

UNITED NATIONS—UNITED STATES WITHDRAWS FROM THE INTERNATIONAL LABOR ORGANIZATION

On November 2, 1977, President Carter issued a statement announcing that the United States had decided to allow its notice of withdrawal from the International Labor Organization (ILO) to take effect.<sup>1</sup> This statement gave effect to a letter of November 5, 1975, from former Secretary of State Henry A. Kissinger to the Director General of the ILO, Francis Blanchard,<sup>2</sup> in which the United States, in conformity with the Constitution of the ILO, announced its intention to withdraw from the Organization in two years' time.<sup>3</sup>

The notice of withdrawal had voiced the concern of the United States that the ILO in recent years has turned away from its basic aims and objectives and was increasingly being used for purposes for which the Organization was not formed.<sup>4</sup> Secretary Kissinger pointed out four matters of special concern of the United States which contributed to its decision to withdraw.<sup>5</sup> The first area of concern was the erosion of tripartite representation within the ILO as provided for in the Organization's Constitution.<sup>6</sup> The United States could not accept the practice of many member nations having worker and employer groups falling under the domination of their national government.<sup>7</sup> The second point of United States discontent was directed at the recent ILO tendency to selectively apply the Organization's human rights conventions, pursuing violations in some member states while giving immunity to others.<sup>8</sup> The third problem, the Secretary maintained, concerned a growing disregard for due process. Recent sessions of the ILO Conference had adopted resolutions condemning particular member states for political reasons, in disregard of established procedures and machinery for fact-finding and conciliation.<sup>9</sup> This accelerating trend had gravely damaged the ILO's capacity to pursue its objectives in the human rights field.<sup>10</sup> Finally, the ILO had become excessively

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<sup>1</sup> N. Y. Times, Nov. 2, 1977, § A, at 1, col. 2.

<sup>2</sup> 14 INT'L LEGAL MAT'LS 1582-84 (1975).

<sup>3</sup> This provision requires any member nation to give two years' notice of its intention to withdraw from the ILO. INT'L LAB. ORG. CONST. art. 1, para. 5; reprinted in G. JOHNSON, THE INTERNATIONAL LABOUR ORGANIZATION (1970) [hereinafter cited as INT'L LAB. ORG. CONST.].

<sup>4</sup> 14 INT'L LEGAL MAT'LS, *supra* note 2, at 1584.

<sup>5</sup> See Alford, *The Prospective Withdrawal of the United States from the International Labor Organization: Rationales and Implications*, 17 HARV. INT'L L. J. 623 (1976) [hereinafter cited as *Prospective Withdrawal*].

<sup>6</sup> In addition to two Government representatives, each member's delegation shall also consist of one delegate representing that country's employees and one delegate representing that country's workpeople. INT'L LAB. ORG. CONST. *supra* note 3, art. 3, para. 1.

<sup>7</sup> 14 INT'L LEGAL MAT'LS, *supra* note 2, at 1583.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

involved in political issues beyond its scope, diverting the Organization's attention from its primary function of improving the conditions of workers, a relatively non-political function.<sup>11</sup>

Despite the formal notice of withdrawal, the United States' actual departure from the ILO came as a surprise to many member nations. Secretary Kissinger, in the notice, had expressed confidence that the United States did not, in fact, expect to be forced to withdraw from the Organization, but that its efforts to promote certain changes would be successful and allow continued American participation. He also warned, however, that the United States was prepared to withdraw should its efforts be unsuccessful.<sup>12</sup>

Two proposed reforms, intended in part to remedy the problems outlined in the United States notice of withdrawal, were dealt with at the June 1977 ILO Conference. In what Secretary of Labor Ray Marshall called "[the Conference's] most important action", a report designed to treat uniformly violations of human rights-oriented Labor Conventions, was rejected.<sup>13</sup> In addition, the Conference refused to take substantive action on a proposed change of article 17 of its Standing Orders which would provide a vehicle for the functioning of due process and a method for screening out political resolutions.<sup>14</sup> The failure of the Conference to adopt these proposals led directly to the United States decision to allow expiration of its membership.<sup>15</sup>

The first of these proposals concerned a report by the Committee on the Application of Conventions and Recommendations, which contained

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<sup>11</sup> *Id.* at 1583-84.

