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Kate Ogg and Susan Harris Rimmer

Women and international treaty making:
the example of standard-setting in the International Labour Organization

J. Aeberhard-Hodges,
Senior Research Associate,
UN Research Institute for Social Development*
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I. INTRODUCTION

Think back to official photographs you may have seen of international treaty conferences in the early 1900s: the black and white clichés show participants standing on steps outside grand edifices, mostly bearded with top hats and waistcoats, in other words mostly men. Fast forward to the various post-World War Two official conference photographic records: often posed around conference tables, pens in hand, are tie-wearing, suited male diplomats and technicians with a few female assistants on the back chairs balancing huge files or notepads on their knees, hardly daring to face the camera. Now look at some recent photos on your own cell phones from treaty conferences these last few years: the President or Chair opening the session is a man? The Principal Guest Speaker: a man? The committee chairs being nominated, announced and taking their seats on the podium: still men? And look at an around-the-room photo pan out: women are present, but how many? Are they strategically seated at the front table right behind the national nameplates? Are the note-takers all women? Who is scribbling on embassy notepads confidential notes for further negotiations: men? and who is walking such notes between delegations in the room: women? The photos do not lie: where *are* the women in international treaty making?

Is this absence due to a dearth of women available to be chosen as national delegates attending the standard-setting sessions of conferences? And if women do attend, what is the role left for them (only to advise their male delegate colleagues, or chair a minor side committee while the key plenary speeches are made by men)? How do working women who are well placed in ministries or hold high office in national employer’s associations and workers’ organizations balance their family responsibilities with travel to the sessions in treaty-making hubs like New York, Geneva or Vienna, not to mention the often non-standard meeting hours during treaty negotiations? What can be done to address stereotyped perceptions expressed as the often heard quip ‘The women are there, but just don’t come to sessions or if they do they don’t say anything’?

This Chapter uses the case study of the ILO to analyse women’s invisibility in treaty making – and its link to general gender-based inequality – even when serious efforts are made to include them. This analysis assesses ILO and its constituents’ attempts, especially in the last decade, to improve the involvement of women representatives from the world of work.

II. WOMEN’S ROLE IN INTERNATIONAL LAW AND INTERNATIONAL TREATY MAKING

As pointed out by many legal scholars, international law is blind to women whether it be the systematic use of gender-based violence against women and girls

(Charlesworth and Chinkin),ⁱ in the structure of the law itself where the apparent neutrality of law masks deep-seated sexism or obliviousness to women's disadvantaged status (Fredman)ⁱⁱ or in human rights discourse (Cook)ⁱⁱⁱ or in major new justice institutions (Chappell).^{iv} Charlesworth makes the point that the very underpinnings of international law derive from biased societal considerations of what is international law, who are its subjects and how it can be implemented. Chinkin^v takes a practical position to introducing gender analysis into domestic law-making, reminding practitioners and policy-makers in the Commonwealth setting that the use of law to achieve women's advancement assumes a rights-based approach rather than a welfare/charitable response to women's perceived needs or a socio-economic development angle that risk being steeped in unconscious bias. In her listing of obstacles to gender mainstreaming in law making, Chinkin starts by emphasizing the need to recognize then overcome contexts where sex discrimination is seen to be 'natural' or 'the way things are done'. ADD direct quotes.

Chappell's analysis of gender in the International Criminal Court (ICC) – from the points of view of the composition of the court and staff in ICC support organs, to the sex disaggregated data on victims of and accused in cases lodged, to the number of States parties with domestic GBV laws – gives strong empirical support to claims regarding the gendered nature of international law. Like Charlesworth's warnings about the silences, invisibility and gaps in formal international law and institutions (leading to what I call a lazy acceptance of the status quo ignoring women), Chappell calls for more effort to re-draw the boundaries of the law in the ICC: maintaining the election and appointment of women to senior positions across its organs, gender transformative rules, gender-sensitive investigations, convincing evidence, targeted charges, bold judging, and adequate financing.

Interestingly, writers on regional justice institutions^{vi} highlight the gender imbalance among judicial appointments and staffing, but in their detailed breakdown of cases fail to disaggregate the number of female/male complainants and analyse by sex who won the cases. Neville-Brown, in describing the workings of the Court of Justice of the European Communities, enters into some gender analysis of cases won, including instances of striking down discriminatory staff regulations, for example, when female EC officials lost their expatriation allowance on marriage when male colleagues did not. Blanpain devotes several chapters to European Union (EU) gender equality laws and jurisprudence, which constituted watersheds already in the 1990s before some of the more recent key equality instruments like Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) and, of course, the 2007 Treaty of Lisbon itself, which amends the two constituent treaties of the EU (Maastricht Treaty (1993), known as the Treaty on European Union (2007) and the Treaty of Rome (1958), known as the Treaty on the Functioning of the European Union (2007)).

This lukewarm analysis of gender in law making is similarly the case, according to feminist writers, in national legal contexts (Scutt).^{vii} Scutt presents materials across a range of legal areas (employment, pay, health and safety, property, family relations, social security, taxation and criminal law) demonstrating the invisibility of women, and includes case studies on the unjustness of Australian justice towards indigenous women. She argues, in the chapter on affirmative action to assist women to overcome historical and ongoing structural barriers to equality, that laying down rules on the

merit principle without gender analysis immediately skewers the design of affirmative action into a measure that will continue to support favouritism towards men (being the human beings ‘with merit’). My reading of Scutt’s commentary is: if the ingredients for your bread are tainted and the way you assemble them and bake the loaf are faulty, you will never arrive at a healthy tasty meal.

