Global Workplace Law & Policy

Forced labour imposed on workers in an occupied territory – searching for sources of protection

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An armed conflict has always a severe impact on civilians in their role as workers, and on workplaces. Of particular concern are violations of fundamental labour rights, such as the prohibition of forced or compulsory labour, contained in the ILO Forced Labour Convention No. 29 and its Protocol of 2014, and in the Abolition of Forced Labour Convention No. 105. Armed conflicts can be internal or extraterritorial. In case of the latter, typical violations would include conscription or trafficking of workers to work in the territory of the aggressor, or imposition of labour, or labour conditions, on the inhabitants of the occupied territory that do not comply with the principles contained in the relevant international labour standards.

However, the ILO forced labour standards do not exist in isolation. The international legal framework around forced or compulsory labour in the context of an international armed conflict and specifically territorial occupation or annexation is a complex one, which draws on multiple

branches of law, including international humanitarian law, international criminal law, and international human rights law. This post deals with the **question of whether we have sufficient guidance from the ILO supervisory bodies on the application of international labour standards in the context of international armed conflict, including in extraterritorial situations. This post concludes that there should be more engagement with the matter of coherence between the international labour standards and international humanitarian law – in order to improve protection of workers.**

Background

We live in the times of multiple crises and multiple armed conflicts. In June 2023 the ILO published a brief prepared together with the global union federation IndustriALL and the Ukrainian trade unions, describing the situation of workers at the Ukrainian nuclear power plant Zaporizhzhia (ZNPP), who have been reportedly subjected to forced labour and life-threatening occupational safety and health risks. Earlier, similar accounts have been released by other international actors, such as the International Atomic Energy Agency (IAEA), in relation to the treatment of workers both in the Zaporizhzhia as well as at the Chernobyl power plants (CNPP).

These were not isolated accounts of potential forced labour cases that have been levelled during this conflict. In July 2022, the Institute for the Study of War, the US-based public policy research organization, informed that the Russian forces occupying the city of Mariupol have reportedly resorted to the practice of providing food and humanitarian assistance to civilians only if they were involved in labour on behalf of the occupiers, including clearing rubble possibly contaminated with explosives, performing disposal of corpses and arranging mass graves.

If true, these allegations raise the issue of whether occupation forces may compel the population of territory over which they exercise control to work, and if so, under what circumstances. The subsequent question is whether workers compelled to work in such situations can get additional protection under the international labour law that prohibits forced or compulsory labour.

The IHRL

Under the international humanitarian law – applicable in case of an international armed conflict – compelling the civilian inhabitants of occupied territory to work is regulated by Article 51 of the 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War.

Accordingly, requisition of civilian labour by the foreign occupying power is put under strict limits. As such, international humanitarian law offers important source of protection to workers in the occupied territories. **However, would the concurrent application of international labour standards relevant to forced or compulsory labour improve such protection?** Which cases of treatment of workers that is incompliant with the IHL could also be qualified as forced or compulsory labour prohibited under the ILO forced labour Conventions? Could there be cases of requisition of civilian labour that is compliant with the IHL but nevertheless raises concerns when assessed under the ILO forced labour standards?

The ILS

The ILO Convention No. 29 prohibits forced or compulsory labour which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2(1)).

When assessing a situation similar to that in the Ukrainian nuclear power plants or in the city of Mariupol, one needs to consider **whether the ILO forced labour standards apply in case of war and whether they apply extraterritorially.**

The ILO monitoring expert body CEACR has considered in detail the application of the Convention No.29 to two situations which occurred during the 2nd World War: that of wartime "comfort women" (sexual abuse of Korean, Taiwanese, Filipino and Indonesian women, among other Asian nations, detained in so-called military "comfort stations"of the Imperial Japanese Army), and wartime industrial forced labour (forced conscription of many thousands of persons from Asian countries, including Korea, China, to work in Japanese wartime factories). In both cases the CEACR confirmed application of the Convention No. 29 and found that both wartime "comfort women" practice as well as wartime industrial forced labour in the Japanese factories have been contrary to the Convention. **This case-law demonstrates the applicability of ILO forced labour standards in the times of international armed conflict**. **There is less guidance regarding extraterritorial application of the international labour standards, for example, in cases of occupation or annexation.**

On the other hand, the ILO has been reviewing the situation in the territories occupied by Israel. While the ILO supervisory bodies have never assessed the situation on the basis of the ILO standards ratified by Israel, labour conditions of the Arab workers has been subject to the annual on-spot review and the report by the ILO Director-General since 1980. The reports have referred to several bases providing normative guidance for such review, including the Declaration of Philadelphia and the ILO Declaration on Fundamental Principles and Rights at Work, as well as the principles laid down in the relevant international labour standards and those enunciated by the supervisory bodies of the ILO. **These references suggest that the fundamental principle of freedom from forced or compulsory labour applies extraterritorially, including in the context of armed conflict.**

An additional support for such argument might come from looking at the relationship between the IHL and theinternational human rights law. Their concurrent extraterritorial application in case of an international conflict – with the IHL as the lex specialis – has been affirmed by the International Court of Justice (ICJ). Accordingly, the UN Treaty bodies have repeatedly upheld the applicability of the provisions of the respective Covenants to the situation in, for example, South Ossetia, Donbas Region, Crimea, the Occupied Palestinian Territories (Gaza, West Bank including East Jerusalem) as well as the Syrian Golan. If the relationship of the IHR with the ILS is similar to that with the IHRL, the protection offered by the ILO Forced Labour Conventions should not cease in case of international armed conflict and these instruments should be applicable in respect of acts done by the State-Party in the exercise of its jurisdiction outside its own territory.