<sup>12</sup> *Id.* at 1582.

<sup>13</sup> Memorandum from Secretary of Labor Ray Marshall to President Jimmy Carter, 2 (Oct. 17, 1977) [hereinafter cited as Marshall]. The report Marshall referred to was a report of the Committee on the Application of Conventions and Recommendations, *See INT'L LAB. CONF.*, (63d sess.) § 25 (prov. record, 1977). This Committee had been formed prior to the 1977 Conference to consider several reports and surveys. The Committee's role was to assess the effect given to Conventions and Recommendations adopted by the Conference. The pertinent work of the Committee regarding human rights-oriented Labor Conventions consisted largely of condensation of the observation of another Committee, the Committee of Experts on the Application of Conventions and Recommendations. The Committee of Experts, in a comprehensive report, had set out their observations regarding the explanations given by governments whose practices in applying ratified Conventions had been called into question. The Committee of Experts had also made several recommendations regarding the application of human rights-oriented Labor Conventions.

<sup>14</sup> *INT'L LAB. CONF.* (63d sess.) § 7 (prov. record, 1977).

<sup>15</sup> Secretary of Labor Ray Marshall's Statement of the United States' Withdrawal from the International Labor Organization, USDL: 77-959, at 2 (Nov. 1, 1977). Secretary Marshall also stated that "We [the present Administration] had hopes that the June 1977 ILO Conference which I attended would take action to bring about the necessary changes. To our regret, the results of that Conference were disappointing. A majority of the delegates refused to halt the Organization's movement away from its accepted principles and procedures. We therefore decided to permit our notice of withdrawal from the ILO to take effect." *Id.*

suggestions to aid in a more uniform application of human rights-oriented Labor Conventions<sup>16</sup> by member nations. Of particular importance was the Committee's suggested approach in evaluating national law and practice against the requirements of these Conventions.<sup>17</sup> The Committee noted that, while "modes of their implementation might be different in different states, these are international standards, and the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any particular social or economic system."<sup>18</sup> Committee members from the countries of Hungary, Romania, and the Soviet Union dissented from this suggested approach. These delegates maintained that there could not be uniform application of Labor Conventions, but that economic and social conditions existing in the country concerned and the specific character and legal concepts of its economic and social system must be taken into account in applying these instruments.<sup>19</sup> During examination of the report at the General Conference these arguments were again aired.<sup>20</sup> After considerable debate, a vote was taken on whether to adopt the report. A majority of votes in favor of the adoption was not obtained, and the report was rejected.<sup>21</sup>

A second major setback to United States hopes of reform occurred when the Conference failed to make any decisive progress toward amending article 17 of its Standing Orders.<sup>22</sup> In recent years proposals had been made by the Working Party on Structure with respect to the procedure for consideration of resolutions relating to matters not included on the agenda of the Conference procedures set out in article 17.<sup>23</sup>

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<sup>16</sup> The report of the Committee of Experts on the Application of Conventions and Recommendations attached special importance to the Labor Conventions dealing with abolition of forced labor, elimination of discrimination, and employment policy. INT'L LAB. CONF. (63d Sess.) § 25, at 5 (prov. record, 1977).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> The Soviet Government delegate charged that "[i]n concrete terms, the socialist and developing countries are considered from the point of view of the bourgeois legal systems and this is inadmissible". INT'L LAB. CONF. (63d sess.) § 31, at 11 (prov. record, 1977).

<sup>21</sup> The results of the vote: 135 votes in favor, none against, with 197 abstentions. *Id.* at 27.

<sup>22</sup> The parts in question of article 17 are para. 1, subparagraphs. (2) and (3) . . . which read as follows:

(2) Copies of all resolutions shall be available at the International Labour Office not more than 48 hours after the expiry of the time limit laid down in the preceding subparagraph: Provided that the Director-General may decide to withhold circulation the text of a particular resolution pending consultation of the Officers of the Governing Body.