Poor attention to gender responsiveness in judge-made law (common law, and precedent) and judicial stereotyping of women both as accused and victims have been noted for some decades. Attempts to remove sexism in the ways courts incorporate international law, function, and demonstrate gender responsiveness down to decision drafting reached a high point with two ‘soft’ but morally weighty instructions:

- Bangalore Principles of Judicial Conduct:^{viii} ‘A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to ... sex...’ and
- Arusha Declaration of Commitments on the Role of the Domestic Judge in Applying International Human Rights Law, adopted 11 September 2003, which encourages judges to make the norm of equality and non-discrimination on the basis of sex the central principle in all judicial decisions, and to cite articles of CEDAW.

This acknowledgement that sexism creeps into the judiciary has led to country and regional-level judges’ training programs (Aeberhard-Hodges, Stewart).^{ix} Here the research and training^x has been axed more on the application of new anti-discrimination laws, especially sexual harassment at work, unequal pay between the sexes for work of equal value, maternity dismissal, and domestic violence/gender-based violence cases. There are few modern decisions that directly situate the implementation of out-dated laws (e.g., where women are always characterised as carers and men as bread winners, or women as the victims with no decision-making power) as a result of decades’ of female invisibility derived from sources as varied as history, societal norms and political theory.

Over 10 years ago, the United Nations treaty bodies concluded that they needed to do more to integrate gender equality across human rights laws and when verifying States Parties’ implementation of those treaties. At a meeting devoted to the theme of gender mainstreaming in their work, they agreed that

[a]wareness of the gendered nature of human rights is developing (for example in elaborating gender factors of the right to life, ...), but there is not yet a clear acknowledgement or understanding that gender is an important dimension in defining the substantive nature of rights. This remains particularly so in a context where an explicit non-discrimination guarantee is absent, such as in the conceptualization of torture or of gender aspects in racial discrimination. Even where non-discrimination guarantees of human rights are monitored, the gendered nature of the rights themselves remain largely to be explored (for example with regard to defining the ‘right to work’, an ‘adequate standard of living’, ‘freedom of movement’, or ‘freedom of expression’). Human rights treaty bodies can make a major contribution in this regard through their constructive dialogue with States Parties to assess compliance with treaty obligations and through the interpretation of human

rights norms in general comments/recommendations and jurisprudence on the basis of individual complaints.^{xi}

And the United Nations (UN) Human Rights Council (HRC) was so concerned about gender-blind policy making that on 14 December 2007 it adopted Resolution 6/30 on ‘Integrating the human rights of women throughout the United Nations system’, by which it decided to incorporate into its programme of work an annual discussion on the integration of a gender perspective throughout its work and that of its mechanisms, including the evaluation of progress made and challenges experienced. In particular, it ‘reiterates the need for integrating a gender perspective through using gender-inclusive language in the formulation, interpretation and implementation of human rights instruments, as well as in reports, resolutions and/or decisions of the HRC and its various mechanisms and other human rights mechanisms’.

While treaty bodies’ gender responsiveness is improving, challenges remain. Media, academics and human rights activists were dismayed, for example, in June 2016 to learn that the vacant positions on the supervisory committee for the UN Convention on the Rights of Disabled Persons were all filled by men, leaving only one women member on that treaty body.^{xii} How can reporting be efficacious when only one side of humanity – not matter how well respected and committed to objectivity – is represented? Lop-sided composition will not go far in exposing and remedying the assumptions that have systematically impeded women's progress compared to men (in this case, women with a disability compared to men with a disability).

One of the issues that has received less attention in feminist examinations of international law is the role of women in international treaty making. This chapter takes a step towards addressing this lacuna through utilizing gender statistical tracking to examine the progress of women’s involvement in international law making at the ILO.

III. TREATY MAKING IN THE ILO CONTEXT

International treaty making in the form of tripartite standard setting in the International Labour Organization (ILO) is arguably one of the most inclusive processes in multilateral and regional settings. The ILO is the only United Nations system entity that gives equal voice to all key actors within its mandate, namely the world of work. Representatives of governments responsible for labour and employment sit with representatives of business and workers in the International Labour Conference (ILC) to negotiate text for a particular world of work issue. Once the detailed discussions have taken place in a specially established tripartite technical committee of the Conference, and agreement on the provisions reached, the new international labour standard (in the form of a convention or recommendation or a pair of such instruments with the recommendation complementing the treaty text) is tabled in the ILC plenary. For adoption a two-thirds majority vote is required, and workers’ and employers’ delegates get to vote along side government delegates. Tripartite standard setting is the backbone of international labour law and is laid down in the ILO’s 1919 Constitution (Articles 3, 19 to 21) and in greater detail in the Standing Orders of the ILC (in particular Article 11).

This unique tripartite involvement pervades also the preparations for an ILC debate on treaty making, meaning that States are not alone in the information gathering and knowledge sharing that underlies the adoption process. The background reports, commencing with a “law and practice report” prepared by the Office, are based on consultations with member States, which must share their inputs and the Office

summaries for comment with the representative employers' and workers' organizations of their country. If the Governing Body (the ILO structure established by the Constitution, which is mandated among other tasks to decide what items shall be placed on the ILC agenda) decides that other preparatory measures are useful, it can call on the Office to organise tripartite expert meetings and regional consultations. For example, in November 2015 the Governing Body agreed to place on the agenda of the 107th Session (2018) of the ILC the item violence against women and men at work and instructed the Office beforehand to organise a tripartite expert meeting on the subject, which will be held in Geneva 3 to 6 October 2016.^{xiii}

This right of workers' and employers' representatives to share in the preparations, negotiations and vote on any new standard for the world of work gives international labour standards (ILS) an authenticity, realism and authority. That is why the norms are sustainable and workable for all subjects of international labour law.