Exceptions

One needs to also consider whether a case of compelling workers in the occupied territory to work is exempted from the prohibition of forced or compulsory labour. The ILO Forced Labour Convention No. 29 contains several exceptions from its scope which includes compulsory **work or service exacted in cases of emergency or calamity,** where Article 2(2)(d) explicitly refers to "**the event of war**". Accordingly, work or service exacted by the authorities in such situation would not constitute "forced or compulsory labour". However, **can the aggressor State justify its requisition of labour in the occupied territories by the exception contained in Article 2(2)(d) of the ILO Convention No. 29 or does this exception apply only to requisition of labour in the**

event of war by the national authorities? The ILO General Surveys concerned with forced labour do not provide guidance on this issue, reflecting the scarcity of ILO's jurisprudence on the matter of extraterritorial application of the ILO forced labour standards.

Poor working conditions and hazardous work

It is interesting to observe the input provided by the ILO to the negotiations of the **Geneva Convention IV**. ILO Office took part in the Diplomatic Conference of Geneva 1949, and the ILO Governing Body submitted a statement in which they emphasized their urgent wish to see the new regulations **to be adopted with due regard to the standards laid down in the relevant ILO instruments**. Accordingly, provisions of Article 51 which require compelled civilian work to be **compliant with the labour legislation in force** in the occupied territory have been added **at the suggestion of the ILO Office**.

Thanks to the ILO's input, workers compelled to work in the occupied territory not only must be paid, but also their working conditions must comply with legislation in force concerning, in particular, wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases. Accordingly, poor working conditions will be in violation of Article 51 of Geneva Convention IV, provided that they contradict the local law (the law that would have applied if the occupation would have not taken place). This rule may offer a significant protection to workers and many cases of exploitation would become a violation of the IHL.

However, what happens if working conditions are poorly regulated by the labour legislation in force in the occupied territory?

This is the area where the ILO standards can serve as a source of additional legal context. The ILO CEACR has recognized that in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty, which calls for protection by the ILO forced labour Conventions. Accordingly, the ILO has developed a methodology to identify persons who are possibly trapped in a forced labour situation and the list of indicators does include abusive working and living conditions or abuse of workers' vulnerability. Such sub-standard working conditions do not on their own suffice to make a determination of forced labour, but they should represent an "alert" to the possible existence of involuntariness and/or coercion. For example, a case of forced overtime or forced work on call (day and night) – with financial or other penalties (including the loss of rights, advantages or privileges), or under threat – could be adequate to satisfy a positive finding of forced labour pursuant to the forced labour indicators. **This methodology has not yet been used in the context of the exception from the scope of ILO Convention No. 29 contained in Article 2(2) (work or service exacted in cases of emergency or calamity, including in the event of war), or in the context of an international armed conflict,** and no guidance has been developed on such use by the ILO supervisory bodies. However, the ILO's broad approach to the meaning of forced labour could contribute to the protection of workers compelled to labour in the occupied territory and a more substantiated application of the Geneva Convention IV. Such contribution could **improve coherence between the IHL and the ILS**, as called for by the ILO Governing Body in the statement submitted to the Diplomatic Conference Geneva 1949. However, to allow such contribution, **more guidance would be necessary** form the ILO supervisory bodies as to the operationalization of the principle of freedom

from forced or compulsory labour in the context of an international armed conflict and its application in respect of acts done by an ILO Member State in the exercise of its jurisdiction outside its own territory.

Conclusion

Not being subject to forced or compulsory labour is a fundamental labour and human right. The protection of this right does not seize in times of international armed conflict. On the one hand, compelling labour in times of emergency, including war is exempted from prohibition of forced labour, but this exemption must be interpreted narrowly. On the other hand, the IHL does not allow compelling unpaid labour of civilian workers or working conditions not compliant with the legislation in force in the occupied territory. The ILO has recognized that substandard working conditions should alert to the possible existence of a forced labour case. However, we observe a scarcity of engagement at the international level with the provisions of Article 51 of Geneva Convention IV referring to working conditions, or with the extraterritorial application of the principle of freedom from forced or compulsory labour in the context of an international armed conflict. There should be more guidance on how to improve coherence between the international labour standards and international humanitarian law respectively. The effectiveness of the provisions relevant to compelling labour of workers in the occupied territory is contingent on deeper engagement with the obligations that these provisions produce.

These comments are those of the author alone, and do not represent the views of the International Trade Union Confederation.

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