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SPECIAL ISSUE: LABOUR RIGHTS, HUMAN RIGHTS

CONTENTS

An annotated bibliography: International protection of freedom of association

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INTRODUCTION: LABOUR RIGHTS, HUMAN RIGHTS

For those concerned with human rights and fundamental labour rights 1998 is a special year, a year of stocktaking that gives cause both for rejoicing and for alarm. There are still many people whose fundamental rights are infringed. Armed conflict has not been banished, poverty has not been abolished, nowhere do women enjoy fully equal rights with men, millions of children labour. Those who 50 years ago had the highest hopes have been deceived. And yet, there have been enormous gains. Few would wish to turn back. Two major international instruments which were adopted in 1948, just 50 years ago, are part of the explanation for the gains which have been realized. First, the Freedom of Association and Protection of the Right to Organise Convention (No. 87) was adopted by the International Labour Conference in July, thereby formalizing in international labour law protection of the rights of workers and employers to associate freely, without prior authorization. Then later in that year, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which set a framework for the pursuit of human rights globally.

This double anniversary would not in itself justify a special issue of the *International Labour Review* on labour rights and human rights. There is a more fundamental purpose behind this issue. It is to explain, to a broader public and to successive generations, something of what these important instruments — and especially Convention No. 87 — have accomplished and of what they are still capable. They can be strong tools for those who seek to pursue the vision of a world where the humanity and dignity of each person are fully respected. And the prospects have just been given a new impetus. In June 1998 the International Labour Conference adopted a solemn Declaration on Fundamental Principles and Rights at Work, which not only reaffirms the principles underlying the ILO's fundamental Conventions but provides for the substantial, active promotion of the application of those principles globally, in all member States.

The central focus of this special issue is on the instrumental right of freedom of association. There can be little doubt that the freedom to associate with those of one's own choosing, to achieve common ends, is a

precious, invaluable right, nowhere more valued than where it is denied. It is proclaimed in the Universal Declaration of Human Rights: "Everyone has the right to freedom of peaceful assembly and association" (Article 20). It entered into international labour law with Convention No. 87: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation" (Article 2). Though few now openly oppose the freedom of workers and employers to associate in principle, challenges to it are common in practice. A few may still question the rationality of affording these rights to all people in their societies, and vigilance is always in order. Without the right to associate, whether exercised or not, the prospects for achieving social justice are poor.

There is no need to go back to prehistory to find a world where few had the rights of free speech, assembly and organization. It was only after the liberation of human ingenuity from feudal bonds and the emergence of industrial society that some prescient thinkers began to see that respect for human rights might be in the general interest. It took much longer before these principles were enunciated internationally. It is only in this century that the process of global institution-building got under way, laying a basis for the international instruments that many now take for granted. And in this, the International Labour Organization has played a central role.

Fundamental principles of labour rights and human rights are set out in the ILO's Constitution of 1919 and in the Declaration of Philadelphia of 1944 (appended to the Constitution). In particular, the Preamble to the Constitution refers to "recognition of the principle of freedom of association" to confront injustice, hardship and privation. The Declaration of Philadelphia reaffirms that "freedom of expression and association are essential to sustained progress" (Art. I (b)) and constitute a fundamental principle on which the ILO is based. Confronted again with questions as to the relevance and universality of fundamental labour rights and human rights, the International Labour Conference has in 1998 declared that all member States have an obligation "to respect, to promote and to realize, in good faith ... the fundamental rights which are the subject of those [the fundamental ILO] Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; ..." (Art. 2). Remembering that virtually all countries and territories are members of the ILO, and that the number of independent States is enormously greater now than in 1919, this reaffirmation is indeed noteworthy.

It is also necessary. Though 122 of the ILO's 174 member States are bound by Convention No. 87, barely half the world's population lives in countries that have ratified it, and few of the most populous countries have done so. Yet all countries members of the ILO are covered by this 1998 Declaration and its follow-up. The commitment represented by that Declara-

tion in effect raises the cost of infringing fundamental rights. Not by specifying new rights, but because of the provision for effective follow-up which includes a method of obtaining regular reports on the four areas of core rights, a requirement that the ILO prepare a global review, and the obligation of the ILO to reorient the use of its resources to assist member States in applying these principles. The purpose of the Declaration is to promote respect for fundamental rights, not to punish failure. Moral suasion backed up by widely shared information can be a powerful incentive. Those governments which risk embarrassment may try to reduce the costs of non-compliance by hindering agreement on the details that will render the follow-up effective. Therein lies a key challenge for the ILO.

This special issue provided an opportunity to request a number of knowledgeable persons to analyse the instruments the ILO has adopted in this area, synthesize the lessons they have drawn from their experience working for the design and implementation of international labour standards, and share their judgement as to priorities for the future. The articles presented here help to explain the broad questions — what rights are fundamental, why they are universal; how the key instrumental right — that of freedom of association — came to be enshrined in international law; what refinement and precision have resulted from the nearly 50 years of ILO supervision of international standards on freedom of association; what has been accomplished as a result of ILO action to implement that law; and what should come next.

By design, the articles in this special issue are closely connected. The reader will find many implicit cross references — echoes — as each author, from his or her perspective, explains the purposes served, the mechanisms involved, their value, and the next steps in promoting respect for labour rights and human rights. The authors set out the primary issues at stake, describe the painful history that made institution-building and the development of significant international legal instruments possible, explain the refinements that have helped to keep Convention No. 87 relevant to real problems of great importance, review the impact of this instrument and highlight the value added in the ILO Declaration of 1998 — another historic milestone in the promotion of social justice.

The articles offered here are supported by an appendix containing the authentic texts of the major documents — the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work — and by a substantial annotated bibliography on major sources of information on the international protection of freedom of association, which has been prepared by the staff of the *International Labour Review*.

First of all, *Nicolas Valticos* — a judge at the European Court of Human Rights and former Assistant Director-General of the ILO — sets the stage. It is timely, he points out, "to recall certain fundamental truths and underline the values that are at stake." Ever more rights are claimed as fundamental, and he sheds light on what is fundamental. He stresses the indivisibility of the human rights proclaimed in the Universal Declaration, the two International Covenants of 1966 and international labour standards while, at the same time, explaining the relationships between them. Some would challenge the universality of human rights, arguing their cultural specificity, but these rights "seek to protect the life and dignity of every human being. One must not confound the individual, and entirely appropriate, particularities of different cultures with the fundamental values of human civilization." Yet the fundamental rights are not immutable; "conditions and concepts evolve." He also introduces the ILO's supervisory machinery, and its special combination of tripartite discussion and decisions and independent monitoring. Noting that, despite setbacks, the overall trend in human rights is clearly positive, he foresees "another difficult period as a result of the advent of as yet unbridled globalization and economic liberalism". There is much to stimulate reflection in this text.

A historical perspective is essential to understanding how it came to be that such significant instruments — and especially Convention No. 87 — were adopted. *Harold Dunning*, formerly Chief of Workers' Relations in the ILO, explains the long and difficult path that led to the adoption of that Convention, and what it means for workers. "It would be all but impossible to find any trade union office in the world where Convention No. 87 is not only well known but also held in high esteem." While the Convention provides for the rights of employers as well as workers, it has proven to be of crucial importance to workers and the development of their organizations. The earliest attempts of workers to join together for their own protection may be as old as civilization itself, but the recent story starts with the industrial revolution in 18th century western Europe. It was a long struggle and success was not assured. Many were involved. "The expression of concern by ... politicians, industrialists, academics and philanthropists at the social effects of industrial development on workers and their families, and on society as a whole ... laid the intellectual foundations of the ILO, a century or more before the edifice was built." And of course, worker solidarity matters. A key step was the development of international links in the latter part of the 19th century, soon followed by the creation of international associations. Of special value here, the political debates and controversies are summarized, and that helps us understand the translation of lofty ideals into the protection that international labour law affords.

The first ILO Convention concerning the right of association — in agriculture — was adopted already in 1921. But of special note is the attempt — which failed — in 1927 to adopt an ILO Convention on freedom of associ-

ation. Dunning then focuses on the determining period after the Second World War — "a period of intense activity in the field of human rights" — which saw the creation of the United Nations and the attachment of the ILO to the UN system as a specialized agency. Then he gives the flavour of the debates on trade union rights and human rights within those fora. Has Convention No. 87 proven its worth to workers? Serious infringement of their rights has not ceased, despite the means of following up complaints in the ILO's Committee on Freedom of Association. "It is undeniable that Convention No. 87 and, in particular, the work of the Committee on Freedom of Association, have proved invaluable defences against social injustice ..." But there are still "appalling allegations" before the Committee. So, while workers throughout the world commemorate this anniversary, it is not with unmitigated joy. He reminds us of the need to be ever vigilant against the erosion of fundamental rights and ever forceful in promoting their application.

Yet no legal instrument is immutable. Even when drafted in enduring and eloquent language, through jurists' observations on particular cases, over time and in changed circumstances, the concepts acquire precision and refinement. Such it is with the major instruments under discussion here. In this issue *Lee Swepston*, chief of the ILO's Equality and Human Rights Coordination Branch, first describes the relationship of the Universal Declaration of Human Rights to Convention No. 87 and the development of freedom of association outside the ILO, as in the International Covenant on Economic, Social and Cultural Rights and in regional instruments. He then explains the ILO's supervisory machinery, especially the (independent) Committee of Experts on the Application of Conventions and Recommendations and the (tripartite) Committee on Freedom of Association. But his major contribution is to summarize the development of the ILO supervision of standards on freedom of association and specifically Convention No. 87. In turn, he highlights disputes and refinements concerning the right to personal security, freedom of opinion and expression, freedom of assembly, protection of trade union premises, special situations during states of emergency, and persons covered. Then he indicates certain developments resulting from ILO supervision concerning subjects within freedom of association — the establishment of organizations without previous authorization, the right of workers and employers to establish and join organizations of their own choosing, administration and activities of organizations, the right to strike, dissolution and suspension of organizations, federations, confederations and international affiliation, legality and the Convention's guarantees, and the definition of "organization".

After reviewing the ways in which freedom of association has been refined in the course of 50 years of ILO supervision, Swepston points to the significant achievements registered by the Committee of Experts over the years. He then concludes: "Can the ILO claim sole credit for these achievements? Of course not. But the path set by Convention No. 87 and reinforced

by the ILO's supervisory work has guided a great many countries for the past 50 years and continues to show the way forward."

Now one must pose the ultimate question: what has been the result of nearly 50 years' effort to apply the ILO standards on freedom of association? What difference have Convention No. 87 and its companion, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made in practice? The major task of judging and then summarizing the impact of these standards is taken up by *Geraldo von Potobsky*, formerly chief of, in turn, the ILO's Freedom of Association Branch and its Applications of Standards Branch and uniquely qualified to guide the reader through the enormous body of information that has emerged as a result of the supervision of these standards.

There is no simple way to measure the impact of international labour law on national law and practice. In the first place, it is more difficult to translate Conventions concerning collective labour law than individual law into national practice for, as von Potobsky points out, "collective labour law directly affects the balance of power between political, social and economic forces." Yet "certainly, there is no doubt that the principle of freedom of association and its practical implications largely owe their dissemination and general acceptance to the ILO." There is a body of evidence in the form of cases examined by the ILO bodies, information received on action taken to comply with the standards, and investigations undertaken by the ILO that demonstrates the powerful and constructive role that standards on freedom of association have had, in practice. It is this body of evidence that he cites and explains.

The ILO's Committee of Experts, a highly technical and quasi-judicial body composed of eminent jurists, monitors the application of ILO Conventions and Recommendations and notes cases of progress (or otherwise) in its reports. From its reports, von Potobsky underlines the improving trend in respect of freedom of association since the 1960s and in particular in the 1990s. Information is offered on the pattern of problems observed, including trade union monopolies, the right to strike, anti-union discrimination and interference; cases of progress by year and by country are cited. General surveys for the Committee of Experts are another important mechanism for reviewing progress, in all countries: there have been six on freedom of association since 1956, the latest dating from 1994. By contrast, the Committee on Freedom of Association, composed of members of the ILO's Governing Body, is a tripartite committee which examines complaints received from workers' or employers' organizations irrespective of whether their governments have ratified Conventions Nos. 87 or 98. Of the selected cases examined from 1985 through 1997, he notes that nearly a third concerned anti-union discrimination, a quarter human rights, and others collective bargaining, the right to strike, the right to establish organizations, etc. In addition to these sources, von Potobsky reviews the use made of Commissions of

Inquiry and of the Fact-finding and Conciliation Commission, which have played important roles at difficult moments in, for example, Japan, Greece, Poland, Chile, Nicaragua and the Republic of South Africa. These are just highlights of what he provides. This article constitutes a point of reference for those who wish to understand the value of the ILO standards in the field of freedom of association and of the action taken by the ILO to promote the application of those standards. The ILO's job is clearly unfinished. As he concludes, today, the supervisory bodies "must be even more vigilant, for in most countries of both North and South the trade union movement is losing ground and is being seriously questioned in certain sectors and countries, including those where it had seemed most firmly established".

In the last article, *Hilary Kellerson*, formerly Deputy Legal Adviser of the ILO, brings us back to the broader range of human and labour rights, where we started, but for the purpose of looking to the future. She summarizes the process by which the International Labour Conference in 1998 adopted the ILO Declaration on Fundamental Principles and Rights at Work and its annexed follow-up, the content of this remarkable Declaration, and the potential that the follow-up represents for real progress toward the universal application of basic rights.

"There is intrinsic value in this solemn Declaration in that it represents a reaffirmation, by governments and both social partners, of the universality of fundamental principles and rights at a time of widespread uncertainty and questioning of those rights. That is not a small achievement." Discussions, quite fruitless, have been going on for years, in various fora, on how to relate policies for increased respect for fundamental rights with the disruptive and sometimes negative effects of unfettered competition. In adopting the Declaration, a major step has been taken. Now, as Kellerson points out, "the whole question of the promotion of fundamental labour standards and their underlying principles [is placed] squarely in the framework of the constitutional principles and procedures of the ILO". In a formal sense the Declaration entails no new legal obligations of member States. But, dry as that may sound, this reaffirmation of the fundamental principles and rights in the four key areas of freedom of association, freedom from forced labour, abolition of child labour and the elimination of discrimination — integrally linked to a potentially strong promotional follow-up — is most remarkable. The Declaration obligates the ILO not only to request, digest and present the information on efforts made in all member States to apply the principles underlying the ILO's fundamental Conventions, but also to reorient the use of its resources to promote that implementation and to help countries create a climate for economic and social development. As she stresses in her conclusion: "The challenge facing the ILO in the next millennium will be to ensure that the Declaration achieves the significance and the impact it offers." If it succeeds, then it will be possible to record accelerated progress toward social justice worldwide.

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International labour standards and human rights: Approaching the year 2000

Nicolas VALTICOS *

Since the adoption fifty years ago of the Universal Declaration of Human Rights [1] — the first international instrument of its kind — the relationship between the rights it embodies and the international labour standards [2] framed by the ILO has frequently been examined. One point often discussed is the extent to which international labour standards are part of human rights *per se*, and attention has been drawn to the fact that labour standards were internationally acclaimed a full quarter century and a world war prior to the embodiment of human rights in the Universal Declaration.

René Cassin, the principal author of the Universal Declaration, himself stated in 1950 that the ILO Constitution, which was an integral part of the Treaty of Peace signed at Versailles in 1919, represented the first instance of a contractual foundation for "international law regarding fundamental individual freedoms" (Cassin, 1950, p. 68).

Ten years later, Wilfred Jenks, who for many years personified the ILO and ultimately became Director-General of the International Labour Office, devoted a lively work to the subject of human rights and international labour standards (Jenks, 1960).[3]

Less than a decade later, in 1968, on the occasion of the 20th anniversary of the Universal Declaration, the Director-General of the ILO submitted a report to both the International Labour Conference and the International Conference on Human Rights convened by the United Nations on the ILO and human

* Judge of the European Court of Human Rights and President of the Curatorium of the Hague Academy of International Law; former Assistant Director-General of the ILO.

[1] The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December, 1948. The full text is appended to this issue of the *International Labour Review*.

[2] "International labour standards" are the rules contained both in the ILO Conventions (which, when ratified, are binding on the States involved) and Recommendations (which offer guidance of a non-binding nature).

[3] Subsequently, Jenks (1970, p. 6) also drew attention to the ILO's pioneering role in the international protection of human rights.

rights, in which the author of these pages was involved. The ILO's human rights-related activities were therein analysed in terms of the great objectives of freedom, equality, economic security and dignity (ILO, 1968).

Indeed, all ILO Conventions and Recommendations contribute to promoting and protecting human rights, to varying degrees (Jenks, 1968). Frequently, the relation is very close.

This relationship between international labour standards and human rights has always been of prime concern to the ILO bodies, as demonstrated by the fact that, during its 86th Session in June 1998, the International Labour Conference adopted unopposed the "ILO Declaration on Fundamental Principles and Rights at Work" and its follow-up (ILO, 1998a).[4] It reaffirms, as fundamental rights, freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. It would not be misplaced to term this Declaration historic, adding as it does a new dimension to the existing instruments for giving effect to the ILO core standards in all spheres relating directly to human rights. The many points of convergence are taken up below.

These two categories of standards share not only the essence of their inspiration and objectives, but parallels even exist in the conditions under which they took shape at the international level, following a major world conflict, and with a view to building a better world. The difference lies in the fact that the system of international labour standards was drawn up at the close of the First World War, in the peace treaties of 1919, while the embodiment of international human rights protection followed the Second World War, first in an ILO Convention in 1948, and later in that year in the Universal Declaration, then subsequent ILO Conventions and the UN International Covenants of 1966.

More than one comparative analysis has been made of the content of numerous labour standards adopted by the ILO and the United Nations International Covenants and Conventions (see, for example, ILO, 1969). There is perhaps reason to wonder what purpose is served by returning to the subject today, so many years on.

The aim is not merely to bring elementary truths to the attention of a new generation of readers — though sufficient reason in itself, since these are fundamental concepts of which successive generations may usefully be reminded. However, a particular reason for revisiting the question lies in the fact that certain recent developments and trends, such as the globalization of the economy (Maupain, 1996) and the resulting intensification of competition, and the power of deregulation encouraged by neoliberalism with its potentially deterrent effect on social and development policy, suggest that the time has come to recall certain fundamental truths and underline the values that are at stake. Indeed, it should be clearly understood that international labour stand-

[4] The full text of the 1998 Declaration is appended to this issue of the *International Labour Review*.

ards, as a body, constitute a special category of human rights, and that the structure now in jeopardy in fact represents a broad set of the rights that were painstakingly constructed and consolidated at the cost of two world wars. But, although it may seem that everything has already been said on the subject, it is all to the good that virtually everything should again be brought into question. It is necessary therefore, once more, briefly to review the main elements in the light of today's issues. Such is the purpose of the following pages.

Human rights and individual and collective labour standards

Just as all individuals have their own personality and fate, human rights were originally — and still are, basically — conceived as individual rights. The same applies, broadly speaking, to labour rights. Hence, the right to life was the first of the rights embodied in the European Convention on Human Rights adopted in Strasbourg in 1950, while hours of work were the subject of the first international labour Convention,[5] adopted in Washington in 1919.

None the less, both labour rights and human rights also have a collective dimension. The right to freedom of association features in both of the UN International Covenants, and had already been embodied in one of the most important ILO Conventions.[6] Indeed, rights which appear at first sight to be individual, such as hours of work or social security, are in fact meaningful only when exercised in a collective manner.