But while ILS adopted in this tripartite setting apply to all women and men and while gender equality is a cross-cutting theme across all ILO policies and practices,^{xiv} it is not necessarily the case that women and men participate equally in the treaty making. Nor is gender parity a given in other ILO policy-making structures and in the secretariat (called the Office).^{xv}

IV. HISTORY: NO FRAMEWORKS, VERY FEW WOMEN

Women's delegations from Belgium, France, UK and US were active at the 1919 Paris Peace Conference, where the Treaty of Versailles was adopted with the Constitution of the ILO as an annex. The International Council for Women called for equal work opportunities for men and women, equal pay for equal work, limiting the working week and the suppression of night work for women. La Ligue française pour le Droit des Femmes likewise called for equality between the sexes at work. Other issues raised by women leaders, even at that early date, included providing pensions, maternity benefits and minimum wages for housework. Margaret Bondfield represented UK workers at that time and persuaded negotiators to include in the future ILO founding document a clause requiring the participation of women whenever a question concerning women's labour was under discussion. And the French worker leader Jeanne Bouvier representing the Federated Dressmakers' Union was active in pressing for social insurance. But when the first ILC was held in October 1919 only 22 women attended, and then only as advisers:^{xvi} 13 for governments, eight for workers and one for employers. Their presence on delegations, one surmises, is linked to the topics of that first ever labour treaty making process. Six conventions were adopted. Two directly addressed women – prohibiting women's night work and ensuring maternity protection; two directly addressed children – a minimum age for employing young persons and prohibiting youngsters' night work; and two involved general policies on hours of work and unemployment. The extent of women's influence on the topics is hard to measure; being advisers their positions are not reflected in voting records.

As standard setting progressed women's invisibility continued. By the time of the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which is ILO's principal sex discrimination treaty, delegate numbers were still heavily skewed towards men. For example, in the ILC technical committee charged with negotiating the future Convention in 1958, out of a total of 99 delegates inscribed (45 government members, 18 employers, 36 workers), only seven women government delegates participated (from Belgium, Czechoslovakia, Denmark, France, Hungary, Liberia, Poland), and one women worker (Federal Republic of Germany);

the committee office-bearers (chair, worker and employer vice-chairs and reporter) were not surprisingly all men.

Compare this to the numbers of women participating in the ILC technical committee at the 2009 general discussion on gender equality at the heart of decent work: out of the 165 delegates inscribed (82 government members-only countries listed so it was not possible to verify whether women or men from their delegation joined this committee, 30 employers, 53 workers), 24 were female employer delegates (coming from Algeria, Brazil, Burkina Faso, Canada, China, Côte d'Ivoire, Finland, France (full delegate & substitute), Kenya (full delegate & substitute), Kuwait, Mexico, Norway (full delegate & substitute), Portugal, Saudi Arabia, Slovakia, Spain (full delegate & substitute), Uganda, USA, Uruguay, Zambia) and 36 were women worker delegates (coming from Algeria, Angola, Argentina, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Czech Republic, Denmark, Dominican Republic, Germany, Greece, Guinea, India, Japan, Kiribati, Luxembourg, Malaysia, Mexico, Namibia, Netherlands, Norway, Russia, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, UK, USA, Zambia). The officers of that committee were all women except for the Chair, to which office the committee members appointed a man: the Government delegate of Norway (in fact, the national Ambassador for Gender Equality, a post deliberately given to a man to underpin Norway's approach to gender equality). The 2009 data show that 80 percent of the employers participating were women, a major improvement over the 1958 (zero!) composition of the employer benches; and that 68 per cent of the workers were women, again a major increase over the dramatic under-representation on the workers' side in 1958. Historical comparisons between two major gender equality Conference debates, 50 years apart and each with major outcomes for women and for men, show that the presence of women is increasing but the disproportion of female/male delegates in other ILC committees discussing items of importance to all actors in the world of work – women and men – remains a challenge.

As the ILO approaches its centenary, examining Provisional Records of the annual ILC Sessions, it is striking to note that only six women have served as President of the ILC in its entire history: Frances Perkins (USA) in 1941, Anne-Greta Leijon (Sweden) in 1984, Olga Keltosova (Slovakia) in 1997, P.A. Santo Tomas (Philippines) in 2001, Ieva Jaunzeme (Latvia) in 2015 and Mildred Nelisiwe Oliphant (South Africa) in 2016. That is to say, when the ILC meets every year, from 1919 onwards it has elected men as Presidents on over 90 occasions, and women on only six occasions. Women Vice Presidents have also been relatively few.

V. WHAT FRAMEWORKS NOW EXIST FOR GENDER REPRESENTATION?

The over-riding instruction for gender balance in international meetings, including treaty making sessions, is the UN Economic and Social Council (ECOSOC) Resolution 1990/15 of 24 May 1990, which recommends governments and other representative groups, among others, to adopt targets aiming for at least 30% of women in leadership with a view to achieving parity, so as to enable wider participation in decision-making generally. The UN has itself set a target of 30% of women in leadership positions, and the General Assembly Resolution 58/142 of 10 February 2004 urges Members “to promote gender balance for their delegations to UN and other international meetings and conferences”.

Within the ILO there are at least seven frameworks – voluntary mostly, and also inspired by the UN instruments – that support action for equal representation of women and men in ILO treaty making.

1. **The 1919 Constitution’s Preamble** refers specifically to women, but as victims of ‘conditions of labour ... involving such injustice, hardship and privation ... as to produce unrest so great that the peace and harmony of the world are imperiled’ and mentions improvement of those conditions by their regulation and by recognition of the principle of equal remuneration for work of equal value. The 1944 Declaration of Philadelphia annexed to the Constitution recognises that there should be no discrimination based on, among other grounds, sex (Part II(a)) and maternity protection (Part III (h)).