(3) When circulation of a particular resolution has been withheld pending consultation of the Officers of the Governing Body, that resolution shall, unless the Officers decide unanimously to the contrary, be available to delegates no later than the date fixed for the opening of the session of the Conference.

INT'L LAB. CONF. (63d sess.) § 3, at 4 (prov. record, 1977).

<sup>23</sup> While there had been discussion by the Working Party on Structure several times, the

At its 201st Session in November 1976, the Governing Body<sup>24</sup> adopted a suggestion by the Canadian Government that the Committee on Standing Orders and the Application of Conventions and Recommendations without prejudice to concurrent consideration by the Working Party on Structure, consider proposals for amending article 17.<sup>25</sup> In March 1977, the Committee presented a report to the 202d Session of the Governing Body dealing, *inter alia*, with proposals for amendment of article 17.<sup>26</sup> The Committee used as a basis for an amendment, the revised proposal of the Government of the United States, which had been submitted to the Working Party on Structure but not considered by them.<sup>27</sup> While the Governing Body did vote to submit the amendments to article 17 as proposed by the United States,<sup>28</sup> there was much disagreement within the Governing Body, most notably concerning the true purpose of the ILO.

The discussion in the Governing Body reveals a basic dichotomy of thought. While many Western industrial states applauded the amendment as one which would insure the exercise of due process and elimination of political resolutions extraneous to the purposes of the Conference as a technical organization,<sup>29</sup> several Communist bloc and Third-World nations were harshly critical of the proposal. It was, the Yugoslavian government maintained, difficult to separate "technical" subjects from the "political" since political events were bound to have an impact in the field of social policy. When events of major international importance occurred, calling into question the principles most basic to the Organization, it could not

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proposals had continuously been buried, with other business taking precedent. *Id.*

<sup>24</sup> The Governing Body, consisting of 48 delegates, serves as the executive council of the ILO. Government representatives occupy 24 seats with labor and employers having 12 seats each. The ten major industrial powers of Canada, China, France, India, Italy, Japan, Soviet Union, United Kingdom, United States, and West Germany each retain a permanent government seat. *Prospective Withdrawal*, *supra* note 5, at 626 n.22.

<sup>25</sup> INT'L LAB.CONF. (63d sess.) § 3, at 2-3 (prov. record, 1977).

<sup>26</sup> *Id.* at 3.

<sup>27</sup> The key purposes of this amendment were to provide a framework for rejecting resolutions not receivable and to set out objective procedures for determining which resolutions were not receivable. As defined, the proposal would exclude resolutions which were condemnatory without an inquiry under established ILO procedures. Independent experts would examine resolutions which had been withheld by the officers of the Governing Body to determine if the resolutions fell under the definition of those deemed not receivable. *Id.* at 4.

<sup>28</sup> The proposal passed with 34 votes in favor, 17 against, with four abstentions in a ballot vote. *Id.* at 3.

<sup>29</sup> The worker delegate from the United Kingdom pointed out that historically the ILO was not designed to be a political body. Mexico's employer delegate noted that the Constitution, as amended in 1946, limited the ILO to the role of a United Nations specialized agency with a further agreement providing that the United Nations would be responsible for political matters and the ILO for technical matters within the sphere of its competence. In addition, delegates from the United States, West Germany, Canada, France and Austria made points supporting the proposal on grounds of due process and elimination of political resolutions. See discussion *id.* at app. II.

be expected that the ILO remain silent.<sup>30</sup> This expressed a sentiment that the ILO could and would be used as a political forum, under the broad rubric of "social policy."<sup>31</sup>

Against this background, the proposed amendments were submitted to the June 1977, Conference for approval for further consideration and implementation by the Committee on Standing Orders. The proposal was defeated.<sup>32</sup>