Indeed, more recent proposals that solely collective rights should be recognized, such as the rights of peoples, the right to development, the rights of mankind, and so on, appear to have gained broad acceptance despite the opposition of a number of traditionalist legal experts. Clashes could conceivably arise between collective and individual rights (Valticos, 1996a), though these are extreme instances which are more in the nature of academic debates.

At this point, a closer look should be taken at the subdivision of human rights into civil and political rights, and economic, social and cultural rights, although it should be clear that this distinction has no substantive effect on their relationship with the ILO labour standards.

The subdivision of human rights into civil and political rights, and economic, social and cultural rights

It should be emphasized that the Universal Declaration of Human Rights involved both economic, social and cultural rights, and civil and political rights. It was only with the adoption of the International Covenants some 20 years later (in 1966) by the United Nations General Assembly, following long and

[5] Hours of Work (Industry) Convention, 1919 (No. 1).

[6] Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

arduous discussions, that two separate texts were framed, one relating to civil and political rights and the other to economic, social and cultural rights. This subdivision can only be termed regrettable because, in truth, human rights consist of rights relating to both categories, and no essential difference exists between them. On the contrary, the two categories of rights should be inextricably linked since, just as a person does not live on bread alone, neither does he or she live on fresh air alone.

Notwithstanding assertions to the contrary, this division has no logical or legal explanation but, in truth, resides on political disparities between States of different persuasions at the time of their negotiation and adoption. In fact, the two Covenants were signed by a considerable, and similar number of States, and have been widely ratified. As of 1 January 1997, 137 States had ratified the Covenant on Economic, Social and Cultural Rights, and 140 States had ratified the Covenant on Civil and Political Rights. Yet it is relevant to examine more closely the relationship between these two categories of rights, on the one hand, and the main spheres covered by international labour standards, on the other.

International labour standards and civil and political rights

Although it might appear that international labour standards emanate from economic and social rights, their impact on human rights has in fact been equally apparent in the sphere of civil and political rights. In particular three major spheres of labour standards — the abolition of forced labour, freedom of association and the elimination of discrimination — clearly demonstrate the role of ILO standards in this domaine. Since this is widely known, there is no need for a lengthy exposition here. Suffice it to outline the essential points.

In 1930, a first Convention (No. 29) prohibiting forced labour led the way in the protection of individual freedoms, particularly in the colonial territories of the period. Following the Second World War, enquiries were conducted from 1951 onwards by a joint UN-ILO Committee, and subsequently by an ILO Special Committee. A new Convention (No. 105) on the abolition of forced labour was adopted in 1957 to combat particular forms of forced labour that had been identified during the course of the enquiries. These Conventions, widely ratified,[7] generated a new spirit of freedom and offered substantial protection against forced labour as a mode of coercion or mobilization of labour, for purposes of economic development or labour discipline, as a reprisal for participating in strikes, or as a form of racial or other discrimination.

Subsequently, the International Covenant on Civil and Political Rights also prohibited forced or compulsory labour (Article 8).

Freedom of association was the second major area of worker protection to be taken up by the ILO and corresponding both to the category of political and civil rights and to that of economic and social rights (and which features

[7] As of 1 June 1998, Convention No. 29 had been ratified by 146 States, and Convention No. 105 by 130 States.

in both Covenants). Certainly, workers cannot protect their interests in an effective manner unless they can form associations. None the less, opposition from various sources blocked the adoption of an ILO instrument on freedom of association during the inter-war period, and it was not until shortly after the end of the Second World War that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was finalized and adopted. It has subsequently been ratified by 120 States over the course of 50 years, providing workers with a basic guarantee and an effective means of protecting their interests. Some 20 years later, provisions relating to freedom of association, of a more general nature, were incorporated in the two UN Covenants, although couched in different terms.[8]

Over and above the general procedures for monitoring compliance with Conventions, a special mechanism was set up whereby workers' or employers' organizations might submit complaints, even against States that have not ratified Convention No. 87. This is made possible by the fact that freedom of association is embodied in the Preamble of the ILO Constitution. Complaints of this nature have indeed been submitted to the high-level committee which was chaired for many years by Paul Ramadier, former President of France's Council of Ministers, and subsequently by Professor Roberto Ago.

Finally, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the accompanying Recommendation (No. 111), prohibits any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. A detailed programme specifically to eradicate *apartheid*, which the ILO naturally condemned, was drawn up in 1964 and subsequently strengthened. The matter of racial discrimination was likewise raised by the United Nations, most prominently in a Declaration of 1963 and a Convention of 1965.

These are the three major spheres in which ILO standards have contributed most extensively to protecting public freedoms (Gernigon, 1982) and civil and political rights. It should also be noted that the scope of this protection is not confined merely to proclaiming the rights in question, but also involves procedures relating to compliance which include both general application mechanisms and special procedures such as, for instance, those set up in connection with freedom of association.

Now it is appropriate to take up the ILO standards which deal with labour issues *per se*, being the particular concern of the ILO.

International labour standards and economic and social rights

Regarding labour rights specifically, the similarities between international labour standards and human rights are especially apparent in the UN Covenant on Economic, Social and Cultural Rights, and include equal remuneration for men and women (ILO Convention No. 100 and Article 7 of the UN Covenant), occupational safety and health (numerous ILO Conventions and Article 7 of

[8] The difference lies principally in the matter of freedom of association of civil servants.

the Covenant), weekly rest, limitation of hours of work and holidays with pay (several ILO Conventions and Article 7 of the Covenant), the right to social security (several ILO Conventions and Article 9 of the Covenant), maternity protection (several ILO Conventions and Article 10 of the Convention), protection and assistance for children and young persons (several ILO Conventions and Article 10 of the Covenant). There is by now a general awareness of the problem of child labour which, during the earliest years of the ILO's existence (Scelle, 1930, p. 111), prompted Albert Thomas to stress the pre-eminence of the human factor over the economy.[9]

Overall, it might be said that the international labour Conventions provide, in a more specific and detailed manner, for the practical implementation, at the national level, of the series of principles embodied in more general terms in the UN Covenant on Economic, Social and Cultural Rights.

The universal nature of international labour standards and human rights

By definition, the rights embodied in parallel and in greater or lesser detail in the two UN Covenants and in the core international labour standards are universal in nature. The Covenants were adopted by the UN General Assembly and widely ratified, as previously mentioned. In total, ILO Conventions adopted by the International Labour Conference have received over 6,500 ratifications, of which those specifically concerning human rights (such as freedom of association, prohibition of forced labour and abolition of all forms of discrimination) have been ratified by some 125 States on average.

However, one should not be satisfied simply with theoretical and statistical information on these instruments. First and foremost, it must be recognized that States which ratify such international instruments frequently fail to implement them, and that action by the supervisory bodies alone, however conscientious and, in some cases, effective it is, cannot ensure full compliance with these instruments. Consequently, one cannot conclude categorically that these standards unquestionably reflect the general feeling and praxis of the world community in this area. This matter requires fuller examination.

The situation is complicated by the fact that regional human rights conventions exist alongside the International Covenants and Conventions. Some were adopted with a view to strengthening them, cases in point being the European Convention on Human Rights of 1950, which has been ratified by some 40 States, and the American Convention on Human Rights of 1969, which has been ratified by 25 States. Others cater for particular regional characteristics, such as the more recent African Charter on Human and Peoples' Rights of 1981, ratified by 51 States.

[9] In June 1998, the International Labour Conference adopted conclusions regarding new standards in connection with the worst forms of child labour, laying the foundations for a Convention accompanied by a Recommendation in 1999.

In addition, notwithstanding the universal nature of the UN and ILO instruments, a marked reticence exists in some regions regarding both social protection norms and human rights principles. Such is the case of several Asian countries, where some authors consider that national or regional cultural values are inviolate, and that the concepts of other, particularly Western, cultures should not be permitted to "pollute" them (see the discussion of these concepts in Sen (1996) and Li (1996)).

In general, such views hold that human rights are "culturally specific", that the community should prevail over individuals and, finally, that rights emanate from national sovereignty. However, such views are not widely held, particularly in connection with human rights. Indeed, were such opinions to prevail, they might ultimately engender absolute power and unaccountable decision-making by national authorities. Individuals should not be left unprotected and defenceless against unbridled government power. Moreover, human rights, and workers' rights, which are protected in the core ILO and UN instruments, have been approved by representatives of States in all regions, including many in Asia, who would certainly not have voted for these instruments if they clashed with regional values.

Such regionalist convictions, which are founded on a hostility to foreign influences, are not unanimously held in Asia or other developing regions. Strictly speaking, they might, to a greater or lesser degree, be more plausible in relation to artistic or cultural values than to those relating to human rights, which involve the most profound values of any civilization and seek to protect the life and dignity of every human being. One must not confound the individual, and entirely appropriate, particularities of different cultures with the fundamental values of human civilization. Arguments based on the cultural traditions of a given country cannot be used to justify the flouting of universal values. Moreover, the fact that Asia is the only continent that has not drawn up a regional human rights instrument suggests that the region does not have any genuinely alternative values to defend in this connection, and that the stance adopted by a number of Asian representatives seeks merely to obtain a delay or exception regarding the application of universal standards (Ramcharan, 1997, pp. 113-116).

This is borne out by the fact that, at the close of the recent ILO meeting (April 1998) on the Asian crisis, eight countries of east and south-east Asia (China, Indonesia, Malaysia, Philippines, Republic of Korea, Singapore, Thailand and Viet Nam) emphasized the importance both of sustained economic growth and of the ILO's core standards. It is not obvious that a new way has emerged in the East.

One must look more closely at the role of regional conventions vis-à-vis the international instruments intended for universal application. Sometimes, far from undermining universal human rights standards, regional conventions have served to hasten the application of analogous provisions, particularly when the UN Covenants have been slow to come into force. A case in point is the European Convention on Human Rights of 1950. In other cases, regional conventions have been used to accommodate individual characteristics of a given

region or, more generally, to raise the profile of an element to which particular importance is attached, or to institute a regional supervisory mechanism which can operate without conflicting with mechanisms of the international system.

An example of such complementarity is the European Social Charter in relation to ILO Conventions. In 1958 the Council of Europe concluded that, alongside the European Convention on Human Rights, which dealt primarily with civil and political rights, it would be useful to have a counterpart social charter covering social rights. So it convened, jointly with the ILO, a tripartite conference (in the ILO style) to pronounce on a draft drawn up in cooperation with ILO representatives.

It may therefore be concluded that such regional instruments have not hindered the implementation or questioned the validity of universal standards but, on the contrary, have given more rapid effect to the substance of such standards and dealt with specific considerations, without jeopardizing the essence of the universal instruments.

Can human rights and international labour standards be considered to be definitive systems?

The international labour Conventions and Recommendations have been forged during the course of almost eighty years, and the Universal Declaration of Human Rights was adopted over fifty years ago. It is fair to question whether they offer a comprehensive and consistent body of mutually complementary standards.

To answer unequivocally in the affirmative would fail to allow for the important law of evolving needs and concepts. It is true that the crux of what one today considers to constitute core labour and human rights is contained in ILO standards and in the Covenants and Conventions of the United Nations and in comparable regional instruments. However, conditions and concepts evolve; some standards lose their relevance, and new needs emerge.

It has already been mentioned above that new — and sometimes greatly different — rights have been claimed, and in some cases formalized recently. Meanwhile, although all the core labour rights have now been recognized, it has been necessary to modify some instruments in order to adapt them to changing circumstances or requirements. This process of modernization will no doubt continue to be required in the future. In short, the International Labour Code as a whole affirms the main rules and fundamental principles, but its details may be modified over time. Just as there is no end to history, so there is no end to human rights.

In early works on the ILO, reference was sometimes made to "Mahaim's dream". He was a Belgian professor who, between 1919 and 1930, played an important role in the founding and early activities of the ILO. He served at one time as Chairman of the Governing Body, and his portrait still hangs at the ILO headquarters, although few now remember him. (But see Mahaim (1921), republished in 1996.) One morning, meeting a colleague, he related that he had had a nightmare that the ILO had adopted Conventions on every imagin-

able subject and he wondered what there remained to do. As he started into wakefulness, he thought briefly and then said to himself: "But it is not sufficient merely to adopt Conventions, we have to ensure that they are properly applied." In addition, he concluded that it would not be possible to adopt definitive instruments on all matters, since they must frequently be supplemented or updated. However, one should take up Mahaim's immediate reaction — to recognize the need to give effect to the Conventions adopted.

Monitoring compliance with international labour standards and human rights

From the first days of the ILO's creation, its founders set up a precise and differentiated mechanism to monitor compliance with the standards to be drawn up by the Organization. Over the years, this supervisory activity[10] has been simultaneously expanded and simplified, in order to take account both of the range and the growth of the Organization's activity.

The ILO's supervisory functions are acknowledged to be more highly developed than those of any other organization at the international level, for two reasons. The first is the participation of the non-governmental employers' and workers' organizations. The second arises from the qualities of independence and expertise of the members of the supervisory bodies, who are eminent individuals. A decisive aspect of the independence of these experts (and of the members of the commissions of inquiry, which will be discussed subsequently) is related to fact that they are not appointed by their governments but by the ILO's Governing Body on the recommendation of the Organization's Director-General. Mention has also been made of the active role of the ILO secretariat (Leary, 1992, p. 581).

On the basis of the conclusions of these eminent experts, any discrepancies between the standards and practice that have been detected are discussed with representatives of the States involved before a special tripartite committee (with representatives of government, employers and workers) of the International Labour Conference. Discussions are often heated, such as one particular session regarding freedom of association which finished at 3 o'clock in the morning with a vote recognizing the violation of the Convention in question by a prominent State. None the less, year by year, discrepancies have been reduced, and it has been ascertained that, between 1964 and 1997, following the action of the supervisory bodies, improvements have been made in compliance with the Conventions in 2,164 cases (ILO, 1998b, para. 175).

A special procedure for protecting freedom of association has also been in operation since 1950, and the tripartite committee dealing with freedom of association has examined several hundred cases and carried out numerous inquiries on that subject.

In matters of some importance regarding freedom of association and other

[10] Numerous studies have been devoted to the ILO's supervisory system. See, for example, the excellent study by Leary (1992); see also Valticos (1968, 1996b and 1996c).

labour matters, commissions of inquiry are set up, likewise composed of independent individuals, and they generally make an on-the-spot visit to examine a situation and recommend measures to be taken to give effect to the standards in question (Valticos, 1987). Mention may be made, among the many cases dealt with, of the Portuguese colonial territories in Africa (Angola and Mozambique) prior to their independence, of Japan in connection with an inquiry which became a landmark in the evolution of freedom of association in that country, of Spain in 1967 prior to its return to democracy, of Chile following the events of 1973, of Poland at the time of the Solidarity demonstrations which the Government endeavoured to put down, at which time the ILO representative was able to visit Lech Walesa while he was in detention, and an ILO commission of inquiry drafted proposals in 1984 for resolving the series of problems besetting the country at the time.

The ILO's implementation methods might be summarized as consisting of a given method — characterized by tripartite discussions and decisions and the independence of the monitoring bodies — combined with a particular spirit — whereby situations are objectively examined and solutions sought in the context of the ILO's principles of freedom and progress.

This method has, on occasion and to varying degrees, influenced the work of other international organizations. It has not been — and could not be — fully replicated, since neither the same institutional basis nor the dynamic influence of tripartism exists elsewhere, although certain rules, such as that of the independence of the supervisory bodies, have been partially imitated, particularly in monitoring compliance with the UN Covenants. For these, supervision has also involved a number of other approaches (Leary, 1992). It is not possible sufficiently to emphasize the importance, at the international level, of methods for monitoring compliance with international human rights instruments and of the pioneering role in the past and the present, of the system introduced by the ILO to boost respect for these rights (Leary, 1992).

The impact of human rights and international labour standards: Progress, problems

It is difficult to assess the precise impact of human rights and international labour standards because they frequently involve areas where the effect of these standards does not lie solely, or even principally, in these legal instruments but also, and primarily, in practice.

It is, however, clear that, while the application of these rules may frequently leave much to be desired and even reveal major shortcomings, overall progress has undeniably been made.

Human rights have now entered the universal consciousness to the extent that any violation sparks a reaction in public opinion similar to that produced by a criminal act or infringement of a moral or legal code. It is true that prominent international human rights bodies may nuance their criticism for political reasons, but their own credibility suffers as a result in the eyes of an increas-

ingly sensitized public. Overall, the identification by international bodies of human rights violations seriously damages the reputation and international credibility of the States responsible.

The same holds for international labour standards. Consequently, freedom of association has been restored in a number of countries with the democratization of authoritarian regimes of the right and left — for example in Spain and in Poland; forced labour has been eliminated or reduced with the end of colonialism and of other systems of forced labour mobilization; and the extreme violation of international standards on discrimination in the form of *apartheid* in South Africa has been eliminated with the early condemnation and subsequent assistance of the ILO.

Problems, frequently serious, certainly still exist, notably unemployment and child labour. Overall, however, in very many cases, the States whose attention has been drawn by the ILO's supervisory bodies to violations of the relevant Conventions which they have ratified have taken the measures necessary to remedy discrepancies. In addition to the specific figures already noted there are the measures taken by States prior to ratifying Conventions to enable them to assume the commitments ensuing from ratification.

A global study, although it dates back some time (ILO, 1976), highlights the importance of the impact of ILO Conventions and Recommendations on the legislation and praxis of States in all regions of the world.

Human rights and international labour standards are related and frequently similar values which are promoted and reinforced by action on both the national and international levels, numerous obstacles notwithstanding. The overall trend is clearly positive, though regression is not unknown. One can foresee another difficult period as a result of the advent of as yet unbridled globalization and economic liberalism (Lee, 1997). Human rights and social protection could be extensively eroded (Dupuy, 1996; Flory, 1997; de Montbrial, 1998). Fundamental human rights and international labour standards, which are today clearly in jeopardy, take on their full significance, once more in the light of a threat, which cannot be discounted, of a lawless world, of new States with no real support, of workers with no genuine protection and, more generally, of men, women and children abandoned to their fate. To confront this danger to social justice — proclaimed by the ILO since its creation (Caldera, 1998) — and to human rights — proclaimed by the infant United Nations — adapted forms of standard-setting and a "re-regulation" (Mückenberger, 1996) in place of today's extreme deregulation are evidently in order.

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The origins of Convention No. 87 on freedom of association and the right to organize

Harold DUNNING*

During 1998, trade unionists in virtually all countries of the world will commemorate the 50th anniversary of the adoption (on 9 July 1948) by the International Labour Conference of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). There will be meetings, speeches, ringing declarations, publications, dedications of a wide variety of forms.

Why is this so? Were there similar events on the 50th anniversary of the adoption of Conventions Nos. 7, 17, 27, 37 and so on? In fact, there is no precedent. Very few trade unionists could identify by name these other Conventions. Yet it would be all but impossible to find any trade union office in the world where Convention No. 87 is not only well known but also held in high esteem.

The very foundation of the trade union movement is the need for workers to join forces in their collective defence and for the advancement of their interests. Convention No. 87 does not guarantee these objectives; what it does is to promote the recognition that workers have rights related to the establishment and the functioning of trade unions, and the adoption by all ILO member States of laws or regulations which protect those rights. The Convention covers the rights of employers in parallel with those of workers, but there is no comparison between the two. Cases of the alleged infringement of employers' rights to associate freely arise rarely, whereas, as will be seen later, complaints from workers' organizations are received almost daily by the International Labour Office even now, fifty years on.