This founding document sets the stage for all ILO work – including its standard-setting – to respect gender equality. No ILO work should exclude women just because of their sex. And Article 3(2) of the Constitution includes a specific reference to women in treaty making, namely: “When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.” Since every matter before the ILC affects human beings, both women and men, such a provision would arguably appear to be superfluous. If the text were to be read to mean that at least one woman adviser will always have to come to ILC sessions, there remains the problem that advisers are not delegates and have fewer rights, for example they cannot vote on the adoption of a treaty. A revision would be welcomed to clarify the purpose of the provision vis à vis Article 3(1), which stipulates the composition of national delegations to the ILC.

Changing constitutional provisions in order to make gender-balanced delegations mandatory is not as rare or difficult as one might think. The Inter-Parliamentary Union (IPU) offers an example of the most explicit commitment to gender equality in the context of an international organization’s constitution illustrating the way in which representation of women within an entity’s treaty-making instances can be expressed in a constitution. By joining an initial, aspirational clause to second clause with sanctions diminishing delegation size and - importantly - voting rights the IPU gave a strong incentive to member States to fulfill the aspiration of the organization.

BOX *Inter-Parliamentary Union Constitution (extracts)*

Article 10

1. The Assembly shall be composed of parliamentarians designated as delegates by the Members of the Union. Members shall include male and female parliamentarians in their delegation and shall strive to ensure equal representation of men and women.

3. Any delegation that for three consecutive sessions of the Assembly is composed exclusively of parliamentarians of the same sex shall automatically be reduced by one person.

Article 15

2.(c) Any delegation that for three consecutive sessions is composed exclusively of parliamentarians of the same sex shall have a minimum of eight votes (instead of the ten for mixed delegations) at the Assembly of the Inter-Parliamentary Union. For delegations entitled to a certain number of additional votes, the overall calculation will be made on the basis of eight votes instead of ten.

END BOX

2. **ILO Declarations** on Equality of Opportunity and Treatment for Women Workers (1975), on Fundamental Principles and Rights at Work (1998) and on Social Justice (2000). While non-binding, ILO Declarations are adopted in the same tripartite framework described above. They carry exceptional moral weight. The 1975 text, in Article 6(5), calls for positive measures to be taken to ensure that women can access top jobs in both the public and private sectors as men do. Such a call, if heeded, would ensure that when ILC delegations are being discussed women are not invisible and may be nominated because they hold to decision-making and representational posts in government, or in worker's organizations or business associations. The 1998 and 2000 Declarations highlight the fundamental principle of women and men's equality in the world of work, without entering into details regarding visibility of women on an equal footing with men in ILO policy making and activities.

3. **ILC 1981 Resolution concerning the Participation of Women in ILO Meetings** noted Article 3(2) of the Constitution, and recalled the ILC's 1975 Resolution on a plan of action to promote equality of opportunity and treatment for women workers, and particularly its call that

measures should be taken to ensure that women are considered for and appointed to delegations on the same basis and by the same standards as men, whether to the International Labour Conference, to regional conferences of the ILO or to other national and international meetings convened under the auspices of the ILO and other intergovernmental organisations.

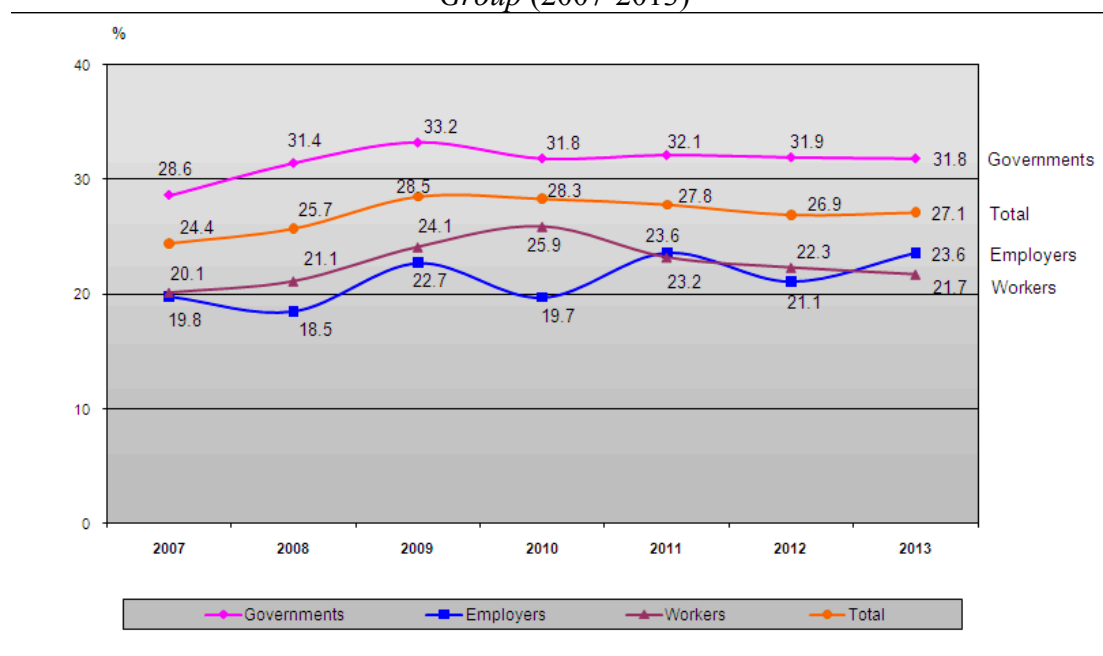
The important 1981 Resolution recognized the already extensive and constantly increasing participation of women in all branches of economic activity and the consequent equal relevance to women and men alike of the questions considered at the ILC, and therefore regretted that over-all participation figures of women on national delegations remained low. It urged that measures be taken to secure the widest possible participation of women at the ILC on the same footing as men and efforts be made in all member States to include women in national delegations among both Government and non-government delegates and advisers. Several other ILC resolutions concerning gender equality also refer to positive action to be taken by governments, employers' and workers' organizations to ensure that women participate fully with men in social, economic and public life including at the international level. The most recent text to single out women's participation in the Organization's treaty-making bodies, in particular the ILC, is the **2009 Resolution on gender equality at the heart of decent work**. It states: '55. The ILO should ... (c) through concrete measures, improve the representation of women at all levels, in all

ILO meetings – including sessions of the Governing Body and the International Labour Conference ...’.