Despite these two major setbacks to United States efforts for reform, desire to implement the notice of withdrawal was not unanimous. While Secretary Marshall supported withdrawal,<sup>33</sup> Secretary of State Cyrus Vance recommended that the United States extend its membership for one year to enable the United States to pursue its objectives further.<sup>34</sup> Secretary Vance voiced several concerns over the effects of a United States withdrawal. He felt that withdrawal would damage both our improving relations with the Third World and our relations and role of leadership with our allies. In addition, Secretary Vance was concerned that withdrawal might provide a precedent which could be used by interests within the United States to force its withdrawal from other international organizations.<sup>35</sup>

External factors also supplied momentum to stay within the Organization. Several encouraging developments had transpired since the latest Conference. Over forty countries, several of which had opposed reform efforts, urged the United States to remain in the ILO. Additionally, the Director General of the Organization had initiated efforts to promote reform in the areas of concern to the United States.<sup>36</sup>

Secretary Marshall favored immediate withdrawal, opposing a one year extension. He felt that withdrawal would demonstrate the seriousness of the United States' position, and encourage support for the reform efforts of other member nations.<sup>37</sup> Secretary Marshall also pointed out that the

<sup>30</sup> *Id.* at III/3.

<sup>31</sup> Delegates from such countries as Poland, the Sudan, Yugoslavia, Romania, and the Soviet Union spoke out against the proposal, generally defending the right of the Organization to deal with any issue it so desired, regardless of the nature of that issue. *Id.* at III/3, III/5, III/8, IV/5.

<sup>32</sup> The proposal received 132 votes in favor, 2 against, with 212 abstentions. There being no quorum, the proposal was not adopted. INT'L LAB. CONF. (63d Sess.) § 7 at 24 (prov. record, 1977).

<sup>33</sup> Marshall, *supra* note 13.

<sup>34</sup> Memorandum from Secretary of State Cyrus Vance to President Jimmy Carter, 1 (Oct. 17, 1977).

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 3-4. Secretary Vance pointed out that the Director General committed himself in a letter to the Governing Body, to use the power of his office and the existing language of article 17 to prevent the introduction of inappropriate resolutions not relevant to the purpose of the ILO. Memorandum from Secretary of State Cyrus Vance to Secretary of Labor Ray Marshall, 2 (Oct. 7, 1977).

<sup>37</sup> Marshall, *supra* note 13, at 3-4.

AFL-CIO and the Chamber of Commerce, the organizations which supplied the United States worker and employer delegates respectively, had made it clear that they would not participate in a one year extension of United States membership.<sup>38</sup>

Much criticism and speculation as to the effects of United States withdrawal from the ILO has been forthcoming. United Nations Secretary General Kurt Waldheim labeled the move a "retrogressive step" from the principle of collective responsibility, and both Third World and Western diplomats have been critical.<sup>39</sup> Many have argued that, rather than promoting reform within the ILO, withdrawal will cause an irreversible slide to an anti-West bias. Some allies have predicted an era of United States isolationism.<sup>40</sup> Finally, others have echoed Secretary Vance's warning that withdrawal might be used as a precedent for arguing for United States withdrawal from other international organizations.<sup>41</sup>

However, the United States, in withdrawing, left the way open for a return to the ILO.<sup>42</sup> As Secretary Marshall stated in response to the charges on isolationism, "[t]his action does not diminish our continued commitment to international organizations. To the contrary, our deep belief in the important role of international organizations has led us to make clear that there are limits to which an organization like the ILO can go."<sup>43</sup> If Secretary Marshall is correct in his optimism that the ILO will make the necessary changes, the United States may, in good conscience, be able to participate in the ILO again in a short while.<sup>44</sup>

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<sup>38</sup> *Id.* at 2.

<sup>39</sup> See note 1 *supra*.

<sup>40</sup> NEWSWEEK, Nov. 14, 1977, at 69.

<sup>41</sup> See *Prospective Withdrawal*, note 5 *supra*, at 638.

<sup>42</sup> A former member may be readmitted upon approval by two-thirds of the Government delegates present and voting and a pledge by the returning member to accept the Constitution, as provided for by art. 1, paras. 3 and 4, governing admittance of new members. INT'L LAB. ORG. CONST., *supra* note 3, art. 1, para. 6.

<sup>43</sup> See note 15 *supra*, at 3.

<sup>44</sup> *Id.*