Convention No. 87 is normally referred to, for convenience, as the Convention on Freedom of Association, but it goes far beyond the simple right to join a trade union (or an employers' organization). Other important rights included are the right of workers' and employers' organizations to draw up their own constitutions and rules, to elect their own representatives, to formulate their own programmes, and to join federations, national and international; and

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to do this without interference by the public authorities. The Convention is therefore an important element in the protection of civil and political rights, namely the right to democracy. Freedom to form and join employers' or workers' organizations would be of only limited value if such organizations were subject to governmental or other external control over their internal administration. Respect for the law of the land is another matter — that is covered by Article 8[1] and, except in certain cases where the law is seen to be oppressive, has given rise to no objection on the part of employers' and workers' organizations.

The strength of feeling among workers, in particular, on the subject of trade union rights under Convention No. 87 cannot be ignored. The (unpublished) document, *The ILO towards the 21st century*, submitted to the Director-General by the Workers' Group of the ILO Governing Body as a contribution to the debate on the ILO's 75th anniversary celebrated in 1994, could not be more explicit, for example:

> *Human rights*. The ILO's mandate in respect of fundamental and inalienable human rights must remain a sustained priority. Its particular responsibilities are in respect of the right to organize and to bargain collectively, the struggle against discrimination in employment, and the abolition of forced and of child labour. Many conflicts and tensions in the world have their origins in denials of these very rights ...
>
> Trade unions have been to the fore in the democratic advances of recent years in which the ILO itself has also played an important, and often historic role. They have opened the way to the exercise of basic freedoms. Nevertheless, gross violations continue, and in too many cases are increasing.
>
> In some countries, killings and disappearance of trade unionists are commonplace. Often those responsible act with impunity (Workers' Group of the ILO Governing Body, 1993, pp. 10-11).

In seeking an explanation for the universal demand of workers for freedom and democracy, there is another important matter to be examined: the historical record.

Emergence of workers' organizations

It is impossible to say exactly when workers first began to demand freedom to join together for their own protection — some writers have traced examples from ancient Greece and even earlier. Nevertheless, there can be no doubt that the desire for freedom is almost as old as civilization itself. A suitable starting-point for the more recent story would be the early part of the first Industrial Revolution in the eighteenth century, in western Europe.

Trade unions as such were a later development, but from about 1750 workers started to come together in organized groups. The industrial revolutions, based successively on water power, then steam, and finally electricity, for the first time made "combination" (as trade union activity was then called) poss-

[1] The full text of Convention No. 87 is appended to this issue of the *International Labour Review*.

ible. Governments and employers were not slow to react, and laws and regulations were adopted aimed at restricting or even prohibiting such activities by the workers. In England, for example, the Combination Acts of 1799 remained in force for 25 years, during which time the workers found many ingenious ways of meeting and discussing matters of mutual interest through societies, clubs or self-help groups.

One important development which took place during this period, independently by and large of workers but greatly beneficial to them in the long term, was the expression of concern by a number of politicians, industrialists, academics and philanthropists at the social effects of industrial development on workers and their families, and on society as a whole. Acting for the most part on their own initiative, they laid the intellectual foundations of the ILO, a century or more before the edifice was actually built.

Organized religion also played an important part in this foundation-laying process. Many trade union pioneers were devout members of Church of England or Methodist ("chapel") congregations. Morgan Phillips, General Secretary of the British Labour Party in the 1940s, expressed the view on many occasions that the labour movement in Great Britain "owed more to Methodism than to Marx," and his opinion was rarely challenged.

In this context, mention must be made of *Rerum novarum* ("On the condition of the workers"), the encyclical issued by Pope Leo XIII on 15 May 1891. In this, the Pope emphatically affirmed the right of workers to form and join associations for mutual help. The same right was also to be accorded to employers. The State should not prohibit employers' and workers' organizations, because it was the natural right of men to come together in this way. On the other hand, *Rerum novarum* insisted that these organizations should be managed on principles compatible with Christianity, and that persons should join freely, not be forced to do so.

At several points, this encyclical embodied important principles which were clearly reflected 57 years later, in the text of Convention No. 87. The State should not interfere with the administration of employers' and workers' organizations; though the word "democratic" does not appear either in the encyclical or in the Convention, it is plain from the context in each case that these organizations must be democratic institutions; and they must all respect the law of the land.

Rerum novarum had a galvanizing effect upon world opinion, and was followed by a great burst of activity in this respect within the Roman Catholic Church, out of which grew a dynamic movement to promote (Roman Catholic) Christian trade unions.

By about the mid-nineteenth century, workers' organizations — and to a lesser extent, employers' organizations — had developed substantially in size and competence throughout western Europe. The majority of organized workers were in the skilled trades; it was to be another quarter-century before unskilled workers began to enter the trade union movement. In part, this was because there still existed in many countries restrictions on, or prohibition of, the formation of trade unions in agriculture and among certain occupations.

Thus workers as a whole were still striving for their most basic objective: freedom of association without conditions.

International links

The second half of the nineteenth century also witnessed a new and extremely significant development: thanks to greatly improved means of communication, international contacts multiplied, leading swiftly to the establishment of international trade union organizations. The sense of solidarity between workers at national level had always been a great source of strength. Now, workers were discovering that, for example, a coal miner had more in common with a miner in another country than he had with a carpenter in his own country, despite the fact that his fellow miner could only exchange information with him through an interpreter. Thus it was that a new kind of organization, the International Trade Secretariats (ITSs), began to appear. This international expression of solidarity between workers who shared the same occupational problems proved to be of such fundamental significance that the ITSs have not only survived to the present day but have grown in membership, while retaining their autonomy. Indeed, several have already celebrated their centenaries. They play a key role in the ILO, especially where Industrial Committees are concerned. For example, the International Transport Workers' Federation, one of the "centenarians", has always supplied the Seafarers' Group of the Maritime Sessions of the International Labour Conference with a secretary and professional advice. The ITSs see in the ILO a source of great support and a solid platform for their programmes and demands, which have universal freedom of association (irrespective of trade or job) permanently at the head of the list.

A much less successful attempt at international solidarity took place in London in 1864. The London Trades Council (an assembly of trade union branches in the capital) decided to convene an international conference, aimed at achieving closer cooperation between workers' organizations in all countries. It saw the creation of a new organization, the International Working Men's Association (IWMA), which became better known as the First International. Unfortunately, it had none of the features which were a source of such strength to other international workers' organizations. It had no solid industrial or professional base; it was, as the title demonstrated, an association of men, not of organizations; and there were no clear common grounds beyond a general desire for emancipation. Some participants were active trade unionists, some were politicians. The participants disagreed over such fundamental questions as whether parliaments should be used as a means for securing the adoption of laws — such as those guaranteeing workers' rights — or overthrown. The IWMA existed until 1872, when it transferred its offices to New York and shortly thereafter ceased any effective activity.

There were lessons to be learned from this last, uninspiring story, and the national organizations of trade unions soon showed that the lessons had been well understood. Alongside the ITSs, the national trade union organizations

began to hold a series of conferences, starting in 1901, at which they were able to coordinate their efforts, without the presence of political parties. In parallel, the (Roman Catholic) Christian trade unions, inspired by *Rerum novarum*, did the same.

International associations

By 1913, the secular national trade union centres had achieved such stable relationships that they were able to form a new organization, the International Federation of Trade Unions (IFTU), with headquarters in Berlin. Despite the outbreak of war in 1914, somehow the IFTU not only survived but its leading members went on to play an active part in the establishment of the ILO in 1919 — even though the setting-up of an international labour organization on a governmental basis had not been among its post-war objectives.

Already in the last quarter of the nineteenth century, there were efforts, briefly referred to earlier, by a growing number of persons involved in social policy affecting workers to find international agreement on conditions of work. Influenced by these pioneers, the Swiss Government had proposed in 1889 that a conference be held in Berne, to consider the possibility of formulating international agreements on such basic issues as hours and conditions of work. The conference did take place, but in Berlin, and duly adopted a number of resolutions on working conditions. To the disappointment of the Swiss Government, and of some of the eminent persons supporting it, there was no agreement on the adoption of Conventions. In 1897 the first International Congress on Labour Legislation, headed by Ernest Mahaim (an early, seminal influence on the ILO), was held in Brussels. Three years later, in 1900, the second International Congress on Labour Legislation was held in Paris and adopted the statutes of the International Association for the Legal Protection of Workers (IALPW). This carried out useful work at its headquarters in Bâle, collecting information on labour problems, though workers themselves were not represented. Prompted by the Association, the Swiss Government organized another intergovernmental conference in Berne in 1905; this can be regarded as the first real international labour conference. At this conference and at a second, similar conference also held in Berne, the following year, the first two international labour conventions were adopted, dealing with the limitation of night work for women in industry and the prohibition of the manufacture of and trade in matches containing white phosphorus — a substance causing serious injury to the workers involved, mainly women. It will be noted that an agenda such as this avoided all the contentious items which were the subject of heated discussion years later in the ILO, inter alia, forced labour, industrial relations, equal pay for women, and trade union rights. In the words of one historian:

> The success achieved was undoubtedly due to the wise choice of subjects proposed for consideration. They were questions on which a large measure of agreement as to the necessity of regulation already existed, and on which big controversial issues were not likely to arise (Alcock, 1971, p. 12).

The organized workers gave their support to this development, although some expressed concern that they were not directly involved in decisions on matters affecting their working lives. Still, it was somewhat better than, as they saw it, the work of a group of academics, clergymen, economists and benevolent employers such as those running the IALPW. They continued to approve of the IALPW, regarding its efforts to collect statistical and other information on labour matters as a useful supplement to their own activities, but they were far from satisfied.

Terrible though it was for the workers to have to fight one another (a requirement they believed to have been rendered impossible by the international solidarity of their own movement), in fact the outbreak of the First World War in 1914 resulted in a chance to take a giant step forward when eventually peace was restored.

Despite the obvious difficulties and dangers, members of the international trade union movement managed to keep in touch extremely well between 1914 and 1918. The war seems even to have had a stimulating effect in this respect. Moreover, trade union leaders were quick to see the advantages in a situation where governments had to appeal to the workers to support the war effort. In some cases, leading trade unionists were appointed to high public office; several became ministers. The early years of the twentieth century had witnessed an upsurge of unrest, leading to strikes, demonstrations, protest marches, and public violence. There had been some fear of revolution. Clearly, in a war situation, governments could not allow complete freedom of action to workers but, generally speaking, workers were not prevented from holding national or international conferences at which they were able to voice their plans for the post-war settlement.

The most notable of these conferences was held in Leeds (northern England) in July 1916. It could not be said to be widely representative, as only four countries sent trade union delegates — Belgium, Great Britain, France and Italy. But these included some of the top spokesmen of the IFTU, and they knew they had the confidence of the large majority of IFTU-affiliated national centres.

The conclusions of the conference were comprehensive and clear. A long list of demands included freedom of association, limited working hours, a minimum working age of 14 years, the abolition of night work for women, comprehensive social security, and factory inspectorates. The conference also called for an international labour office, to be based on the IALPW acting in cooperation with the IFTU. It is a tribute to the care with which the Leeds conference worked, that within a few years of the end of the war, every one of their demands had been met by the International Labour Organization, or was well on the way to being met.

Creation of the ILO

The circumstances surrounding the establishment of the ILO after the First World War were extraordinary. For the first time in history, a peace conference created a tripartite institution, with governments, employers' and work-

ers' organizations all having the power to speak and to vote. For the first time, delegations to a peace conference included representatives of these two non-governmental organizations. And for the first time, a key commission of a peace conference was presided over by the leader of a trade union.

Samuel Gompers, President of the American Federation of Labor (AFL), had come to Europe for a different purpose. His Federation had adopted its own programme of post-war aims, and he had come to Paris in order to establish fraternal relations with European trade unions, with little success. When invited by President Wilson to join the United States delegation to the Paris Peace Conference, he could hardly refuse. He was further flattered when he was appointed to the Commission on International Labour Legislation, and elected Chairman. The proceedings and conclusions of the Commission are comprehensively related by Edward Phelan (later to become a Director-General of the ILO) in a chapter contained in an authoritative work by one of the members of the United States delegation, Professor Shotwell of Columbia University (Shotwell, 1934, Vol. I, pp. 127-198).

The Commission was composed of 15 members, and its terms of reference were "... to inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in co-operation with and under the direction of the League of Nations" (Shotwell, 1934, Vol. II, p. 368).

The Commission worked for two months under the chairmanship of Samuel Gompers, and with the technical advice and support of Professor Shotwell and an efficient secretariat. For the most part, the atmosphere was peaceful and constructive, but on one point the Chairman expressed strong opposition. It was proposed that, in conferences of the proposed new organization to deal with labour questions, there should be two government delegates from each country (or alternatively, one government delegate casting two votes), and one employers' delegate and one workers' delegate, each with one vote. The Chairman considered this to be unfair, and proposed equality of voting between the three groups. Government delegates argued in reply that the decisions of such conferences would be futile if governments, outvoted, were not prepared to implement them by law or other means.

The Chairman was defeated when the issue was put to the vote and, when he reported back to the AFL Convention after the Conference, said plainly that he had come close to resigning from the Commission because of this defeat. He also denounced his fellow trade unionist on the Commission, George Barnes, MP, for voting with the rest of the Commission, accusing him of being a socialist.

In his last speech to the Commission, Samuel Gompers stated that he had debated with himself whether it was not his duty to fight against the scheme and to urge American labour to oppose it. In the event, he decided to return to the United States to lead a campaign in its favour (Shotwell, 1934, Vol. I, pp. 197-198).

The report of the Commission, approved by the Peace Conference, in effect provided the draft Constitution of the ILO, and became part of the Treaty of Peace signed at Versailles in 1919. It is a tribute to the members of the Commission, and no less to the professional draughtsman who assisted them, that this Constitution has remained essentially unamended to the present day.

The new international organization was received by most national trade union centres with mixed feelings. Some felt that it embodied too many concessions to capitalism, while at the other end of the spectrum some thought that it looked too much like socialism and gave undue weight to the government delegations. In the centre, a number of workers' organizations agreed to try to make the ILO a useful instrument for protecting their rights and interests, while complaining that these provisions of the Treaty of Peace fell short of the targets the workers had set in the course of their wartime conferences. In relation to freedom of association, for example, "... whereas the Treaty only recognized the right of association 'for all lawful purposes' (a wording which might give governments the possibility of declaring illegal the right to strike), Berne [the last of those workers' conferences, held in February 1919] wanted all laws against the right of association suppressed;" (Alcock, 1971, p. 36).

It was some years before the workers realized that their progress towards free association had in fact received a substantial boost. Although the phrase "recognition of the principle of freedom of association" was included in the Constitution, it was in the Preamble only; but gradually the principle was strengthened by practical application. It was to be codified in 1944 in the Declaration of Philadelphia, as the second of four "fundamental principles on which the Organization is based..." This Declaration (see below) forms part of the ILO's Constitution, and States signifying their acceptance of the Constitution are deemed to be committed to the principle of freedom of association, whether or not they have ratified a Convention dealing with the matter. The workers therefore have reason to feel that the results of the Gompers Commission laid a valuable foundation for the advancement of their interests.

Early ILO instruments concerning freedom of association

At its Third Session, held in 1921, the International Labour Conference had before it a series of reports relating to work in agriculture, one of which dealt with freedom of association for the workers concerned. The Government delegate of France objected in principle to the discussion of all the items on the agenda, and asked for them to be withdrawn. His argument was that "These questions must at the present time be dealt with from a national point of view and not by international legislation" (ILO, 1921, p. 39).

He affirmed that this view was shared by the "French agricultural world," but did not indicate whether this term included the workers as well as the employers. The Conference did not accept his proposal, and proceeded to deal with the items on the agenda. An advisory opinion of the International Court

of Justice later confirmed that agriculture was indeed a proper industry for the ILO to consider.

The Conference in due course adopted the Right of Association (Agriculture) Convention, 1921 (No. 11). It was in fact a very brief and simple Convention, the substantive provision of which (Article 1) stated:

> Each member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Convention No. 11 has been widely ratified, but it does not automatically follow that workers in agriculture do in fact enjoy the same rights as those in industry. That is partly because of the inherent difficulties where small groups of workers are found in thousands of modest farms, and where it is far more difficult to conduct labour inspection than in cities. Nevertheless, it represented a beginning in the process of extending the protection of workers' rights.

The second attempt by the ILO to deal with freedom of association, in 1927, failed completely, although there were lessons for the future in that failure. The International Labour Conference agenda included consideration of a draft questionnaire to be addressed to governments, with a view to adopting a Convention at a later session.

When the Committee to which the Conference referred this question met, under the chairmanship of Mgr. W. H. Nolens (Netherlands), an appeal was made from the Chair, supported by the Reporter, Arthur Fontaine (France), that members should refrain from entering into a discussion of the substance of the item. The Committee was reminded on several occasions that its task was simply to consider the draft questionnaire, but to no avail. Arguments broke out over possible implications behind certain formulations; for example, if member States were to be asked whether they considered employers and workers should have the right to combine, should they not also be asked whether they had the right not to combine? Votes were taken on several different drafts of this and other questions. Finally the Committee recommended that the item on freedom of association should not be included in a future Conference agenda; the voting in plenary was 28 in favour of inclusion, 66 against.

Indeed, throughout the work of the Committee, the pattern of voting showed how deeply the respective Groups felt on several disputed points. One of these was the exact meaning of the "lawful purposes" to which trade unions were to be restricted. The workers in particular were clearly mindful of Article 427 of the Treaty of Peace of 1919, which stated: "Among these methods and principles ... of special and urgent importance [is] the right of association for all lawful purposes by the employed as well as by the employers." They did not want any Convention to specify what exactly trade unions were permitted to do, lest this be interpreted as rendering any other action as beyond their rights. The votes which were taken were of the order, for and against, of 24:12, 22:15, 19:16; and 18:17. Since no committee with such a record was likely to reach full agreement on such a substantial item, the conclusion was foregone.

Although this was a setback for the cause of freedom of association, the trade union movement did not abandon the issue. But the period of the late 1920s and early 1930s was one during which organized workers were greatly weakened by extensive unemployment and poverty, and had other problems to deal with.

As in 1914, the outbreak of war in 1939 presented the international trade union movement with both problems and opportunities. Large numbers of workers were mobilized for service in a military or civilian capacity, and individual freedom was subject to various restrictions, such as the prohibition of strikes. On the other hand, some governments found that the trade unions could be an invaluable ally in maintaining industrial morale; for example, the leader of the United Kingdom's largest trade union, Ernest Bevin, was appointed Minister of Labour, and on many occasions accompanied the Prime Minister, Winston Churchill, on visits to cities, factories and ports where there had been heavy casualties.

In spite of difficulties of communication, strenuous efforts were made to maintain contacts between trade union centres, a move which was supported by governments as a means of strengthening goodwill among the Allied powers. For much of the war, of course, most of Europe and parts of Asia and Africa were under occupation, and what contact there was occurred largely with refugees from occupied countries.

In London, the Trades Union Congress (TUC) sought to form a consultative committee, bringing together representatives from the All-Union Central Council of Trade Unions, USSR, and from the United States trade union centres, the American Federation of Labor and the Congress of Industrial Organizations (now united in AFL-CIO). The AFL declined the TUC's invitation, so the TUC formed two committees, one Anglo-Russian and the other Anglo-American. The significance of this will be clear when consideration is given to the trade union initiatives which led to the adoption of Convention No. 87, with the active encouragement of the United Nations.