4. **Credentials Committee reports** of each session of the ILC for the last decade have included a section reflecting the proportion of men and women accredited to that particular session. The most recent iteration includes the following information: at the opening of the 105th Session of the ILC on 31 May 2016, a total of 910 female delegates had been accredited, representing 30.1 per cent of total delegates (as against 30.2 per cent in 2015 and 29.8 per cent in 2014). The Committee recalled that the objective of 30 per cent of female participation in delegations was met for the first time in the history of the Conference in 2015, with a total of 30.2 per cent of females being accredited to the Conference as titular delegates, advisers and substitute delegates or as advisers. The Committee noted, however, that not all delegations reached the 30 per cent goal and that women were still unevenly distributed by group or function. With respect to function, male titular delegates from across the Government, Employers’ and Workers’ groups were accredited in overwhelming proportions, meaning that women were missing particularly in leadership and decision-making positions. These data for the 2016 ILC were: Government titular delegates 67.3 per cent male; Employers’ titular delegates 81.2 per cent male; and Workers’ titular delegates 82.5 per cent male.^{xvii}

Figure 1 below is an example of the Office Table updated annually to give all participants a quick-view of who comes to the ILC.

Women Participants (Delegates, Substitute delegates and Advisers) at the ILC by Group (2007-2013)



5. **Governing Body decisions** concerning how to get more women on delegations. In November 2012 the Governing Body debated the persistent gender imbalance in the ILC composition and decided on four specific concrete steps designed to increase the proportion of women on delegations: (a) more detailed reporting by ILC’s Credentials

Committee on the gender composition of delegations; (b) possible Credentials Committee contacts with ILC delegations with consistently low female participation in order to receive information about the reasons and inclusion of the results in its report, with a view to improving the situation; (c) ILO's Director-General to send letters after every ILC to Members which have not reached a 30 per cent level of participation of women in their delegation, and report periodically back to the Governing Body on any obstacles encountered, as well as any measures taken to achieve gender parity; and (d) continued collection by the Office of relevant information and offering assistance to governments, employers' and workers' organizations with a view to achieving gender parity in delegations to ILO meetings.^{xviii} The Director-General's post-ILC letters to member States, sent annually since 2013, appear to have had an impact, as many Geneva-based delegations contacted the Office for concrete advice.

To implement the Governing Body's instructions and respond to the requests for technical assistance, the Office organizes half-day clinics to Geneva-based government missions, using the results of the ILO survey of 22 Members that had achieved gender parity (defined as 45 to 55 per cent women) in their ILC delegations in 2010, which has been replicated each year. The first set of replies, summarized and widely distributed in 2012, identified common elements for getting more women on delegations. Four areas emerged where those Members had useful national-level experiences.

1. Policy and legislation: examples included having national gender equality policies, action plans, high-level gender equality ministries and specific legislation.
2. Equity measures: included quotas for women's parliamentary or executive branch representation, as well as for political parties, women's parliamentary caucuses and gender equality committees, and targeted support for women coupled with sensitivity training for men.
3. Strategic partners: included outreach actions, lobbying by gender equality committees within political parties, and Members' engagement with civil society.
4. Enabling measures: included strengthened institutional structures, equity for women as a goal in employment strategies, public opinion campaigns, training for employers' and workers' organizations and emphasizing the key gender equality international labour standards in all activities.^{xix}

The Office-run clinics have been widely attended. They offer space for government representatives to identify the real barriers to having more women come to the treaty-making sessions, and walk through, with peers, practical measures to enable governments to re-think gender balance among their delegates.

6. Office documents for the smooth functioning of the ILC. While only having advisory force, they contain strong references to gender balance in representation. The documents include the Director-General's letter convoking member States to the ILC Session, which highlights the importance of including women along with men when engaging in proceedings concerning national delegations; and the background *Conference Guide* giving practical information to delegations, which stresses the importance of gender balance.

7. ILC Resolution concerning gender equality and the use of language in legal texts of the ILO.^{xx} ILO member States took a step towards eradicating the common practice of leaving women invisible in texts that used only masculine terminology and grammatical constructions (pronouns, possessives etc.) when, in 2011, the ILC adopted what one might call the ‘ending sexist language’ resolution. Affirming the importance of language in promoting gender equality, including by ensuring the equal visibility of women and men, the Resolution:

1. Resolves that gender equality should be reflected through the use of appropriate language in official legal texts of the Organization. This can be achieved among others through the use of the principle applied in paragraph 2.
2. Further resolves that in the ILO Constitution and other legal texts of the Organization, in accordance with applicable rules of interpretation, the use of one gender includes in its meaning a reference to the other gender unless the context otherwise requires. (...)

The Resolution recognises that using only the male language form in international labour texts - including products of the treaty-making processes - diminished women’s importance. The Resolution implicitly recognises that, because of the authority of such treaties and official ILO texts, using only male language forms reinforced a notion that women were inferior because they were not recognised and named in their own right. The Office was quick to react to this ILC instruction. On 10 November 2011 the Director-General issued internal Announcement 258 (Version 1) in which he welcomed the 2011 ILC Resolution, stated that he expected all ILO staff to review it, and asked all units involved in preparing official legal texts of the ILO to ensure that gender equality is reflected through the use of appropriate language.

VI. IMPROVING WOMEN AND MEN’S PARTICIPATION IN THE ILC

In view of this rich range of frameworks for improving women’s presence in particular in ILO treaty making, what has happened? The ILO is one of very few international entities to have engaged in consistent, statistically sound data collection on gender balance in its principal conference, and this 15 years’ data set shows that indeed more women attend (see Figure 1 above). The data set covers several criteria: per centages of women and men across the total number of delegates, by group they represent (governments, workers’ organizations, employers’ associations) and by region, together with, recently, tabulations of numbers of women who address ILC’s plenary thus having voice in the labour parliament of the world.

The additional in-depth indicator of women’s participation in the proceedings of the ILC (number of women addressing plenary) showed that although there were increasing numbers of women attending the ILC, female participants did not have their voices heard on par with men. According to the published ILC plenary speeches in 2012, the 247 plenary speakers included only 44 women (17.8 per cent). Africa (26.9 per cent), Europe (20.8 per cent) and the Americas (13.7 per cent) had the most women taking the floor. In 2013 the proportion of women addressing plenary had risen to 23.1 per cent.

This publically available data allows over-time comparisons, and matching of decreases and increases against external factors (geo-political situations, financial crises or the substantive item on the ILC agenda). For example, the number of women

participants at the 2012 ILC actually decreased to 26.9 per cent , compared to 28.5 per cent in 2009, a high explained by the fact that in 2009 the ILC was charged with a general discussion on gender equality at the heart of decent work, and many delegations included committed women to speak to that specific topic. The number of women workers’ representatives rose sharply in 2011 when the ILC adopted the Domestic Workers Convention No. 189, which had been a major goal for unions urging protection for women working in this sector.

Given that raw data exist in the ILO case study, the finding that the increase of women participants does not necessarily result in more women participating (i.e. women participants are voiceless) can be investigated further. Taking only the most recent 105th (2016) ILC Session plenary speeches concerning the Reports of the Chairperson of the Governing Body and of the Director-General^{xxi} (excluding interventions during sittings for adoption of committee reports, and the voting sittings where for example the officers of each committee present and therefore their ability to ‘be heard’ depends not on the delegation taking the floor but on the fact that the speaker was elected to hold office in that committee and present its work to the plenary, so would skewer the methodology if included), the following Table shows the particularly poor showing of women addressing the plenary:

105th (2016) Session of the International Labour Conference								
Numbers of Men and Women speakers in plenary								
(by category Gt= government; W= worker; E= employer)								
	Gt men	W men	E men	Observer men	Gt women	W women	E women	Observer women
1 June	13	3	3	3	1	1	-	2
On 1st June : 22 men spoke and 4 women spoke								
2 June	9	8	4	3	1	1	-	-
On 2nd June : 24 men spoke and 2 women spoke								
3 June	9	8	6	2	3	2	-	1
On 3rd June : 25 men spoke and 6 women spoke								
6 June	14	16	7	15	4	2	-	2
On 6th June : 52 men spoke and 8 women spoke								

7 June	26	11	15	2	11	3	-	2
On 7th June : 54 men spoke and 16 women spoke								
8 June	31	11	10	2	12	1	1	1
On 8th June : 54 men spoke and 15 women spoke								
9 June	4	1	-	-	-	-	-	-
On the final day for responding to the Reports in the ILC plenary, 9th June : the last five speakers were all men								

Out of a total of 282 plenary speakers:

- 231 male speakers were recorded (approx. 82 per cent), and
- 51 female speakers were recorded (of whom eight were from organizations having observer status, being unable to vote). So only approximately 18 per cent - not even one in five speakers - were women.

More research could be undertaken to track male/female intervention ratios vis à vis past years' delegates and speakers lists.

Another aspect of these interesting data is to investigate if the slow improvement in numbers of female delegates has been due to more down-to-earth factors, such as ILO's introduction of practical measures (pre-conference preparation clinics to share good practices; non-sexist drafting rules following the ILC 2011 Resolution) and due to a serious choice of topics for substantive debate leading to ILS (for example, one could track whether equal numbers of women and men will attend the ILC 2018 discussion of a new standard on gender-based violence at work). Are workers' and employers' organizations pushed by rising female membership to be attentive to all aspects of sex-based inequalities in the workplace, including in ILC proceedings?

Contributing to efforts to discover why so few women are visible at international meetings, including the ILC, the Office studied who sits on principal decision-making labour-related institutions. Through the use of questionnaires it tracked women v. men's participation in 48 national social dialogue institutions and efforts made to promote gender balance in them. The data showed that the average proportion for women participants for all regions was 14.68 per cent. By region, the highest share was found in Europe (16.76 per cent women), followed by Latin America and the

Caribbean (14.16 per cent), Africa (12.34 per cent) and Asia (11.21 per cent). By group across all regions, women were mostly participating as government representatives (18.93 per cent), followed by as worker representatives (12.95 per cent) and then as employer representatives (10 per cent). Moreover responses to the questionnaires indicated that, on average, only 9.82 per cent of the Chairpersons elected or appointed to such bodies in the last five years were women. Only a slightly higher per centage of recent Vice-Chairpersons (12.38 per cent) were women.^{xxii}

ILO research confirms that women are persistently under-represented at all levels of social dialogue, and concludes that this under-representation is one of the direct consequences of under-representation of women in the top posts within government units, trade unions and employers' organizations.^{xxiii}

Taking trade union membership and leadership composition, one can see why in the past there were so few women workers' delegates at the ILC. The following data from one regional confederation and one national workers' organization tell the story starkly.