As soon as the war in Europe ended, in May 1945, the international trade union movement began to re-establish itself. The ITSs renewed their conferences and activities for workers in specific industries, while a conference of national trade union centres, convened by the TUC in London in October, created the World Federation of Trade Unions (WFTU), which brought together most of the European centres, with others from Asia, Latin America and Africa. In North America, the Canadian Labour Congress joined the WFTU, as did the Congress of Industrial Organizations, while the larger and older body, the American Federation of Labor, declined. The stage was therefore set for a resumption of full participation by workers' organizations in the work of the ILO. They were helped by the adoption by the International Labour Conference held in Philadelphia in 1944 of the "Declaration concerning the aims and purposes of the International Labour Organization" — the Declaration of Philadelphia — which reaffirmed the basic principles of the ILO and extended them in certain respects, especially in the economic and financial field. It reaffirmed the ILO's commitment to workers' rights, including freedom of expression

and of association, and the right of collective bargaining.[2] The door was therefore open for the next step, a new Convention on trade union rights.

The United Nations and the ILO

The Charter of the United Nations provides that "The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities ... shall be brought into relationship with the United Nations ..." (Articles 57 and 63). In November 1945, the International Labour Conference adopted a resolution confirming the desire of the ILO to enter into such a relationship with the United Nations. An agreement to this effect was concluded, and approved by the General Assembly of the United Nations and by the International Labour Conference.

In the Agreement, the United Nations "recognizes the International Labour Organization as a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein," and the two organizations agree to the inclusion in their respective agendas of items proposed by the other.

In January 1947, the WFTU addressed a letter to the Secretary-General of the United Nations, requesting that the following items be placed on the agenda of the Economic and Social Council (ECOSOC):

— guarantees for the exercise and development of trade union rights;
— equality of social rights for immigrant workers.

This was followed shortly afterwards by a letter from the WFTU proposing a draft resolution for adoption by the Security Council concerning the first of these two items. (The second was deferred, at the request of the WFTU.) This draft called attention to alleged "tendencies, in various countries, to destroy the very foundations of trade union rights". It called for "still greater participation in the general direction of economic policy" by "the community". It asserted that "those concerned, namely the producers, should have a say in determining economic and social policy". The draft concluded with five operative clauses concerning trade union rights, the last of which read "The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee shall make the necessary enquiries and shall submit recommendations to the Economic and Social Council as to the measures to be adopted" (United Nations, 1947a, pp. 333-337).

A few days later, a letter dated 12 March was received by ECOSOC from the AFL, with which was enclosed a memorandum, recalling that on 20 August 1946, a document had been circulated to members of ECOSOC, containing a draft "International Bill of Rights". This had covered, among other questions, the basic points raised by the WFTU in its submissions to ECOSOC. The AFL memorandum reproduced Part IV of this draft Bill of Rights, dealing

[2] The full text of the Declaration is included as an Annex to the Constitution of the ILO.

with questions relating to conditions of work and freedom of association (United Nations, 1947a, pp. 337-342).

The AFL concluded its memorandum with a lengthy draft resolution for consideration by ECOSOC, which would recommend, in accordance with the United Nations/ILO Agreement, that the ILO take into early consideration the problem of trade union rights, and draft proposals for appropriate action.

ECOSOC therefore had before it two rival sets of proposals, one calling for action by the Council itself, the other recommending reference to the ILO in accordance with the United Nations/ILO Agreement. Both of these were receivable, since ECOSOC, at the request of the General Assembly of the United Nations, had recognized, separately, the WFTU and the AFL, and had established good working relations with both.

It would be difficult to explain why an international trade union organization, the WFTU, had called upon ECOSOC to deal substantively with the subject of freedom of association, while a recognized national centre, the AFL, wished ECOSOC to refer the subject to the ILO, were it not for the political clouds which were gathering over the whole international scene at the time.

The debate in ECOSOC, reflected later in the General Assembly and in the Commission on Human Rights, showed how sharply opinion was divided over essentially political problems. Representatives of the socialist countries, led by the USSR, expressed their full support for the WFTU and for direct action by ECOSOC. Although the language used in these debates was, on the whole, reasonable and restrained, it was clear that in the view of some members, the ILO could not be trusted to give the workers a fair deal, largely because of the participation of representatives of employers. The spokesmen from "non-socialist" countries, on the other hand, declared their full support of the ILO, basing their arguments on the record of ILO achievements since 1919, and on the relevant articles of the United Nations Charter and the United Nations/ILO Agreement.

The debates in all the bodies referred to were long, repetitive and tedious, but the result was never in doubt. ECOSOC decided, by 15 votes to 3, to refer the subject of trade union rights to the ILO, and rejected alternative proposals to set up its own machinery for that purpose. If the vote had gone the opposite way, however, the ILO would have suffered a severe blow, with great damage to its prestige and effectiveness.

While the WFTU and AFL proposals were under discussion, the ILO, as envisaged in its agreement with the United Nations, had been represented by observers both in Geneva and New York. This proved to be of considerable value, not least because it enabled the Office to proceed with measures in anticipation of a positive decision by ECOSOC. As ECOSOC, in its final resolution, had called for an early report on action taken, the International Labour Conference considered the question of freedom of association at its 30th Session, held in 1947. The Conference Committee which dealt with the item was extremely high-powered. The Chairman of the Committee was David Morse (who was elected Director-General of the ILO the following year, and served with great distinction until his retirement in 1970). Several of the other Gov-

ernment delegates were either former ministers in their governments, or had occupied high posts in the civil service. The Employers' and Workers' members were also of the first rank, many of them members of the Governing Body of the ILO, and two (Pierre Waline, France, and Sir Alfred Roberts, United Kingdom) later elected Vice-Chairmen of the Governing Body and leaders, respectively, of the Employers' Group and the Workers' Group.

This Committee dealt expediently with the item, with only one serious difference of opinion. In an echo of the early years of the ILO, the employers moved that, in the Resolution (under consideration) concerning Freedom of Association and Protection of the Right to Organize and to Bargain Collectively, after the words "the right to join" (associations) should be inserted "or not to join." The issue was resolved, after a sharp exchange, by a vote in which the Employers' amendment was rejected (41 votes in favour, 50 against). The report of the Committee, which also included a draft resolution to place the item, freedom of association, on the agenda of the 31st Session of the Conference in 1948,[3] was adopted unanimously by the Conference plenary sitting. It could be said that, although 1998 will be properly regarded as the 50th anniversary of the adoption of Convention No. 87 in 1948, it was at the 1947 Session that history was made.

In July 1947, therefore, it was possible for the Director-General of the ILO, Edward Phelan, to report to ECOSOC with some satisfaction that the ILO had responded to the request addressed to it and, by unanimous decision of the International Labour Conference, had laid the foundations for the adoption of a Convention on freedom of association.

ECOSOC held another series of discussions, very much on the lines of a previous Session, and not surprisingly adopted a resolution, by 15 votes to 2 with one abstention, taking note of the ILO's report and observing with satisfaction the action taken. But the resolution went beyond that: it recognized the principles proclaimed by the ILO, requested the ILO to continue in its efforts to adopt one or several Conventions, and looked forward to the report which ECOSOC would receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights.

ECOSOC also referred the report from the ILO to the General Assembly, meeting in New York in the autumn of 1947. This led to further lengthy discussions, in committee and plenary, ending with the adoption of a resolution, recognizing the principle of the right to freedom of association for workers, and recommending that the ILO pursue urgently, in collaboration with the United Nations, the study of the control of machinery to protect trade union rights and freedom of association (United Nations, 1947b, pp. 959-1018). In the report which was placed before the International Labour Conference the following year, these words indicated how important these developments had been for the organization: "The Conference will no doubt observe with satisfaction that a particularly fruitful collaboration has been established between the United

[3] For a single discussion only, a rare procedure for an item of major importance.

Nationsand the International Labour Organisation with regard to a question of vital importance both for the Governments and for the workers and employers of all countries in the world" (ILO, 1948a, p. 7).

The adoption of Convention No. 87

Since the International Labour Conference, at its 30th Session in 1947, had already decided to place on the agenda of its next general session the questions of freedom of association and of the protection of the right to organize, preparations were well in hand for these items, even while discussions were taking place in the General Assembly and ECOSOC.

A summary report on the proceedings of the 1947 Session, together with a questionnaire seeking the views of member governments on possible further action by the ILO, were circulated to all members. On the basis of their replies, the Office prepared an analysis, indicating that a large majority favoured the adoption of one or more Conventions, and containing an outline of the possible form of new instruments. A committee was appointed at the 31st Session of the International Labour Conference (San Francisco, June-July 1948) to deal with the item "Freedom of association and protection of the right to organise". Once again, it was a high-level committee, this time under the chairmanship of James Thorn (Government delegate, New Zealand) and one of the two Reporters was, as previously, the veteran trade unionist Léon Jouhaux (Workers' delegate, France.)

On the whole, the Committee worked smoothly, with concessions made on all sides in order to reach agreement. The members were undoubtedly influenced by the powerful support expressed by the General Assembly for the work which the ILO was called upon to do, and wanted to achieve a positive result. Nevertheless, there were clear points of disagreement, some of which had to be resolved by voting. The Government delegates from two Eastern European States proposed that the word "employers" be deleted from the text submitted by the Office; the Convention would therefore provide only for the rights of workers. This was clearly unacceptable to the majority of the Employer members, who on this point were supported by the Worker members, as well as by most Government members. The proposed deletion was rejected by six votes for, 101 against, and one abstention. Possibly as a *quid pro quo*, the employers did not reintroduce their 1947 amendment to add "or not to join" after the words "the right to join". The Office text of a Convention, based as it was on the replies of governments prior to the Conference, was adopted by the Committee with no substantial change.

The report of the Committee was adopted by an overwhelming majority at the plenary sitting of the International Labour Conference. It contained the full text of what became, in due course, Convention No. 87. Two speeches in plenary are worthy of mention in the present context. Léon Jouhaux said, "I should like to say that the Workers' representatives will vote in favour of the Convention now before you, but we shall not vote without certain reservations" (ILO, 1948b, p. 229). He went on to explain that the new Convention

did not go far enough in some respects, and that too much weight had been given to national sovereignty, which he thought was outdated. Louis Cornil (Belgium), Reporter on the Employers' side, expressed the views of his own Group: "Employers and workers have discussed this proposed Convention with a common desire to achieve something. The extent of the concessions made by all parties reveals a mutual trust which I do not think has ever before been so clearly shown" (ILO, 1948b, p. 231).

These remarks, and others from Government members, suggest that there was a general feeling that the new Convention would prove to be a milestone in the history of the ILO. It was probably not realized that, by adopting Convention No. 87, they were also formulating key elements of what was to become the United Nations Universal Declaration of Human Rights.

What is special about Convention No. 87? Membership of the ILO requires the formal acceptance of the obligations of its Constitution, which includes the Preamble and the Declaration of Philadelphia; the principle of freedom of association is embodied in both.

What Convention No. 87 does is to translate that principle into specific rights capable of enactment in law and applicable in practice. No particular use would be served by enlarging on those rights at this point: the ten Articles on Freedom of Association are clear, concise, and readily understandable by all. Part II on Protection of the Right to Organize is even more concise, consisting of one sentence only; but it should be noted that the Conference in 1948 placed on the agenda of the 32nd Session (1949) an item, "Right to organise and collective bargaining", which in 1949 produced, under that title, Convention No. 98. The two Conventions are normally considered integrally.

What was noteworthy about Convention No. 87 was the unequivocal tone of its statement of workers' rights (and of employers' rights.) From the point of view of workers in factory, farm, mine, or on board ship, the articles are brief, easily understood, and free of legal jargon; which is one reason why they have been reproduced in all countries in the world where trade unions exist, and form an essential element in almost all workers' education courses.

Trade union rights and human rights

It is no coincidence that 1998 is the 50th anniversary of the adoption both of ILO Convention No. 87 and of the United Nations Universal Declaration of Human Rights. The three years immediately following the end of the Second World War were a period of intense activity in the field of human rights. In June 1945, even before the war had come to an end, consideration of human rights had been a focal point in the Conference on International Organisations, in which non-governmental organizations were closely involved, and which culminated in the decision to create the United Nations. A plaque on the wall of the Fairmont Hotel, San Francisco, where that historic conference was held, testifies to the contribution of 42 NGOs, which was "particularly reflected in the Charter provisions for human rights and United Nations consultation with private organizations". These included leaders of trade unions and, as already

pointed out, in 1946 the American Federation of Labor produced its own draft of an international Bill of Rights and submitted it to the United Nations. 1948 therefore saw the convergence of several simultaneous activities, involving the ILO, the General Assembly, ECOSOC, and the Commission on Human Rights. Throughout, there was almost a permanent interchange of observers, so that the texts of the two main documents under consideration, where they refer to the rights of workers, differ only in the precise drafting. A comparative analysis of the texts can be found in a recent ILO publication (Swepston, 1998). Concerning trade union rights, Article 23(4) of the Declaration[4] states: "Everyone has the right to form and to join trade unions for the protection of his interests." Convention No. 87 is more explicit, and includes the parallel rights of employers, but the idea underlying both texts is exactly the same. It may be noted in passing that Eleanor Roosevelt, who then chaired the United Nations Commission on Human Rights, demonstrated her interest in trade union rights at one sitting of the Commission by saying that, as a member of an American trade union, she was entitled to express an opinion.

The value of Convention No. 87 for workers

The evaluation of the effectiveness of Conventions had been a permanent preoccupation of the ILO since its creation in 1919. In the case of Convention No. 87, dealing as it does with the most fundamental aspect of workers' and employers' rights, attention has been particularly close.

At one level, the Constitution of the ILO requires that Members make an annual report on measures which have been taken to give effect to the provisions of Conventions which they have ratified.[5] These reports, in summary, are placed before the ILO's Committee of Experts on the Application of Conventions and Recommendations, whose report is then placed before the tripartite Committee on the same subject at the annual session of the International Labour Conference, which in turn reports to the plenary sitting.

The Committee of Experts has another task, which is to examine in depth the extent to which selected Conventions and Recommendations are applied within the entire ILO membership, and to publish a General Survey each year on a particular theme. In view of the importance of the rights of employers and workers, the Committee of Experts is requested by the Governing Body of the ILO to consider the application of instruments dealing with freedom of association more frequently than any other group of Conventions and Recommendations. There is thus a continued scrutiny of the effectiveness of Convention No. 87 and Convention No. 98, and a substantial volume of factual information on the subject now exists, combined with the observations of the Committee, all of which has been considered by the International Labour Conference.

[4] The full text of the Universal Declaration of Human Rights is also appended to this issue of the *International Labour Review*.

[5] As at 30 June 1998, Convention No. 87 had been ratified by 122 Members, and Convention No. 98 by 138 Members (International Labour Standards Department, ILO).

It would be agreeable, on this 50th anniversary of the adoption of Convention No. 87, to be able to conclude that the existence of the Convention, and the elaborate machinery created to ensure its application — a key element of which will be described below — have led to a universal improvement in respect for trade union rights. Unfortunately, this is not the case. In 1983, the Committee of Experts, in its fifth General Survey on Freedom of Association and Collective Bargaining, described the world situation as follows:

> The Committee has been able to note with satisfaction ... that in some countries, following sweeping political changes, fundamental freedoms and trade union rights have been fully recognised or re-established, and that, in other countries, certain improvements in laws and regulations have brought national legislation more into conformity with the principles and standards of the Conventions. The Committee notes, however, with concern that in a number of other countries the situation has hardly changed or has even deteriorated and that the law and/or practice do not correspond to the requirements of the Conventions.
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> This is confirmed by the fact that in recent years the number of cases brought to the attention of the Governing Body Committee on Freedom of Association has increased alarmingly (ILO, 1983, paras. 413-414).

The Committee on Freedom of Association was set up by the Governing Body in 1951, and is composed of nine members — three representing governments, three employers, and three workers, with an independent chairperson. By mid-1998, the Committee had considered 1,972 cases, brought mainly by workers' organizations, alleging that the principles of freedom of association were being infringed. The seriousness of these allegations ranges over a wide spectrum: from interference with such normal activities as the holding of trade union meetings and the suppression of publications to the arbitrary arrest, detention without trial, ill-treatment, torture, execution and "disappearance" of trade union leaders. In every case, the complaint is methodically investigated, the government is invited to present its version of the alleged events and, in serious cases, the ILO with the agreement of the government concerned may send a representative to make enquiries on the spot, which sometimes involves interviews with persons under detention. In a small number of cases, the Governing Body has referred a complaint to the Fact-finding and Conciliation Committee on Freedom of Association, a body set up in 1950 by agreement between the ILO and ECOSOC. It will be recalled that in 1947, the General Assembly had called upon the ILO not only to consider the elaboration of standards on workers' rights but also to set up, as a matter of urgency, the necessary machinery to ensure that such standards were applied in practice. If the Committee of Experts is concerned that the situation in some countries has hardly changed over the years, the ILO's three constituent groups are no less disturbed.

The workers, understandably, feel they have the greatest reason to be concerned. For two and a half centuries they and their predecessors have struggled for the freedom to associate for their own protection, frequently at great cost. Now they have an international organization, whose members have freely agreed to be bound by certain principles, including respect for freedom of association.

By ratifying Convention No. 87, the great majority of countries have solemnly accepted the obligation to respect these rights in specific terms. And yet, in spite of the devoted efforts of so many over the past 50 years, the work of the Committee on Freedom of Association, far from declining, is growing.

The most recent reports of the Committee contain a list of appalling allegations. They include the prohibition of trade union meetings, anti-union laws, dismissal for membership of a trade union, interference with the normal rights of agricultural and domestic workers, and a number of extreme cases alleging ill-treatment, murder and "disappearance" of trade union leaders.

It could be argued that the situation is amplified by the so-called "information explosion". Perhaps life was just as cruel a century, two centuries ago; but at that time communications were poor, and the victims were not heard, whereas today a serious offence against human rights can easily be reported in print or on radio or television very soon afterwards — or even live. Common observation confirms that there is some substance to this argument. Even so, the situation is incompatible with all that the ILO stands for; social justice for all is still a distant dream.

Some economic and social trends are also likely to impede progress towards the attainment of the lofty ideals embodied in the Universal Declaration of Human Rights. Workers are well aware of the dangers of the twin evils — as they see them — of decentralization and deregulation. In many areas of politics and business, governments are exercising less control and thereby evading their responsibilities for the welfare and protection of their subjects. Coupled with this is the enormous growth in numbers and power of the multinational enterprises, some of which wield more power than the governments in whose countries they operate. From the point of view of the workers, these trends make the position of their organizations considerably weaker. They have in some cases sought to counter this by organizing on an international basis, so that workers employed in several countries by the same multinational employer can present a united front; but it is an unequal struggle.

There has been a tendency in recent years for criticism of the whole process of standard-setting to be expressed at the International Labour Conference. A significant number of Government delegates have suggested that ILO standards have an adverse effect on economic policies, especially in developing countries. The Employer delegates have not been slow to echo that concern; almost invariably, any proposal for a new Convention is countered by the employers, who much prefer the less stringent terms of a Recommendation. This tendency is reinforced by the fact that employers' and workers' organizations, as such, do not have a voice in the GATT, now WTO, which deals with trade liberalization. This is yet another difficulty in the way of effective standard-setting.