The European Trade Union Confederation (ETUC) 2014 survey on women in EU trade unions^{xxiv} received replies from 51 (out of 85) national confederations from 31 European countries, as well as from 20 sectoral national unions from 12 European countries. It examined trends of female membership in national trade union confederations:

- women represented 44,393,073 members, of which 19,624,693 were women (44.2 per cent)
- the national confederations with the highest rates of female membership were STTK-Finland (75 per cent), followed by the Latvian union LBAS (65 per cent) and the Estonian union EAKL (62 per cent); and the lowest percentage of female members was reported by the two Turkish confederations: TURK-IS (13 per cent) and HAK-IS (11 per cent), and DEOK-Cyprus (13.7 per cent)
- 12 unions reported more female than male members (EAKL-Estonia, AKAVA and STTK from Finland, ICTU-Ireland, LBAS-Latvia, LPSK from Lithuania, LO and YS from Norway, CGT-Portugal, SACO and TCO from Sweden and TUC-UK)
- 27 confederations (out of 47) have a female membership rate equal to or higher than 44.2 per cent.

The ETUC Survey also examined women in positions of power within trade unions. It found that for all the positions of power within national confederations, women were in the minority compared to men:

- 4 female Presidents (against 35 for men)
- 18 female Vice-Presidents (against 51 for men)
- 9 female General Secretaries (against 27 for men)
- 7 female Deputy General Secretaries (against 13 for men)
- 9 female treasurers (against 16 for men)
- only 7 women held a leadership position in their national confederation (47 were men).

Australia's thorough data on trade union membership allows longitudinal gender analysis. The most recently released ABS data suggest that just 15 per cent of all Australian employees, and a mere 11 per cent of those employed in the private sector, are union members. The data reveal a significant deconfiguration of the gender imbalance within union representation. Despite being roughly half of all union members, and taking an even larger share of (unpaid) union delegate or representative roles in unionized workplaces, significant gaps emerge in women's representation in top roles. For example, on 2015 Australian Council of Trade Unions data, 38.5 per cent of union secretaries – the most senior and powerful leaders within the movement – are women. Women's representation in these roles has grown during the past 15 years – for example, just 23 per cent of secretaries were women in 1999 – but this improvement has not kept pace with women's share of union membership. Researchers record feedback that, despite high levels of commitment to union work and enjoyment of many aspects of the job, women working within the union movement (including paid female officials) keenly felt they were under-represented in senior roles. They questioned whether this was an imbalance due to or an outcome of, the sexism and a 'masculinist' culture reported by women as being alive and well within their union workplaces?^{xxv}

VII. CONCLUSIONS ON THE ILO CASE STUDY

The world supports the promotion of women's leadership in high-level economic decision-making, including at the International Labour Conference. Recent efforts by the ILO, including the Director-General's letter to under-represented delegations, the Office-run clinics on practical ways to increase the participation of women in delegations and the Conference's on-going exhortations for gender-balanced delegations, are welcomed. But, as noted above it was only in 2015 that representation of women at the ILC was over 30%, for the first time in the history of the ILO. As a new ILS on gender-based violence at work is scheduled for negotiation at the June 2018 Session of the ILC, the tripartite constituents had time to work on identifying female representatives for that ILC. Indeed, overall attendance data show women delegates and advisers accredited to this Session represented 32.7 per cent of the total number of delegates and advisers (as compared to 31.1 per cent in 2017 and 30.1 per cent in 2016). ADD 2018 data.

Achieving equal representation of women with men on all delegations to Sessions where labour law treaties are negotiated and adopted remains unfinished business. One immediate improvement of a mandatory nature is to revise the gender-blind wording of Article 3(1) of the ILO Constitution on composition of delegations. Such a constitutional amendment – although time consuming and technically delicate – would be consistent with member States' commitment to gender equality.

If ILO member States and tripartite constituents want the highest quality international labour law, expressed through the treaties adopted at the ILC, they should aim at ensuring that the process of making international labour law includes women on an equal footing with men. The integrity of international labour standards can only be maintained by ensuring women's engagement and only then will the ILO's mandate on social justice and genuine social dialogue be fulfilled.

The future of women's engagement with international law making

This chapter has demonstrated what needs to change so that more women can participate and be heard in international law making. Using the ILC example, there are an array of practical measures that can be taken to identify and send women

delegates to such conferences: quotas, rotation systems, provision of child care, adaptation of meeting hours, amending constitutions of multilateral institutions so that unequal delegations may not vote and so that officers of technical committees should comprise equal numbers of women and men, to name but a few. Statistical tracking is critical as data (as the ILO study shows) can shock governments and other stakeholders into taking better note of gender balance on delegations, not to mention the weight of naming and shaming. Regarding law-making in international bodies including the UN treaty body system, States must reflect on gender equality in nominations and voting patterns for the various key human rights bodies. More research is needed on how to translate greater women's participation into the creation of international law that is more meaningful for women.

ⁱ H. Charlesworth and C. Chinkin, 2000 *The Boundaries of International Law: A feminist analysis*, Manchester, Manchester University Press.

ⁱⁱ S. Fredman, 1998. *Women and the Law*, Oxford Monographs on Labour Law, Oxford, Clarendon Press.

ⁱⁱⁱ R. Cook, 1997. "Women" in *The United Nations and International Law*, Ed. C. Joyner, Cambridge, Cambridge University Press.

^{iv} L. Chappell, 2016. *The Politics of Gender Justice at the International Criminal Court : Legacies and Legitimacy*, USA, Oxford University Press.

^v C. Chinkin, 2001. *Gender Mainstreaming in Legal and Constitutional Affaires*, London, Commonwealth Secretariat.

^{vi} L. Neville-Brown & T. Kennedy, 1995. *The Court of Justice of the European Communities*, 4th Ed., London, Sweet & Maxwell; R. Blanpain & J.-C. Javillier, 1991. *Droit du travail communautaire*, Paris Librairie générale de droit et de jurisprudence.

^{vii} J. Scutt, 1990. *Women and the Law-Commentary and Materials*, Sydney, The Law Book Company.