The United Nations Commission on Human Rights is faced with problems of a somewhat similar nature; some governments, having accepted the Universal Declaration of Human Rights and having, in some cases, ratified the various United Nations Conventions flowing from it, nevertheless claim that allegations of the infringement of human rights constitute an affront to na-

tional sovereignty. In this light, the apparent failure of the ILO to ensure the worldwide application of Convention No. 87 in fact reflects a wider tendency to let the clock slip back in respect of human rights.

In this atmosphere, the workers participating in the work of the ILO see themselves as forced to continue to struggle against all who threaten freedom of association. It is undeniable that Convention No. 87 and, in particular, the work of the Committee on Freedom of Association, have proved invaluable defences against social injustice: in terms of the release of persons unjustly imprisoned, of the removal of restrictions on legitimate trade union activity, or the annulment of death sentences, the Convention has achieved a great deal in 50 years. The laws of more than half of the ILO's member countries have been drafted or amended to conform to ILO standards, including Convention No. 87. These are all welcome developments. But workers cannot be expected to be satisfied while so many of their colleagues are deprived of their rights, subjected to ill-treatment, and in some cases "found to have taken their own lives while detained". The Committee on Freedom of Association would seem to have a heavy agenda for many years to come.

Workers will this year ensure that this 50th anniversary is widely and memorably commemorated throughout the world; but there will be no dancing for joy.

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Human rights law and freedom of association: Development through ILO supervision

Lee SWEPSTON *

There were two striking developments in 1948 in the nascent field of international human rights law. The first in time was the adoption by the ILO of the Freedom of Association and Protection of the Right to Organise Convention (No. 87); the second was the adoption by the United Nations of the Universal Declaration of Human Rights a few months later.[1] The close relation between some aspects of the two at the time has been maintained through the ILO's supervisory process ever since.

The Universal Declaration is, of course, of great importance to the ILO in its work for the promotion and defence of human rights. As the ILO's Committee of Experts on the Application of Conventions and Recommendations stated in the report of its 1997 Session:

> The Universal Declaration ... is generally accepted as a point of reference for human rights throughout the world, and as the basis for most of the standard setting that has been carried out in the United Nations and in many other organizations since then. ... The ILO's standards and practical activities on human rights are closely related to the universal values laid down in the Declaration, ... [T]he ILO's standards on human rights along with the instruments adopted in the UN and in other international organizations give practical application to the general expressions of human aspirations made in the Universal Declaration, and have translated into binding terms the principles of that noble document.[2]

* Chief, Equality and Human Rights Coordination Branch, International Labour Standards and Human Rights Department, International Labour Office. As concerns the development of principles contained in Convention No. 87, this article draws on Héctor Bartolomei de la Cruz, Geraldo von Potobsky and Lee Swepston: *The International Labour Organization: The international standards system and basic human rights*, Boulder, CO, Westview Press, 1996 (particularly Chapter 21).

[1] The complete texts of both Convention No. 87 and the Universal Declaration of Human Rights are appended to this issue of the *International Labour Review*.

[2] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Report III (Part 1A), International Labour Conference, 86th Session, 1998, Geneva, pp. 16-17, paras. 56-58. The full text of this section of the Committee of Experts' Report (paras. 41-60) is appended to this issue of the *Review* (see Appendix III).

It is of particular interest to the ILO that the Universal Declaration of Human Rights proclaims in its Article 23, paragraph 4, that: "Everyone has the right to form and to join trade unions for the protection of his interests." This is a more specific manifestation of the right laid down in article 20 of the Universal Declaration to "the right of freedom of peaceful assembly and association".

The inclusion of this principle in the Universal Declaration had been preceded by its inclusion in three important ILO instruments. The first of these is the ILO's Constitution, which in its original version as Part XIII of the Treaty of Versailles proclaimed that the High Contracting Parties considered that the right of association "for all lawful purposes" is of "special and urgent importance", both for workers and employers.[3] The Preamble to the Constitution explicitly cites trade union rights among the measures that could improve working conditions and thus assure peace. When in 1944 the ILO adopted the Declaration of Philadelphia, the second of these fundamental texts, and in 1946 incorporated it into the Constitution, it reaffirmed freedom of association as one of the fundamental principles on which the Organization was based, and characterized it as "essential to sustained progress". It also referred to "the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".

The third of these fundamental texts was the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The adoption of a specific Convention on this subject in the ILO was not easy, as is outlined in Harold Dunning's article in this issue of the *International Labour Review*. It was put off many times as being too difficult to agree on, and its lack began to be felt early. In 1921, the ILO adopted the Right of Association (Agriculture) Convention (No. 11), which recognized in very general terms that workers in agriculture have the same rights of association as workers in industry — but at the time the ILO had not yet defined the freedom of association rights of industrial workers.

When the time did come, events moved fairly quickly. In the ILO itself, the 1944 Declaration of Philadelphia contained the provision mentioned above. In addition, the Third Conference of American States Members of the ILO adopted in 1946 a resolution on freedom of association that spelt out the basic principles which would be included in Convention No. 87. In 1947, the International Labour Conference adopted the Right of Association (Non-Metropolitan Territories) Convention (No. 84), which refers not only to the right of employers and workers to associate for any legal purpose, but also to collective agreements, consultations and the solution of labour conflicts.

[3] Following its amendment in 1946, the ILO's Constitution no longer includes the phrase "for all lawful purposes".

Though ratified by only four countries,[4] this Convention had an important effect on the development of international law on the subject.

The same year, the Economic and Social Council of the United Nations (ECOSOC) examined reports on freedom of association from the World Federation of Trade Unions (WFTU)[5] and the American Federation of Labor (AFL), and decided to ask the ILO to include these subjects on the agenda of its Conference. The ILO did so in 1947, and adopted a resolution which prepared the ground for the adoption of Convention No. 87 in 1948, before the adoption of the Universal Declaration, and of Convention No. 98 shortly thereafter, in 1949.

The adoption of international human rights law in a "legislative" process — in international Conventions adopted by the ILO and the United Nations — really began only in 1948, with that of Convention No. 87 and the Universal Declaration. Before the ILO was established, there had been some early attempts to adopt international agreements on workers' rights by negotiation between States, but they had not been terribly successful. At the end of the First World War, in 1919, the League of Nations and the International Labour Organization were established, and the ILO set about adopting international Conventions on conditions of work. The only instruments which really amounted to what are called "human rights" treaties today were the Slavery Convention adopted by the League of Nations in 1926, and the Forced Labour Convention (No. 29) adopted by the ILO in 1930 to develop the coverage of labour aspects of slavery. But no other human rights instruments were adopted until after the Second World War.

Since 1948, the ILO and the United Nations have developed along parallel lines as far as freedom of association issues are concerned — and other human rights questions as well — and regional organizations have also developed both standards and supervisory capacity. But consideration will first be given to how the United Nations and other organizations developed the concepts, and then to the development of these principles by the ILO through its Conventions and supervisory process.

The development of freedom of association outside the ILO

The United Nations

Article 23(4) of the Universal Declaration on Human Rights, quoted above, is couched in language deriving directly from Convention No. 87, and is a general statement of the same philosophy. Article 2 of Convention No. 87 reads:

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[4] Belgium, France, New Zealand and the United Kingdom. Note that it was not applicable to countries which had no non-metropolitan territories.

[5] This was before the split in its membership which led to the establishment of the International Confederation of Free Trade Unions (ICFTU).

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without any previous authorisation.

The main difference between this text and that of the Universal Declaration is that the latter omits any reference to employers. Also, of course, it stops at the general expression of the principle, as is its vocation.

In 1966, the United Nations codified the principles laid down in the Declaration in two seminal texts: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Both Covenants came into force ten years later once they had received a sufficient number of ratifications; they are the most influential international human rights instruments of broad coverage. They also followed the earlier ILO provisions on freedom of association.

Article 22 of the *International Covenant on Civil and Political Rights* is its only detailed article on freedom of association. The first paragraph of that Article is an almost exact restatement of Article 23(4) of the Universal Declaration. The second paragraph states that no restrictions may be placed on the exercise of this right "other than those which are prescribed by law and which are necessary in a democratic society" and allows "lawful restrictions on members of the armed forces and of the police in their exercise of this right", as does Convention No. 87. The third paragraph reads as follows:

> Nothing in this article shall authorise the States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Entire legislative conformity is guaranteed with Convention No. 87 in this remarkable provision, which was incorporated in the other Covenant as well.

The *International Covenant on Economic, Social and Cultural Rights* contains a more detailed treatment of the same subject, in Article 8:

> 1. The States Parties to the present Covenant undertake to ensure:
>
> (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
>
> (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;
>
> (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of a particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorise the States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

In comparing this provision with ILO standards, Valticos and von Potobsky point out the relative merits of the two approaches:

> This provision is not as detailed as Convention No. 87. Moreover, the restrictions which it authorizes might reduce considerably the extent of the protection which it affords. This applies to the limitations which, contrary to Convention No. 87, are permitted as regards the members of the administration of the State. This is also the case as regards the limitations "which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others", for which there is no equivalent in Convention No. 87. However, the obligations arising from that Convention are expressly reserved by the saving clause contained in Article 8, para. 3, of the Covenant. On the other hand, this Article recognizes the right to strike, but it leaves the conditions of its exercise to the discretion of national legislations.[6]

Thus, while there are some differences, the ILO and United Nations texts are almost completely consistent one with the other; certainly they have not been developed by the supervisory bodies of the two organizations in a way which gives rise to any difficulties.

Regional instruments

Protection on the regional level is most thorough in Europe, where it is contained in two instruments. The *European Convention on Human Rights* (1950) provides for freedom of association and protection of the right to organize in terms adopted later (1966) in the International Covenant on Economic, Social and Cultural Rights, in its Article 11. The *European Social Charter* (1961) takes an approach much more similar to that of the ILO standards, in its Articles 5 (the right to organize) and 6 (the right to bargain collectively). Article 6, para. 4, of the Charter contains the first express authorization in an international instrument of the right to strike. This Article was supplemented by the following provision from the Appendix to the Charter:

[6] Nicolas Valticos and Geraldo von Potobsky: *International labour law*, 2nd revised edition, Deventer, Kluwer, 1995, p. 105.

> It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31.

Article 31 (1) of the Charter, in turn, provides that:

> The rights and principles set forth ... and their effective exercise ... shall not be subject to any restrictions or limitations not specified ... except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

In the Americas, the *American Convention on Human Rights* (Pact of San José, 1969) provides for freedom of association in its Article 16. The *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights* (Protocol of San José, 1988) develops this in Article 8, which closely resembles the provisions of the International Covenant on Economic, Social and Cultural Rights. It contains one provision not found in any of the other standards examined here, affirming that no one may be compelled to belong to a trade union. This makes trade union security clauses or practices contrary to the Protocol.

In Africa, the *African Charter on Human and Peoples' Rights* (1981) contains no provision directly on freedom of association for employers or workers. It does contain, at Article 10, a general assertion for everyone of the "right to free association provided that he abides by the law"; and, at Article 11, the right to freedom of assembly.

International law is thus fairly clear and remarkably consistent on the question of freedom of association and protection of the right to organize and to bargain collectively. It is also clear that all these provisions emerge more or less directly from Convention No. 87 and the closely related text of the Universal Declaration.

ILO supervisory mechanisms

Before examining how the supervisory bodies have perceived the obligations under the ILO's Constitution and standards, it may be helpful to review the kinds of supervision that operate.

All ratified ILO Conventions are dealt with by the ILO's Committee of Experts on the Application of Conventions and Recommendations. Governments report at regular intervals, and the Committee of Experts makes any comments that may be called for. In more difficult cases, the situation is referred to the tripartite Conference Committee on the Application of Standards in the annual session of the International Labour Conference, where the government concerned may be invited to come and discuss its situation in a public forum, as with other ILO Conventions.

It is also possible to invoke the constitutional complaints procedures for freedom of association Conventions, as for all other Conventions. *Representations* under article 24 of the Constitution are generally referred to

the Committee on Freedom of Association (see below). *Complaints* under article 26 of the Constitution may also be filed, and are examined by a Commission of Inquiry convened by the Governing Body. (As this article is being written, a complaint is pending concerning Convention No. 87 in Nigeria.)

The arrangements described above apply to all ratified Conventions. In the case of freedom of association and the right to collective bargaining, however, the ILO has made additional provisions. The Governing Body decided in January 1950 to create the Fact-Finding and Conciliation Commission on Freedom of Association,[7] following discussions with ECOSOC. In November 1951, the Governing Body created a special committee from among its own members to carry out prior examination of the cases submitted to that Commission; this was the Committee on Freedom of Association.

The Fact-Finding and Conciliation Commission on Freedom of Association may examine cases only if the government against which a complaint was filed agrees to the examination.[8] The first governments against which the procedure was invoked refused this consent, and the Commission was thus blocked from any action until 1964. Because of this blockage, the Committee on Freedom of Association, which required no such agreement, evolved from a body whose role was originally conceived as a filtering mechanism for the Commission into an independent body which was able to examine complaints; to date it has examined nearly 2,000 such complaints. The Committee is composed of nine titular and nine substitute members, drawn on a tripartite basis from the ILO Governing Body; it meets three times a year. Complaints may be submitted by governments or by employers' or workers' organizations, alleging that the right of freedom of association has been infringed.

The distinguishing characteristic of the Commission and of the Committee is that they may examine complaints *whether or not the country concerned has ratified any ILO Convention* on the subject — their authority derives directly from the Constitution, and complaints may thus be filed against any member State of the ILO. If the government concerned has not ratified the relevant ILO Conventions, the Committee on Freedom of Association itself follows up the effect given to complaints; if it has, the Committee of Experts on the Application of Conventions and Recommendations is charged with the follow-up.

The principles contained in the Conventions and in the Constitution have thus been subject to intense scrutiny over the past 50 years. With 122

[7] ILO: *Record of proceedings*, International Labour Conference, 33rd Session, 1950, Geneva, Appendix XII.

[8] Consent is not required, however, if the State concerned has ratified ILO Conventions on freedom of association, as in this case the complaint could be dealt with under the article 26 complaint procedure.

ratifications of Convention No. 87,[9] and reports from ratifying States at two-yearly intervals or less, the Committee of Experts has continuously had to evaluate whether given situations were in compliance with the Convention. And the Committee on Freedom of Association has been employed in a similarly intense manner deciding on the 2,000 cases arising from complaints.

There are two principal sources for examining the opinions of the ILO supervisory bodies. The primary source for the Committee of Experts is its own comments on individual country situations. Each year the Committee of Experts also carries out a General Survey on one or more ILO Convention(s) and Recommendation(s) reviewing the situation around the world as regards ratification and difficulties encountered in their application by governments. It uses this opportunity to review the meaning and development of the international law contained in the Conventions concerned. The last General Survey to be concerned with freedom of association was published in 1994.[10]

The Committee on Freedom of Association also collects its own decisions, in a *Digest of decisions*, which is issued from time to time.[11] This reviews the questions, principle by principle, and provides detailed guidance on what has been decided over the years. The two together provide detailed information on ILO law and practice on freedom of association and protection of the right to organize. What follows here is a quick review of a highly complex subject, which may be explored in much greater depth through primary sources.

Freedom of association and civil liberties as developed by the ILO supervisory bodies

This subject is of overarching importance in the field of freedom of association, and bears a special relationship to the principles laid down in the Universal Declaration of Human Rights. There is a general consensus that respect for civil and political rights is necessary for the exercise of trade union rights. In the preparatory report prepared for the adoption of Convention No. 87, the Office stated that "freedom of industrial association is but one aspect of freedom of association in general, which must itself form part

[9] As at 15 July 1998.

[10] ILO: *Freedom of association and collective bargaining: General Survey of the reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948, and the Right to Organise and Collective Bargaining Convention (No. 98), 1949*, Report III (Part 4B), International Labour Conference, 81st Session, 1994, Geneva. Hereinafter cited as *General Survey*, + year of publication.

[11] ILO: *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th (revised) edition, Geneva, 1996 (hereinafter cited as *Digest*).

of the whole range of fundamental liberties of man, all interdependent and complementary one to another, including freedom of assembly and of meeting, freedom of speech and opinion, freedom of expression and of the press, and so forth".[12]

The supervisory bodies have always insisted on the importance of civil liberties. The Committee on Freedom of Association in particular has stated that a "genuinely free and independent trade union movement can only develop where fundamental human rights are respected".[13] In 1992 the Director-General stated in his report *Democratisation and the ILO* that: "The ILO takes a keen interest in civil and political rights, for, without them, there can be no normal exercise of trade union rights and no protection of the workers".[14] In its 1994 General Survey, the Committee of Experts stated:

> The Committee considers that the guarantees set out in the international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, notably the International Covenant on Civil and Political Rights, are genuinely recognized and protected. These intangible and universal principles, the importance of which the Committee wishes to emphasize particularly on the occasion of the 75th anniversary of the creation of the ILO and the 50th anniversary of the Declaration of Philadelphia, should constitute the common ideal to which all peoples and all nations aspire.[15]

According to a Resolution concerning trade union rights and their relation to civil liberties, adopted by the Conference in 1970, the civil liberties essential for the normal exercise of trade union rights include: "(a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organizations."[16]

Right to personal security

There are several aspects to this principle. As regards physical integrity, the complaints received by the Committee on Freedom of Association refer principally to loss of life, injury, torture or other ill treatment, and "disap-

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[12] ILO: *Freedom of association and industrial relations*, Report VII, International Labour Conference, 30th Session, 1947, Geneva, pp. 11 and 12.

[13] *Digest*, para. 35.

[14] ILO: *Democratisation and the ILO*, Report of the Director-General (Part 1), International Labour Conference, 79th Session, 1992, p. 24.

[15] *General Survey*, 1994, para. 43.

[16] ILO: *Record of proceedings*, International Labour Conference, 54th Session, Geneva, 1970, pp. 733-736.

pearance" of trade unionists. The Committee has placed special emphasis on the importance of setting up an independent judicial inquiry in such cases.[17]

As regards torture, cruelty and ill-treatment in particular, the Committee has pointed out that during their detention trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.[18]

The Committee frequently invokes the right to be tried promptly under normal judicial procedures.[19] During a state of emergency the same safeguards of a speedy trial of trade unionists, with the guarantees of a regular judicial procedure, must be applied.[20]

The Committee has often stated that the forced exile of trade unionists is not only contrary to human rights, but also particularly serious since it deprives them of the possibility of working in their countries and separates them from their families. It also constitutes a violation of freedom of association, since it weakens trade union organizations by depriving them of their leaders and key activists.[21]

Freedom of opinion and expression

The Committee on Freedom of Association considers that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and that workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications, and in the course of their other activities.[22]

A question of particular interest for the ILO is the freedom of speech of delegates to the International Labour Conference. The functioning of the Conference would be considerably hampered and the freedom of speech of the workers' and employers' delegates paralysed, if they were to be threatened with prosecution based, directly or indirectly, on the contents of their speeches at the Conference. Article 40 of the ILO Constitution provides that delegates to the Conference shall enjoy "such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". The arrest and sentencing of a delegate as a result of his or her speech to the Conference, or by reason of information given on the

[17] *Digest*, paras. 51 and 52; *General Survey*, 1994, para. 29. In the case of disappearances, the CFA has asked the government concerned to carry out investigations to determine the fate of the disappeared persons, and to initiate an investigation to clarify the facts, assign responsibility and punish those found guilty.