^{viii} UN Commission on Human Rights resolution 2003/43 and

^{ix} J. Aeberhard-Hodges, forthcoming. 'Improved gender justice: Tracking recent judicial decisions across jurisdictions' in *Journal of Industrial Relations*, Sydney, University of Sydney; and A. Stewart, 2000. 'Implementing gender justice through the judiciary : a case study of judicial training in India', in *Governance, Development and Globalisation*, Eds. J. Faundez, M. Footer & J. Norton, London, Blackstone Press Limited.

^x S. Cusack, *Eliminating Judicial Stereotyping: Equal access to justice for women in gender-based violence cases*, Office of the High Commissioner for Human Rights, Geneva, June 2014.

^{xi} UN: *Integrating the gender perspective into the work of United Nations human rights treaty bodies: a report: 10th meeting of persons chairing human rights treaty bodies*, Geneva, 14-18 September 1998, HRI/MC/1998/6 (UN, NY), para.98.

^{xii} The CRPD Committee now stands as the treaty body with the fewest number of women members – one woman (out of 18 members) in 2017- a significant departure from its previous compositions of six women (out of 18 members) in 2014-2016; seven women (out of 18 members) in 2012-2014; eight women (out of eighteen members) in 2010-2012; and five women (out of 12 members) in 2008-2010; see <http://www.wunrn.com/2016/06/crpd-committee-on-the-rights-of-persons-with-disabilities-no-woman-elected-in-2016-un-treaty-body-with-fewest-number-of-women-members/>.

^{xiii} ILO document GB.325/INS/2, Appendix III pp. 16-19, and para. 34 'Revised Point for Decision: ...2. The Governing Body decides: (a) to place a standard-setting item on "Violence against women and men in the world of work" on the agenda of the 107th Session (June 2018) of the Conference; and (b) to convene a tripartite meeting of experts to provide guidance on which basis the Governing Body will consider, at its 328th Session (November 2016), the preparations for the first discussion of possible instruments by the Conference.'

^{xiv} ILC, 104th Session (2015) Report II, *Programme and Budget 2016-17*, para. 158 'Gender equality: In line with the women at work centenary initiative, and building on previous work, advocacy with employer and business organizations will continue to make the business case for promoting gender equality and diversity in the workplace, increasing participation of women in governance structures and fostering women entrepreneurship through an adapted business environment.'

^{xv} Article 9(1) of ILO's Constitution addresses the staff of the International Labour Office, who shall be appointed by the Director-General and with due regard to the efficiency of the work of the Office, be of different nationalities. Article 9(3) states: 'A certain number of these persons shall be women.' The Office prepares statistics on staff composition for the Governing Body on an annual basis, including sex-disaggregated data. The latest report shows that as at 31 December 2015, women comprised 44.4% of regular staff, compared to 44.3% at the same date in 2014. See: ILO document, 326th Session of the Governing Body, GB.326/PFA/INF/5 (Rev.). For comment on gender parity in the UN itself, see: H. Charlesworth, 2004. 'Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations' *Harvard Human Rights Journal*. Vol. 18.

^{xvi} Under the ILO Constitution and Conference Standing Orders, Members' delegations may include a number of advisers (who shall not exceed two in number for each item on that Session's agenda), but according to Article 3(6) they cannot vote and may not speak except on a request made by the delegate whom they accompany and by the special authorisation of the President of the Conference. Hence advisers have little visibility; there are rarely enough seats around negotiating tables to accommodate a large number of advisers and in some settings the Chair may require a private sitting where advisers must leave the room.

^{xvii} ILC, 105th Session, *First Report of the Credentials Committee*, Provisional Record 6B, Geneva, May-June 2016.

^{xviii} GB.316/LILS/1. In March 2014 the Governing Body noted information on the follow-up given by the Office to its decision concerning the achievement of a more equitable proportion of women in delegations to the International Labour Conference (GB.320/LILS/INF/3).

^{xix} These ILS are: Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Workers with Family Responsibilities Convention, 1981 (No. 156), Maternity Protection Convention, 2000 (No. 183).

^{xx} ILC 100th Session (2011) *Provisional Record No. 10*, page 10/2.

^{xxi} ILC 105th Session (2016) speeches recorded from 1 to 9 June
<http://www.ilo.org/ilc/ILCSessions/105/speeches/lang--en/index.htm>

^{xxii} T. Breneman-Pennas & M. Rueda Catry, 2008 *Women's participation in social dialogue institutions at the national level*, Working Paper No. 16, ILO's Social Dialogue, Labour Law and Labour Administration Branch, Geneva.

^{xxiii} For analyses of gender composition in a variety of national consultation bodies see: D. Budlender, 2011 *Gender Equality and Social Dialogue in South Africa*, Working Paper No. 2, ILO's Bureau for Gender Equality & Industrial and Employment Relations Department, Geneva; J. Parker, T. Nemani, J. Arrowsmith, J. Douglas with R. Cooper and N. McDonnell, 2011 *Comparative study on social dialogue and gender equality in New Zealand, Australia and Fiji*, Working Paper No. 22, ILO's Industrial and Employment Relations Department, Geneva; A. Weiler, 2013 *Social dialogue and gender equality in the European Union*, Working Paper No. 44, ILO's Bureau for Gender Equality & Governance and Tripartism Department, Geneva.

^{xxiv} Direct Link to Full 73-Page ETUC 8 March 2014 Survey Report:

http://www.etuc.org/sites/www.etuc.org/files/other/files/etuc_8th_march_survey_2014_en_eh.pdf

^{xxv} R. Cooper 2012 'The Gender Gap in Union Leadership in Australia: A Qualitative Study' *Journal of Industrial Relations*, April 2012 54: 131-146, University of Sydney Business School.