[18] *Digest*, paras. 58, 59 and 60; *General Survey*, 1994, para. 30.

[19] *Digest*, paras. 96, 102 and 109; *General Survey*, 1994, para. 32.

[20] *Digest*, paras. 99 and 101; *General Survey*, 1994, para. 32.

[21] *Digest*, paras. 122-127; *General Survey*, 1994, para. 33.

[22] *Digest*, paras. 152 and 153; *General Survey*, 1994, para. 38.

debates thereof, jeopardize freedom of speech for delegates as well as the immunities that they should enjoy in this regard.[23]

Freedom of assembly

The Committee has pointed out many times that freedom of assembly constitutes a fundamental aspect of trade union rights. The authorities should refrain from any interference which would restrict this right or impede its lawful exercise, provided that the exercise of these rights does not cause a serious and imminent threat to public order.[24]

Protection of trade union premises

The Committee has often stated that trade union premises are inviolable. They should only be searched when a warrant has been issued by the regular judicial authority, when that authority has good reason to believe that evidence for criminal proceedings under the ordinary law will be found on the premises, and on condition that the search is restricted to the purpose for which the warrant was issued.[25]

Special situation during states of emergency

The Committee of Experts has noted that a state of emergency is frequently invoked to justify exemptions from the obligations arising under the Conventions on freedom of association, but that such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in cases of extreme gravity. Any such restrictions must be limited in scope and duration to what is strictly necessary to deal with the situation in question. While it is conceivable that the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations, might be limited, suspended and even prohibited, it is not permissible that the guarantees relating to the security of the person should be limited, suspended or abolished.[26]

Persons covered

Article 2 of Convention No. 87 provides that "Workers and employers, without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing". Only the members of the armed forces and of the police may be excluded (see below), and the Convention covers both wage-earners and other workers. In adopting the term "without distinction whatsoever", the Conference emphasized that the right to organize

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[23] *Digest*, para. 170; *General Survey*, 1994, para. 39.

[24] *Digest*, paras. 130 and 131; *General Survey*, 1994, para. 35.

[25] *Digest*, paras. 175 and 180; *General Survey*, 1994, para. 40.

[26] *Digest*, paras. 186 to 199; *General Survey*, 1994, para. 41.

should be guaranteed without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.[27]

Public employees are covered along with other workers. The Committee of Experts has emphasized this means that "all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings".[28]

As concerns *nationality*, in principle ILO standards apply to all workers. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) does not list nationality among prohibited grounds of discrimination, but various ILO instruments provide that equal treatment should be given to migrant workers, and some provide specifically for this to be the case for freedom of association. For instance, the Migrant Workers (Revised) Convention, 1949 (No. 97), refers to equality on the basis of nationality with respect to membership of a trade union and the enjoyment of the benefits of collective agreements (Article 6, para. 1(a)(ii)). The later Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), included trade union rights in its requirements for equality of opportunity and treatment (Article 10).

There are special problems concerning the coverage of *agricultural workers*, and the fact that these workers have special difficulties has also been recognized by the adoption of the Rural Workers' Organisations Convention (No. 141) and Recommendation (No. 149), 1975, which recognize their special status. Nevertheless, they continue to benefit from the guarantees provided for in other freedom of association Conventions, in particular Conventions Nos. 87 and 98.

Political opinion, including political activities, should not be a basis for discrimination concerning the right to join a trade union. Furthermore, conviction for a political offence should in no case constitute a valid ground for withdrawal of the right to trade union membership.[29]

Employers should enjoy the same right to organize as workers. This principle applies in particular to countries in which private enterprise does not exist or where it has only a marginal importance under the existing political system — a decreasing number of countries now, but until recently there was a significant number of them. The Committee of Experts has emphasized that employers, including managerial staff and executive staff in state-run enterprises, are covered by Convention No. 87 and that their right to organize should be fully protected.[30]

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[27] *General Survey*, 1994, para. 45; ILO: *Record of proceedings*, International Labour Conference, 30th Session, 1947, Geneva, p. 570.

[28] *General Survey*, 1994, para. 49.

[29] *General Survey*, 1994, para. 65.

[30] *General Survey*, 1994, paras. 66 and 67.

There is only one category of exception allowed by Convention No. 87, in Article 9 (1): "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations." This provision permits either the total exclusion of this category of workers from the coverage of the Convention, or the recognition of some limited rights of freedom of association. The Committee on Freedom of Association, in particular, has made it clear that "this is a matter which has been left to the discretion of the States Members of the ILO".[31]

Aspects of freedom of association developed through ILO supervision

Establishment of organizations without previous authorization

Article 2 of the Convention lays down the right of workers and employers to establish their organizations "without previous authorization". This principle often comes into play when occupational organizations request "legal personality", as required by the legislation of some countries. The Convention refers explicitly to this question in Article 7, providing that "[t]he acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application" of the various guarantees provided in the Convention.

The supervisory bodies have repeatedly spoken against provisions that allow excessive discretionary powers to the national authorities. The Committee on Freedom of Association has stated, for example, that where the authority competent to register a union has the discretionary power to refuse registration this is not very different from cases in which prior authorization is required.[32] The Committee of Experts considers that genuinely discretionary power to grant or reject a registration request is tantamount to a requirement for prior authorization, which is not compatible with Article 2 of the Convention.[33] In addition, the possibility of appealing to the courts against an administrative decision rejecting registration has been considered an especially important safeguard.

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[31] *Digest*, para. 221; see also *General Survey*, 1994, para. 55. It should be noted that paragraph 2 of Article 9 provides: "In accordance with the principle set forth in paragraph 8 of article 9 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any rights guaranteed by this Convention."

[32] *Digest*, para. 244.

[33] *General Survey*, 1994, para. 74.

Right to establish and join organizations of their own choosing

The requirement of Article 2 that workers and employers "shall have the right to establish and ... to join organizations of their own choosing" is one of the most important aspects of the ILO's concept of freedom of association, and has been vigorously defended by the supervisory bodies. The questions of trade union pluralism and unity are examined on the basis of this provision, as are other questions relating to the structure and composition of occupational organizations. For instance, the supervisory bodies have stated that a requirement for a minimum number of workers or of a certain proportion of workers for the creation of a trade union may be incompatible with the Convention. The Committee of Experts has therefore said that this number or proportion should be kept at a reasonable level so as not to constitute an obstacle to the creation of organizations.[34] The Committee on Freedom of Association has been more concrete, saying that a requirement for 50 founding members of a trade union is "obviously too high a figure", while a legal requirement that there be a "minimum number of 20 members to form a union does not seem excessive".[35] Limitation of the geographical region within which a trade union can be established has also been found by the supervisory bodies to be contrary to Article 2, and restriction of the right to organize to workers in the same occupation or branch of activity can also cause a problem, both in the private and in the public sectors.

When trade union unity is imposed by law, this kind of unity does not correspond to the principle of free choice which is laid down in Article 2 of the Convention. This does not, however, prevent a voluntary decision by workers or employers to choose to have a single organization to represent them, to avoid the problem of having parallel organizations at the general, sectoral or enterprise levels. Article 2 of the Convention favours neither unity or diversity for trade unions. Nor does it make trade union diversity an obligation, but it does require that at the very least diversity should always remain possible.[36] Both the Committee of Experts and the Committee on Freedom of Association consider that there is a fundamental difference between cases in which a trade union monopoly is imposed or maintained by law, and situations in some countries in which the workers or their unions voluntarily combine into one organization, independently of legislation. In the latter case, the laws should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish.

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[34] *General Survey*, 1994, paras. 81 and 82.

[35] *Digest*, paras. 255 and 256.

[36] *Digest*, para. 291.

Examples of cases which the supervisory bodies have considered contrary to Article 2 of the Convention are the legal registration of only one first-level organization for all the workers in an undertaking, or by occupation or branch of activity;[37] the requirement that at least 50 per cent of the workers join in order to establish or register an organization;[38] and the power to impose an obligation on all workers in the category to pay contributions to the single national trade union, the establishment of which is permitted by branch of industry and by region, as this represents a consecration and strengthening of a trade union monopoly.[39] Both the Committee on Freedom of Association and the Committee of Experts have insisted that the principle of free choice should allow the continued existence of minority organizations as an alternative in the future to the union which presently is recognized for the exclusive exercise of certain rights of representation. This does not imply equal representation for all the organizations that may coexist, but it does require that some of these rights remain in force. The definition of "organization" in Article 10 of the Convention is important here: "any organization of workers or of employers for furthering and defending the interests of workers or of employers". If a law allows the existence of a minority trade union organization, but deprives it of trade union functions to the point that it no longer corresponds to this definition, the implicit result is the prohibition of the existence of another union than the majority, "recognized" one, and this would be contrary to Article 2 of the Convention. In practical terms, the Committee of Experts considers that laws which distinguish between the most representative trade union and others are not in themselves contrary to the principle of freedom of association, so long as the distinction is limited to recognizing certain rights (particularly for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations) for the most representative union, determined under objective and previously established criteria.

Freedom to refrain from joining and union security clauses (the "closed shop") are a distinct issue. The Conventions on freedom of association, the right to organize and collective bargaining protect the positive right to organize, and do not deal with the right *not* to join an occupational organization. While Article 2 of Convention No. 87 thus recognizes only the positive right to associate, the Committee of Experts has found that Article 2 of that Convention leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization or, on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice.[40] In other words, under Convention No. 87 it is acceptable either to adopt the

[37] *General Survey*, 1994, para. 92.

[38] *General Survey*, 1994, paras. 82 and 83.

[39] *Digest*, para. 293.

[40] *General Survey*, 1994, para. 99.

prohibition of trade union security clauses in order to guarantee the right not to associate, or to authorize and regulate practices which restrict or cancel this negative right.

Administration and activities of organizations

The first two Articles of Convention No. 87 deal with the individual's right to join an organization and the rights deriving from its exercise, especially as concerns the formalities of constitution of organizations, their composition and structure, and the problems of trade union unity or pluralism. Article 3 of that Convention introduces the collective rights of organizations of employers and of workers, beginning with their internal autonomy and their "right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration". It continues with their right to organize their "activities and to formulate their programmes", thus protecting the exercise of the socio-economic functions of these organizations. The Article reaffirms the general principle of the autonomy of these organizations by stipulating that: "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

This field has called for a great deal of discussion by the supervisory bodies, and for the examination of many different situations. They have said, for instance, that the fact that legislation imposes certain requirements regarding constitutions does not infringe the principle of freedom of association, so long as the legislation contains formal requirements and constitutions are not subject to prior approval at the discretion of the public authorities. The legislation may therefore list particular points which must appear in an organization's constitution, so long as the development of these rules is left up to the members of the organization.[41]

The Committee on Freedom of Association has not accepted provisions which appear to imply subordination of trade unions to the economic policy of the government, which minutely regulate the internal election procedures of a trade union, or which provide for the maximum number of votes for each organization within a federation. This kind of question must be freely decided upon by each organization. On the other hand, the Committee has accepted that the law may require that the majority of the members of a trade union must decide on certain questions which affect the very existence or structure of a union (adoption and amendment of the constitution, dissolution, etc.), if this is intended to guarantee the members' right to participate democratically in the organization.[42]

The free *election of representatives* of employers' and workers' organizations can be seen from different points of view, and this has given rise to problems concerning the principles laid down in the Convention. This con-

[41] *General Survey*, 1994, para. 109.

[42] *Digest*, paras. 343 and 361.

cerns in particular the procedures for trade union elections, eligibility conditions, re-election, and dismissal of leaders.[43] The autonomy of organizations can be assured only if the organizations themselves regulate these questions in their constitutions. The supervisory bodies have repeatedly ruled against close control over elections by the authorities. This may constitute interference that violates the Convention, and carries the risk of arbitrary interference. If supervision is deemed necessary, it should be exercised by a judicial authority in order to guarantee an impartial procedure.[44]

The access of trade union leaders to the workplace has also been subject to comment. The Committee of Experts considers that the rights arising from Articles 2 and 3 of the Convention imply that the leaders of a trade union must be able to remain in contact with the members of the union, and *vice versa*. When the union is organized on a wider basis than the undertaking, the leaders should be able to have access to the workplaces if necessary, as an essential condition for the promotion and defence of the interests of their members.[45] This question is also covered in the Workers' Representatives Recommendation, 1971 (No. 143), and, for rural workers, in the Rural Workers' Organisations Convention (No. 141) and Recommendation (No. 149), 1975.

Concerning *financial administration*, the Committee on Freedom of Association has stated that, in accordance with the principle of trade union autonomy, provisions which give the authorities the right to restrict the freedom of a trade union to administer and use its funds as it wishes for normal and lawful trade union purposes, are incompatible with the principles of freedom of association, which presuppose financial independence. Workers' organizations should not be financed in such a way as to allow the public authorities to enjoy discretionary powers over them.[46]

On *financial control over internal activities*, the Committee on Freedom of Association has stated repeatedly that the rights laid down in Article 3 of the Convention do not prevent the supervision of the internal activities of a trade union if those activities violate legal provisions or rules. Nevertheless, it is important that such control and the power to take measures for the suspension or dissolution of the union should be exercised by the judicial authorities, to avoid the risk that measures taken by the administrative authorities should appear to be arbitrary. The Committee of Experts considers that there is no infringement of the right of organizations to organize their administrations if, for example, the supervision is limited to the obligation to submit periodic financial reports or if there are serious grounds for believing

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[43] See Bernard Gernigon: *Tenure of trade union office*, Geneva, ILO, 1977.

[44] *General Survey*, 1994, para. 115; *Digest*, paras. 400 and 401.

[45] See the Committee's observations regarding the Federal Republic of Germany, in ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Report III (Part 4A), International Labour Conference, 69th Session, 1983, Geneva, p. 130.

[46] *Digest*, paras. 428 and 438.

that the actions of an organization are contrary to its rules or to the law (which should not violate the principles of freedom of association). Similarly, there is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. Both the substance and the procedure of such verifications should always be the subject of review by the competent judicial authority, affording every guarantee of impartiality and objectivity.[47]

The question of *political activities* ranks among the problems most frequently raised under Article 3 of the Convention. The difficulty here lies in defining the scope of trade union action "for furthering and defending the interests of workers", which is the purpose of a workers' organization according to Article 10 of the Convention. This function of these organizations cannot be pursued strictly within the limits of worker-employer relations. Their activities naturally extend into the wider area of economic and social policy because of the repercussions of these policies on the situation and the interests of workers.

The Committee of Experts considers that legislative provisions which establish a close relationship between trade union organizations and political parties, as well as those which prohibit *all* political activities for trade unions, give rise to serious difficulties with regard to the principles of the Convention.[48] At the same time, it is only in so far as trade unions do not allow their occupational demands to assume a clearly political aspect that they can legitimately claim that there should be no interference in their activities.[49]

In recent years the Committee of Experts has noted a significant change in this respect. Until recently, legislation in several countries had established a close relationship between trade union organizations and the single authorized political party. Although this type of subordination still exists in some countries, the Committee has noted with satisfaction in recent years — and in particular since the fall of the Berlin Wall in 1989 — a clear trend towards its abolition.[50]

The right to strike[51]

Although the right to strike is expressly recognized in instruments such as the International Covenant on Economic, Social and Cultural Rights (1966), the Inter-American Charter of Social Guarantees (1948) and the European

[47] *General Survey*, 1994, para. 125; *Digest*, paras. 443-445.

[48] *General Survey*, 1994, para. 133.

[49] *Digest*, paras. 454 and 457.

[50] *General Survey*, 1994, para. 130.

[51] See also Jane Hodges-Aeberhard and Alberto Odero de Dios:, "Principles of the Committee on Freedom of Association concerning strikes", in *International Labour Review* (Geneva), Vol. 126 (1987), No. 5 (Sep.-Oct.), pp. 543-563.

Social Charter (1961), it is not provided for in any ILO Convention or Recommendation.[52] Nevertheless, the ILO's supervisory bodies have had to deal with this question more often than any other subject in labour relations, and it is through this supervisory process that the ILO's principles have developed.

The general principle is that "the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87",[53] and strike action therefore cannot be seen in isolation from industrial relations as a whole. The provisions of Convention No. 87 which give a legal basis for this principle are Articles 3, 8 and 10.

The general principle was recognized very early by the ILO' s supervisory bodies, in spite of the absence of an explicit provision in the Convention. As early as its second meeting in 1952, the Committee on Freedom of Association affirmed the principle of the right to strike, stating that it is one of the "essential elements of trade union rights";[54] and stressed shortly afterwards that "in most countries strikes are recognised as a legitimate weapon of trade unions in furtherance of their members' interests".[55]

The Committee of Experts stated in 1959 that the prohibition of strikes by workers other than public officials acting in the name of the public powers "may sometimes constitute a considerable restriction of the potential activities of trade unions ... [T]here is a possibility that this prohibition may run counter to Article 8, paragraph 2 of Convention No. 87".[56] In its 1973 General Survey, it further stated that a "general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interest of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities" (Article 3).[57]

The supervisory bodies also consider that the right to strike is not an absolute right, and can be exercised only under certain conditions.

Who has the right to strike? Both workers and their organizations enjoy this right. Nevertheless, the juridical basis of recognition of the right rests fundamentally on Articles 3 and 10 of the Convention, which refer to the rights and objectives of workers' organizations. In any case, the Committee on Freedom of Association has accepted that under Convention No. 87 the right to call a strike is the sole preserve of trade union organizations.[58]

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[52] Except Paragraph 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which states that none of its provisions "may be interpreted as limiting, in any way whatsoever, the right to strike".

[53] *General Survey*, 1994, para. 179.

[54] CFA: Second Report (1952), Case No. 28 (Jamaica), in *Sixth Report of the International Labour Organisation to the United Nations* (Geneva), Appendix 5, p. 210, para. 68.

[55] CFA: Fourth Report (1953), Case No. 5 (India), in *Seventh Report of the International Labour Organisation to the United Nations* (Geneva), Appendix 5, p. 181, para. 27.

[56] *General Survey*, 1959, para. 68.

[57] *General Survey*, 1973, para. 107.

[58] *Digest*, para. 477.

The *general prohibition of the right to strike* is normally not acceptable. It may be justified in a situation of acute national crisis, but only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of serious conflict, insurrection or natural disaster in which the normal conditions for the functioning of the society are absent.[59]

It is acceptable to prohibit strikes for certain categories of workers, that is for certain public officials and for workers in essential services. For the former, the origin of the exception is found in the preparatory work for the Convention.[60] The supervisory bodies have interpreted public service and essential services in a restrictive way as concerns strikes. The prohibition should be limited to officials exercising authority in the name of the State, and essential services are "those the interruption of which would endanger the life, personal safety or health of the whole or part of the population". The Committee of Experts has stated that it would not be desirable — or even possible — to attempt to draw up a complete and fixed list of services which have been considered as essential. However, the Committee on Freedom of Association has accepted as essential services the hospital sector, the furnishing of water and electricity, and the telephone service and air traffic control; but it has not accepted governments' claims that banks, ports, petroleum, agricultural activities, teaching, or transport in general are essential services in the strict sense of the term.[61] Nevertheless, there are sometimes special circumstances under which non-essential services might become essential if a strike affecting them exceeds a certain duration or extent so that the life, personal safety or health of the population are endangered.[62]

As a condition for accepting the restriction or prohibition of strikes in these cases, compensatory guarantees should be provided to workers who are deprived of this essential means of defending their socio-economic and occupational interests. These guarantees include conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery perceived to be reliable by the parties concerned. The workers should be able to participate in determining and implementing the procedure, which should provide sufficient guarantees of impartiality and rapidity; arbitration awards should be binding on both parties and, once issued, should be implemented rapidly and completely.[63] It is essential that all the members of the bodies entrusted with mediation and arbitration should not only be strictly impartial, but should also appear to be impartial both to the employers and to the workers concerned, in order to gain the confidence of both sides.[64]

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[59] *General Survey*, 1994, para. 152.

[60] ILO: *Freedom of association and protection of the right to organise*, Report VII, International Labour Conference, 31st Session, 1948, San Francisco, p. 87.

[61] *General Survey*, 1994, para. 159; *Digest*, paras. 540 to 545.

[62] *General Survey*, 1994, para. 160.

[63] *General Survey*, 1994, para. 164; *Digest*, paras. 546 and 547.

[64] *Digest*, paras. 548 and 549.

Subject to the guarantees mentioned above, the prohibition of strikes in State undertakings is accepted by the Committee on Freedom of Association only when the undertaking is an essential service; it is not acceptable in others, to which the general principles on the right to strike apply.[65] These principles on prohibition of strikes in essential services apply to both public-sector and private-sector undertakings.

In many cases the applicable legislation requires that certain *conditions* must be met before being able to declare a strike. These may include, for example, the exhaustion of conciliation or mediation procedures, a waiting period and advance notice; compliance with a collective agreement; or prior approval by a certain percentage of workers in a secret strike ballot. The Committee on Freedom of Association considers these requirements to be compatible with freedom of association. However, the conditions laid down should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade unions. This could be the case when an absolute majority is required for the calling of a strike, or a quorum of two-thirds of the members, in particular where unions have a large number of members covering a large area.[66]

As concerns *the objectives of a strike*, the supervisory bodies have said that the right to strike should not be limited to conflicts arising from collective bargaining. Although strikes that are purely political in character do not fall within the scope of freedom of association, trade unions should be able to have recourse to (peaceful) protest strikes, in particular to criticize the economic and social policy of the government.[67]

The Committee of Experts pointed out in its 1994 General Survey that *sympathy strikes*, which are recognized as lawful in some countries, are becoming increasingly frequent because of the move towards the concentration of enterprises, the globalization of the economy and the delocalization of work centres. It considers that a general prohibition of sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful.[68]

The supervisory bodies have accepted that various forms of strike action are valid, and have said that limitations imposed by governments on such actions as a slow-down in work (go-slow strike), work rules being applied to the letter (work-to-rule), and occupation of the work place, would only be justified if the strike ceased to be peaceful.[69]

Special problems are created by the requisition or mobilization of workers who are on strike, and by the establishment of minimum services. The supervisory bodies have said that requisitioning may be justified by the need to

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[65] *Digest*, para. 543.

[66] *Digest*, paras. 498 and 508-511.

[67] *General Survey*, 1994, para. 165.

[68] *General Survey*, 1994, para. 168.

[69] *General Survey*, 1994, para. 173; *Digest*, para. 496.

ensure the operation of essential services in the strict sense of the term, in circumstances of the utmost gravity during an acute national emergency.[70] The imposition of minimum service may be justified in the event of a strike the extent and duration of which might result in an acute national crisis endangering the normal living conditions of the population. This kind of service should meet two conditions: it must be limited to the operations which are strictly necessary to meet the basic needs of the population in terms of life, safety and health; and workers' organizations should be able to participate in defining such a service, along with employers and the public authorities. A system of minimum service may also be appropriate in strikes in essential services, as an alternative to a total prohibition of a strike.[71]

The supervisory bodies consider that *picketing* is acceptable so long as it is in accordance with the law, remains peaceful and does not disturb public order.[72]

Finally, as concerns *sanctions for strike action*, the ILO supervisory bodies take into account their effect on labour relations, which may be endangered if the authorities apply severe sanctions in an inflexible way, especially penal sanctions. Arrests and dismissals of strikers on a large scale involve serious risks of abuse, and place freedom of association in grave jeopardy; and generally, the authorities should not have recourse to imprisonment for the mere fact of organizing or participating in a peaceful strike.[73]

Dissolution and suspension of organizations

Article 4 of Convention No. 87 states that: "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority." In other words, if it is necessary for the authorities to take such an extreme measure, it should be done by a judicial proceeding which provides all legal guarantees to the organization concerned.

Other measures which would have similar effects to the suspension or dissolution of an organization would also violate the Convention if they are the kinds of measure covered by Article 4. These might include cancellation of the registration of the organization or annulment or suspension of its legal personality, resulting in the loss of advantages essential to carrying out its activities.[74]

For Article 4 to be correctly applied, the right to appeal to the courts against an administrative decision is not sufficient; it is also necessary that the decision should not take effect until a final decision is handed down. In addition, the supervisory bodies have considered that the right of recourse to the

[70] *General Survey*, 1994, para. 163; *Digest*, para. 573.

[71] *General Survey*, 1994, paras. 161 and 162.

[72] *General Survey*, 1994, para. 174; *Digest*, paras. 583-587.

[73] *General Survey*, 1994, paras. 176-178; *Digest*, paras. 590-600.

[74] *General Survey*, 1994, para. 184.

courts does not always constitute a sufficient guarantee, since if the authorities have a discretionary right to take a decision, the judges may only ensure that the legislation has been correctly applied. The judges should therefore be able also to deal with the substance of the case.[75] The supervis-ory bodies hold the same position in relation to registration of organizations in order that they may acquire legal existence. Recourse to the courts has also been upheld by the Committee on Freedom of Association regarding the suspension or dissolution of organizations in situations when a state of national emergency has been declared.[76]

Federations, confederations and international affiliation

Article 5 of the Convention provides that: "Workers' and employers' organisations shall have the right to establish and join federations and confederations". Article 6 goes on to stipulate that "[t]he provisions of Articles 2, 3 and 4 [of the Convention] apply to federations and confederations". In other words, the rights concerning the establishment of organizations, their administration and their activities, as well as concerning their suspension and dissolution, apply to bodies operating at a higher level as well as to first-level organizations.

Article 5 also provides that any "organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers". This lays down the legal basis for international solidarity of occupational organizations, and is very important for the functioning of the ILO because of the consultative status held by the major organizations of employers and workers.

The problems encountered in practice concerning federations and confederations are related principally to the constitution and activities of these organizations. The supervisory bodies have stated that the following constitute a violation of Article 5: prohibition on establishing federations or confederations; authorization to establish only one such organization for an occupation or region, or for the whole country; requirement of an excessively large minimum number of member organizations; prohibition on grouping organizations from different branches of activity or occupations; prohibition on establishing federations of organizations in different regions of the country; and more generally, any excessive conditions or requirement for prior authorization concerning their establishment.[77]

The general principle is that under Article 2 of the Convention, to which Article 6 refers, first-level organizations have the right to establish and join, without prior authorization, the federations and confederations of their own choosing, subject only to their own statutes. In application of this principle, it would also be incompatible with Article 5 to prohibit the creation of a national

[75] *General Survey*, 1994, para. 185; *Digest*, paras. 681 and 683.

[76] *Digest*, paras. 679 and 680.

[77] *General Survey*, 1994, para. 191; *Digest*, paras. 609, 612, 613, 616, 617 and 618.

confederation which would group organizations representing different economic sectors or regions of a country.

More specifically, the supervisory bodies have said that public-sector organizations should have the right to join federations and confederations which include organizations from the private sector, so long as this does not include an obligation to join strikes.[78] As concerns unions of agricultural workers, a government's refusal to allow them to affiliate with a national centre of workers' organizations including industrial unions is incompatible with Article 5 of the Convention.[79]

Any restriction on the activities of federations and confederations concerning their rights to strike or to bargain collectively, also violate Article 5.[80]

As concerns international affiliation, there are two aspects to this question: the right of a national organization freely to associate with an international one, and the consequences of this affiliation. The Convention is violated if affiliation is made subject to prior authorization by the government, as this is not compatible with the principle of free and voluntary affiliation with such organizations.[81] This principle also implies the right of national trade unions to receive assistance as a result of affiliation, including financial assistance and subsidies, remaining in contact and exchanging trade union publications, and sending representatives to meetings.[82] Visits by representatives of international organizations to their national affiliates and participation in their meetings are considered to be normal activities, subject to national legislation on the admission of foreign nationals. However, the formalities to which foreign trade unionists and trade union leaders are subject, and those applicable to national trade unionists when they travel abroad, should be based on objective criteria and be free from anti-union discrimination.[83]

Legality and the Convention's guarantees

The original text of the Constitution referred to the right of association for "all lawful purposes", and therefore the first proposals made in 1927 for a Convention on the subject included a mention of "legal formalities" for the exercise of this right. The negative reaction of the workers, who feared the restrictions which could arise from this formula at the national level, was one of the reasons for the very difficult discussions on that occasion.

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[78] *General Survey*, 1994, para. 193; *Digest*, para. 615.

[79] *Digest*, para. 620.

[80] *General Survey*, 1994, para. 195.

[81] *General Survey*, 1994, para. 197.

[82] *General Survey*, 1994, para. 197; *Digest*, paras. 627-636.

[83] *Digest*, paras. 638, 639 and 642.

In 1948, when the Conference adopted Convention No. 87, it again examined the problem on the basis of a formula included in the preamble of the draft Convention prepared by the Office, under which workers, employers and their organisations, like any other person or body, were required to respect the law in the exercise of their rights. The workers, with the support of a number of government members, would not accept a formula which made the international right of freedom of association subject to national legislation. After discussions, the present text of Article 8 was adopted:

1. In exercising the rights provided in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Definition of "organization"

Under Article 10 of the Convention provides: "In this Convention, the term 'organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers." The promotion and defence of the interests of its members are what distinguish and characterize an organization of workers or of employers, whatever it may be called.

In some cases the supervisory bodies have based themselves on this definition in formulating their conclusions. As already seen, in dealing with the question of the most representative organizations, a minority organization which by law does not have certain representation rights which are given preferentially or exclusively to the majority organization should still be able to exercise some functions in order to remain covered by this definition. The supervisory bodies have considered that a general prohibition on strikes considerably limits the functions of a trade union as recognized in this definition, and is incompatible with freedom of association.

Concluding remarks

This brief survey of the provisions of Convention No. 87, its place in general international human rights law and the ways in which its principles have been developed by the supervisory bodies of the ILO and by reference to the practice of member States, illustrates both the vitality of this supervisory process, and the changing nature of the exercise of the right to freedom of association. A static application of this seminal instrument would leave the concepts it embodies trapped in a time-frame of 50 years ago, when the Convention was adopted. Instead, as with the Universal Declaration itself, a dynamic process of supervision has allowed Convention No. 87 to remain valid for a changing world.

In concluding, it may be worth citing some of the reflections of the Committee of Experts on the occasion of the 50th anniversary of the adoption of Convention No. 87, under the heading "Progress achieved". Bearing in mind that ratification is but the first step in the process of applying a Convention, the Committee stated that many cases of progress had been noted over the years, and that this tendency had accelerated recently.

> The suppression of a legally imposed trade union monopoly and the abolition of the directing role of the party under the government rule represent without doubt the most frequent cases of progress regarding the application of the Convention during these last years. Other improvements achieved relate to the re-establishment of freedom of association following the lifting of a state of emergency and the return to the rule of law and democracy in countries that had been under dictatorships. There has also been an expansion of the right of association in a number of countries: public employees, nurses, teachers, employees of religious or charitable institutions, fire-fighters, homeworkers, domestic workers, rural workers, seafarers, workers in the informal sector and foreign workers have been granted the right of association that had long been denied them.[84]

These are but examples of the progress noted by the Committee of Experts, which complements the achievements of the Committee on Freedom of Association and the whole panoply of ILO supervisory mechanisms. Can the ILO claim sole credit for these achievements? Of course not. But the path set by Convention No. 87 and reinforced by the ILO's supervisory work has guided a great many countries for the past 50 years and continues to show the way forward.

[84] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Report III (Part 1A), International Labour Conference, 86th Session, 1998, Geneva, p. 14, para. 44. See Appendix III to this issue of the *International Labour Review*.

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Freedom of association: The impact of Convention No. 87 and ILO action

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The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), embodies the legal standard protecting the principle of freedom of association, which received its first international expression in the Constitution of the International Labour Organization (ILO) drafted in 1919. The Convention's principal achievement was to represent a general consensus on the basic rights encompassed within that principle, and to give them legal expression. It is the most comprehensive international instrument to date in this area of human rights and has become a pivotal reference point within the broad area of trade union law and practice.

This article sets out to examine the overall impact of ILO Convention No. 87 and of the other relevant standard supplementing it — relating in particular to protection against anti-union discrimination and interference in occupational organizations — contained in the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).[1] The analysis will focus largely on action by the ILO to promote the application of this Convention globally. The validity or significance of the principles and standards it enshrines have not been contested, and it is one of the most imperative duties of the ILO to promote them.

To evaluate the impact of the Convention is not an easy task and it deserves a far wider and deeper study than that offered here. It is important to bear in mind that the twists and turns taken by collective labour relations in a context of ongoing political and economic change constantly raise problems in relation to the principles and standards of freedom of association.

This article first addresses the general question of the influence of these Conventions, which comes up against difficulties inherent to the transfer of international standards into a national context in such a sensitive and com-

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[1] Both instruments are published in ILO: *International Labour Conventions and Recommendations, 1919-1951*, Geneva, 1985; the full text of Convention No. 87 is reproduced in Appendix I of this issue of the *Review*.

plex area as collective labour relations. This is followed by a review of studies undertaken by the ILO since the 1920s of how freedom of association is actually applied in countries. Then the regular supervisory procedure for monitoring the extent of compliance by States with the standards under consideration is described. Thereafter an analysis is provided of the work and results obtained by the Committee on Freedom of Association and by the ILO fact-finding and inquiry commissions. Finally, a number of conclusions are drawn.

The complex problem of the influence of standards

Specialists in comparative labour law have stressed that transferring the standards and institutions developed by an international organization into national legislation is much easier in the context of individual labour law than in that of collective labour law. For, collective labour law directly affects the balance of power between political, social and economic forces, in what are often very different cultural and historical contexts, such that frequently strong resistance emerges to changing the established order.[2] Nevertheless, as Paul Ramadier, for ten years Chairman of the Committee on Freedom of Association of the ILO's Governing Body, has stated, the principle of freedom of association is a kind of customary rule in common law, standing outside or above the scope of any Conventions or even of membership of one or other of the international organizations.[3]

Certainly, there is no doubt that the principle of freedom of association and its practical implications largely owe their dissemination and general acceptance to the ILO.

Another, more complicated issue is that of measuring the influence of ILO standards on national legislation. This influence may be derived from the fact that the ratification of Conventions on freedom of association results in practice in a spontaneous harmonization by governments of their legislation either before or after ratification; or from the direct application of standards in monist legal systems; or as a result of the supervision exercised by the competent authorities of the ILO. However, such influence may also be exercised outside the context of any ratification, either because governments seek their inspiration from these standards — either directly or through other laws — or through the influence of certain bodies such as the Committee on Freedom of Association. The technical cooperation provided by the Office's experts has played an important role in some of the situations examined here and also when individual countries have undertaken a major reform of their labour law.

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[2] See, for example, Otto Kahn Freund: "On uses and misuses of comparative law", in *The Modern Law Review* (London), Vol. 37, 1974, No. 1 (Jan.).

[3] ILO: *Minutes of the 121st Session of the Governing Body*, 1953, Geneva, p. 39.

As regards the legislative control exercised by the organs of the ILO, it is fairly easy to prove the influence of international standards, as both the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association carry out an ongoing monitoring exercise in this respect.

It is more difficult to establish the impact of international standards in cases of factual violations of trade union and employers' rights or of human rights related to freedom of association. The geographical spread and extent of such violations can be considerable, and they certainly appear regularly on the agenda of the Committee on Freedom of Association. The most serious complaints concern the fundamental rights required to enjoy freedom of association, e.g. the right to freedom and security of person.

In some cases, problems arising from the application of these principles and standards are solved relatively quickly. But other cases last for years, and only once a measure of political change has been achieved in the country concerned are the comments of the supervisory machinery heeded in any effective way and cause the law and practice of that country to be changed radically.

General and special surveys

Bearing in mind its tripartite structure, the single most important characteristic of the ILO, one of its chief concerns has always been the effectiveness of workers' and employers' right to organize in the various member States. Quite apart from the operation of the current supervisory machinery, the ILO has always attempted to help solve problems of freedom of association by conducting studies and surveys to obtain a fuller understanding of the sorts of situation that arise.

The early studies

In fact, the first step in this direction was taken in response to the need to have as much information as possible on the practical application of the principle of freedom of association. As early as 1923 the Governing Body called for a full survey to be carried out, as a result of which a comparative study was published at the end of the 1920s on the main problems encountered in this area,[4] as well as five volumes of monographs on various countries, irrespective of whether they were members of the ILO.[5] Drawing on

[4] ILO: *Freedom of association: Comparative analysis*, Studies and Reports, Series A (Industrial Relations), No. 28, Geneva, 1927.

[5] ILO: Studies and Reports, Series A (Industrial Relations), Geneva, published between 1927 and 1930. *The trade union movement in Soviet Russia* (No. 26); *Freedom of association: Great Britain, Irish Free State, France, Belgium, Luxembourg, Netherlands, Switzerland* (No. 29); *Freedom of association: Germany, former Dual Monarchy of Austria-Hungary, Austria, Hungary, Czechoslovak Republic, Poland, Baltic States; Denmark, Norway, Sweden, Finland* (No. 30); *Freedom of association: Italy, Spain, Portugal, Greece, Serb-Croat-Slovene Kingdom, Bulgaria, Rumania* (No. 31); *Freedom of association: United States of America, Canada, Latin America, South Africa, Australia and New Zealand, India, China, Japan* (No. 32).

the volume of material which had been assembled, the comparative study presented a number of conclusions on the situation as it was at the time. Two basic tendencies emerged from the different systems examined, one of which tended to predominate: one tendency placed the interests of the individual in the forefront, the other the interests of the organized community, whether the State or the association. In countries of the individualist tendency, the same value was placed on trade union (and employers') rights as on other rights and no effort was made to promote them in the law, which sometimes protected individual freedoms against the activities of occupational associations. In the other countries, the State recognized the associations as representative of different professional or occupational categories, which needed to defend their members from other such categories (for example, by means of collective bargaining) and in relation to the State (by participating in administrative and legislative activities). The principle of individual liberty thus gave way to the interests of the organization to which the individual belonged. The study concluded by expressing doubts as to whether any system based entirely on one or other of these tendencies could last in the long run. In practice, countries tended to reconcile both approaches, and the conception of freedom of association that sought such a reconciliation was the one prevailing at the time.

With the hindsight of three-quarters of a century, it is interesting to view these conclusions in their historical perspective. Extreme forms of the collective tendency and its various facets have largely died out; the more moderate and democratic form is present in many countries, and may be considered as the dominant tendency. Nevertheless, the individualist approach is making a comeback today, to the detriment of workers' and employers' organizations. In this context, new and serious problems are beginning to emerge as regards respect for freedom of association.

The McNair Report and the Price missions

The second important general study was conducted in the 1950s, as a result of the participation of employer and worker delegates from the socialist countries of Europe in the work of the ILO. In 1954, there had been objections to their credentials at the Conference on the grounds that the employers' representatives of those countries had no place in the tripartite structure of the ILO, and that there was no freedom of association in those countries, given that the organizations were dependent on the State. This study was carried out by independent experts and consisted of various national monographs and a general report.[6] The majority opinion of the mem-

[6] ILO: "Report of the Committee on Freedom of Employers' and Workers' Organisations", in *Official Bulletin* (Geneva), Vol. XXXIX, 1956, No. 9, pp. 475-585. The report's authors were Sir Arnold D. McNair (United Kingdom), former President of the International Court of Justice (and Chairman of the Committee), Pedro de Alba, former President of the Mexican Senate, and A. R. Cornelius, Judge of the Federal Court of Pakistan. The monographs were published in three mimeographed supplements.

bers of the Committee (known as the McNair Committee) was that the trade unions in their hierarchy were well able to look after themselves, and not likely to be subject to domination and control by the government; but it was beyond their terms of reference to state the extent to which the unions were subject to the domination of the Communist Party. As regards the question of the employers, these did not exist in the ordinary sense of the word, but it was reasonable to expect that the persons running industrial enterprises whose functions corresponded to those of employers in most of the member States would have a contribution to make to the work of the ILO.

Based as it was on documentary sources, this study led to demands for the establishment of a mechanism to inquire not only on the legal issues relating to freedom of association, but also on the actual situation in each member State. In 1958, the Governing Body instructed the Office to carry out studies on the trade union situation, using surveys conducted in the countries themselves as well as official and other documentary sources. Mission teams headed by a high-ranking official, John Price, carried out the surveys between 1959 and 1961 in the United States, the USSR, the United Kingdom, Sweden, the Federation of Malaya, and Burma. The reports were all published.[7]

The 1980s series

Some 20 years later, between 1982 and 1984, the Office conducted another series of studies with on-the-spot visits to the countries concerned, conforming with resolutions adopted at the Second and Third European Regional Conferences, held in 1974 and 1979.The aim of these studies was to make a detailed analysis of the trade union situation and of industrial relations from the point of view of ILO standards. The Office conducted the studies at the invitation of the Governments of Austria, Hungary, Norway, Spain and Yugoslavia. The studies contain a description of the situation obtaining in each country and a critical analysis thereof, with suggested solutions to the problems based on the relevant standards.[8] In every case, a working group of the Governing Body studied the report and heard representations from the government, employers and workers of the country in question.

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[7] ILO: *The trade union situation in the United States*, Geneva, 1960; *The trade union situation in the U.S.S.R.*, Geneva, 1960; *The trade union situation in the United Kingdom*, Geneva, 1961; *The trade union situation in Sweden*, Geneva, 1961; *The trade union situation in the Federation of Malaya*, Geneva, 1962; and *The trade union situation in Burma*, Geneva, 1962.

[8] ILO: *The trade union situation and industrial relations in Hungary*, Geneva, 1984; *The trade union situation and industrial relations in Norway*, Geneva, 1984; *The trade union situation and industrial relations in Spain*, Geneva, 1985; *The trade union situation and industrial relations in Yugoslavia*, Geneva, 1985; *The trade union situation and industrial relations in Austria*, Geneva, 1986.

The General Surveys of the Committee of Experts

Finally, amongst general studies on freedom of association mention should be made of the general surveys periodically conducted by the Committee of Experts on the Application of Conventions and Recommendations, in accordance with articles 19, 22 and 35 of the Constitution of the ILO. This sort of general survey is carried out each year on a subject chosen by the Governing Body, and consists of a study comparing the legislation of the different countries with the various standards contained in the relevant Conventions. This exercise provides a worldwide picture of the extent of application of the Conventions in question and of the difficulties encountered in their application, since the surveys cover both countries which have ratified the Conventions and countries which have not yet done so. General surveys on questions of freedom of association were carried out in 1956, 1957, 1959, 1973, 1983 and 1994. The 1994 general survey contains the most up-to-date account of the comments of the Committee of Experts on the scope of the various provisions of Conventions Nos. 87 and 98.[9]

Special studies

In addition to the general studies, the ILO has sent missions to specific countries to conduct special studies and surveys, in order to improve knowledge of critical or problematic situations regarding freedom of association, and in order to promote the principles of the ILO.

A distant precursor is the survey conducted in 1920 in Hungary. Although at that time not a member of the Organization, the Government of Hungary had requested a study to be made in order to be able to refute allegations about the existence of a so-called "White Terror" (and the intimidation of workers). The Office thus investigated the conditions in which Hungarian trade unions were operating.[10] Between 1947 and 1950, other studies were carried out on the labour and trade union problems occurring in Greece, Venezuela, Iran and Turkey, all of which were duly published by the Office.[11]

In 1967, the Government of General Franco in Spain, which had been the subject of repeated complaints to the Committee on Freedom of Association, requested the ILO to carry out a study on trade unions and labour matters in that country. Spain accepted that this study be undertaken in accordance with the principles enshrined in the Constitution of the ILO, de-

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[9] ILO: *Freedom of association and collective bargaining, General Survey of the reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948, and the Right to Organize and Collective Bargaining Convention (No. 98), 1949*, Report III (Part 4B), International Labour Conference, 81st Session, 1994, Geneva.

[10] ILO: *Trade union conditions in Hungary*, Geneva, 1921.

[11] ILO: *Labour problems in Greece*, Geneva, 1949; *Freedom of association and conditions of work in Venezuela*, Geneva, 1950; *Labour conditions in the oil industry in Iran*, Geneva, 1950; and *Labour problems in Turkey*, Geneva, 1950.

spite the fact that it had not ratified the Conventions on freedom of association. To this end, a study group was set up composed of three independent experts; it held hearings in Geneva and visited Spain. The report of the study group contained a description of the situation as regards trade union matters and individual safeguards, and suggested the various conditions with which any new legislation on workers' organizations would have to comply. The conclusions included a paragraph worthy of being reproduced here, as it remains topical and relevant to any country facing a similar situation:

> In the world in which we now live, no national genius, however distinctive, can disregard the ethos and mores of the world as a whole, without severe loss. Spain's place in the world will be significantly influenced by her attitude towards world standards. In labour and trade union matters, and in respect of ... civil liberties ... there are unequivocal world standards. ... No State is bound contractually by any of these standards unless it has ratified the appropriate instrument, but no State can escape comparison with them and evaluation of the measure of freedom which it secures to its people on the basis of the comparison.[12]

In 1977, as a result of the significant political change that had occurred in Spain, the country passed a new law on trade unions and ratified Conventions Nos. 87 and 98.[13] The authorities of the time acknowledged the influence of ILO principles and activity on the development of that law.

Subsequently, other study missions, fact-finding missions, technical assistance missions and missions to promote freedom of association principles and standards took place (though not with such a broad scope as the earlier study group) in a number of countries, including Argentina, Chile, Poland and Nicaragua, generally in relation to complaints made to the supervisory bodies of the ILO.

Regular supervision and the promotion of freedom of association

The Committee of Experts on the Application of Conventions and Recommendations is a highly technical and quasi-judicial body and is the first to intervene in the supervisory process. It is composed of jurists drawn from all over the world; its mandate is the permanent supervision of the application by member States of the standards of the ILO, especially of the Conventions which they have ratified. At its annual meeting, the Committee of Experts

[12] ILO: *The labour and trade union situation in Spain*, Geneva, 1969, p. 297.

[13] On the background to this study, the conditions in which it was carried out, the subsequent situation and the declarations of the Spanish authorities, see Nicolas Valticos: "L'Organisation Internationale du Travail et l'évolution de la législation syndicale en Espagne", in *Estudios de Derecho Internacional. Homenaje al profesor Miaja de la Muela*, Madrid, Tecnos, 1979, Vol. II, pp. 793-812. For a more recent study, see the detailed examination of the case of Spain in Esther Martínez Quintero: *La denuncia del sindicato vertical. Las relaciones entre España y la Organización del Trabajo (1969-1975)*, Vol. II, second part, Madrid, Consejo Económico y Social de España, 1997.

examines the reports by governments and the observations received from the employers' and workers' organizations, and monitors follow-up on recommendations made by other supervisory bodies; it also makes use of information supplied to these bodies, and of information gathered during so-called direct contact missions and the kinds of special mission mentioned above.[14]

The Conference Committee on the Application of Standards, the other body involved in the regular supervisory process, meets every year during the International Labour Conference. The chief task of this tripartite committee is to discuss with representatives of the governments concerned the main problems the Committee of Experts has encountered in the application of standards and which they have indicated in their report. The two bodies complement each other, since the technical supervision provided by the Committee of Experts in turn affords an opportunity, within the Conference Committee, for "direct dialogue between governments, employers and workers," which "can even mobilize international public opinion".[15]

The regular nature of this process means that the impact of ILO standards on national legislation can be established clearly, along with difficulties encountered in harmonizing national legislation with these standards.

Problems arising in freedom of association: Their nature and changing pattern

The annual report of the Committee of Experts contains its observations on problems encountered in the application of ratified Conventions in the countries concerned.[16] Some of the longest parts of the report concern the application of Conventions No. 87 and No. 98. Their contents enable one to identify differences between national legislation and international standards as regards both existing legislation and any provisions adopted to deal with special situations, mostly those resulting from serious political, economic or social problems.

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[14] For more information on the procedures of the Committee of Experts and of the Conference Committee on the Application of Standards, see ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2/1998, International Labour Standards Department, Geneva, 1998, mimeo.

[15] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries,* Report III (Part 4A), International Labour Conference, 81st Session, 1994, p. 12.

[16] The report of the Committee of Experts (numbered Report III) is presented to the Conference under the third item on the agenda: Information and reports on the application of Conventions and Recommendations, under the general title: *Report of the Committee of Experts on the application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution).* There are two main volumes: the *General report and observations concerning particular countries* (called Part 4A till 1997 and Part 1A thereafter), and the *General Survey of the Reports on the ... Convention ...* (called Part 4B till 1997 and Part 1B thereafter). The second main volume is published separately and specifies in its title the actual Convention(s) covered each year (see, for example, note 9). Reference is made in this note to the first volume.

Table 1. Number of ratifications of Conventions No. 87 and No. 98

Year (as at 31 Dec.)	No. of member States of the ILO	No. of ratifications of Convention No. 87	No. of ratifications of Convention No. 98
1969	121	76	87
1979	140	90	104
1989	150	98	111
1998 (as at 30 June)	174	122	138

Source: International Labour Standards Department, ILO.

The comments of the Committee of Experts and the discussions within the Conference Committee on the Application of Standards enable one to follow developments in the problems affecting trade union legislation in the member States, the sorts of problem that usually arise, their frequency and scale, and to establish trends over time.

Certainly, the increase in the problems observed is linked to the increase in the number of ratifications, which are themselves largely linked to the growth in the number of member States, which rose from 121 in 1969 to 174 in 1998, following the incorporation of many countries including the newly independent States of eastern Europe and the former USSR. Table 1 shows the gradual acceptance of both instruments across the world.

An analysis of the reports of the Committee of Experts [17] over the years shows certain persistent problems in relation to the labour law concerning trade unions in many countries, which corroborates the theory mentioned earlier of the inherently greater difficulty of transposing the system of international standards on collective labour relations into a national context. Nevertheless, the dialogue between governments, the Committee of Experts and the Conference Committee on the Application of Standards also shows the efforts made by many countries (often with advice from the ILO) to overcome the problems they encounter and to bring their legislation into line with the relevant Conventions. An astonishing number of bills are drafted to this end and then not passed. Sometimes the opposition to a change in the law comes from particular economic or social sectors; at other times, changes in government mean these draft bills are set aside. But there is a growing number of "cases of progress" (see below), showing that governments have succeeded in adapting their legislation to the requirements of international standards, in accordance with the requests of the Committee of Experts and the Conference Committee on the Application of Standards.

Developments and trends in the problems observed will now be considered.

[17] And of the so-called "direct requests" addressed to governments, which usually precede the observations and are not reproduced in the reports.

The 1970s

In this period, when the two Conventions had received a considerable number of ratifications, the chief problem repeatedly noted by the Committee of Experts was that of the *trade union monopoly (*or *single trade union system)* provided for by legislation. This is a severe restriction on one of the fundamental principles upheld in Convention No. 87 (Article 2), namely: "Workers and employers, without distinction whatsoever, shall have the right to establish ... organizations of their own choosing without previous authorization." The system was a central element in the model of trade unionism upheld by the socialist countries of eastern Europe, and also by countries on other continents. The details varied, the structure or system was more or less rigid, and there were variations in the degree of discretion granted to the administrative authorities which registered trade unions; and in many cases, the single trade union was subject to the ruling party. In fact, the situation was one of a national trade union system usually involving a single centralized workers' organization. There were some cases of lesser monopoly which recognized just one union per enterprise; there were also a few cases of this system being imposed on the public services.

Another major, recurring problem concerned the restrictions imposed on the *right to strike*, either a general restriction or one affecting specified activities, especially those of essential services (defined more broadly than in the definition accepted by the ILO authorities for this purpose). Equally frequent were cases of the *deprivation of the right to organize* of certain categories of workers, in particular public servants and workers in public enterprises or bodies, members of collective farms in the socialist countries, agricultural workers, foreign workers, etc. Restrictions affecting *trade union officers* were also quite extensive, for example, the obligation to be employed in the same enterprise or occupation, the prohibition on re-election, or the right to order a union officer's suspension or dismissal by administrative authority. Less frequent was the absence of any protection for workers against acts of *anti-union discrimination*, often because of ineffective legal provisions, sanctions and means of application.

Other, though fewer, major restrictions existed in the law, for example administrative authority control over trade union organizations, obstacles to the establishment of federations and confederations and to unions' political activities, and the absence of protection from interference by employers in union affairs.

Particular attention was paid to those countries which declared states of emergency or exceptional situations involving generalized restrictions on freedom of association (and civil and human rights), even though these restrictions were gradually lifted subsequently.

The 1980s

During this period, the observations concerning *trade union monopoly* continued to be made and even increased in number; they mostly concerned

the countries of eastern Europe and certain Arab and African countries, the cases involved amounting to rather over thirty. However, the problems most frequently observed by the Committee of Experts during this decade concerned the *right to strike*, usually in the essential services (broadly defined) but also in industries of national importance, export industries or export-processing zones. There were also many cases of lack of protection against *anti-union discrimination*, and of *interference*. The Committee of Experts also often handled cases involving the *deprivation of the right to organize* of workers in the public sector and in export-processing zones, and of other categories of worker, as well as of restrictions affecting the election of *trade union officers*, though these occurred on a lesser scale than the other problems mentioned.

Some of the cases involving countries which had declared states of emergency and placed severe restrictions on freedom of association were resolved, and some new cases arose.

Towards the end of the decade a tendency emerged which was to bring about considerable change in the situation concerning trade union monopoly, as will be explained below.

The 1990s

In the current decade, the cases which had been pending at the end of the 1980s in the vast majority of countries still persist, with some countries making progress in their legislation and a few experiencing additional difficulties. In second place, though in a proportion of under a third, come the countries which have managed to solve their earlier problems but now face new ones. In third place come the few countries involving new cases. However, the most important point about the current decade is that there are far more cases of progress than earlier. Moreover, most countries of eastern Europe, which had previously experienced the problem of a trade union monopoly, now no longer appear on the list of countries whose legislation is under scrutiny.

The problems currently under examination by the Committee of Experts may be summarized as follows.

The largest number of problems concerns restrictions to the *right to strike*, such as the fixing of conditions with which it is difficult to comply, compulsory arbitration and straightforward prohibition of the right to strike in certain spheres: public servants not engaged in administration of the State, essential services (broadly defined) and also other activities, as well as strikes called by trade union federations and confederations.

In second place come the cases involving inadequate protection against *anti-union discrimination*, followed by employer *interference* in trade unions. There are nearly as many cases of restrictions to the election of *trade union officers*, mostly for reasons of nationality and also because the workers involved are not employed in the enterprise or in the occupation concerned. A large number of countries continue to *deprive workers of the right*

to organize, to the detriment, according to the individual case, of civil servants, senior staff, seafarers, agricultural workers, teaching staff, workers in export-processing zones, on the railways, foreign workers and others. It must be said that civil servants and foreign workers are those worst affected, as the other cases are much rarer. Some countries deprive several categories of workers of the right to organize.

Next come the cases involving excessive conditions placed on the *establishment of trade unions, federations and confederations and of employers' organizations*, especially those where a large number or proportion of members or previous authorization are required. The problem of *trade union monopoly* now comes in fourth position. Only a dozen or so cases remain pending, as there has been remarkable progress in this area since the end of the 1980s. The smallest number of cases concern *internal control of unions* by the labour authorities.

In general, the Committee's observations on individual countries concern few problems in the application of Conventions. Nevertheless the issues raised may be important and, sometimes, the Committee makes observations repeatedly over many years without a satisfactory solution being found.

But there are about a dozen cases where the observations by the Committee of Experts concern several problems within the same legislation. Most of them have existed for a long time and still await decisive government action in order to comply with the obligations governments have entered into in relation to the Conventions concerning freedom of association.

Cases of progress

Since 1964, the Committee of Experts has been registering "cases of progress" in which governments have taken measures to modify or repeal their legislation, harmonizing it with the Conventions they have ratified, in order to satisfy comments made by the Committee.

As regards Convention No. 87 and the provisions of Convention No. 98 concerning anti-union discrimination and acts of interference in occupational associations, between 1970 and 1998 the Committee of Experts declared itself satisfied in a total of 119 cases of progress, involving 76 countries. In most cases, the countries involved appear only once in this long list, but nearly 20 countries appear two or three times, because of the harmonization measures they have taken.

It should be pointed out that each case of progress can cover one or more questions or problems treated and solved in a given country (for example, difficulties arising from the right to strike, discrimination against trade unions, etc).

As may be seen in table 2, there was some increase in the number of cases of progress during the 1980s compared with the previous decade, the number of countries involved remaining practically the same. In the 1990s these cases have nearly doubled and the number of countries involved has now more than doubled since the previous decade.

Table 2. Cases of progress registered by the Committee of Experts on the Application of Conventions and Recommendations

	1970-79	1980-89	1990-97
Cases	26	33	60
Countries	24	23	51

Source: ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Geneva, various years.

There has been a continuous increase in the questions or problems involved in cases of progress, from about 30 in the 1970s to around 50 in 1980s and up to over 90 since 1990.

There are interesting variations in the type of problem in which progress has occurred. In the 1970s cases of progress mostly involved the reversal of the suspension or dissolution of trade union organizations by administrative authority, deprivation of certain workers' right to organize, control of unions by administrative authority, anti-union discrimination and interference by employers.

In the 1980s, cases of progress on strike issues came clearly into first position, followed again by cases concerning deprivation of the right to organize, administrative control and then election of trade union officers and anti-union discrimination.

Finally, between 1990 and 1998 the largest number of cases involved the abolition of trade union monopoly and issues concerning the right to strike, followed at some distance by measures affecting the right to organize, anti-union discrimination, election of trade union officers, and then, to a lesser extent, by the establishment of unions, suspension and dissolution by administrative authority and the control of unions.

Looking at developments overall, restrictions on the right to strike have become increasingly important over the last 20 years as regards both problems in connection with freedom of association and cases of progress. On the other hand, cases involving trade union monopoly, which reached their highest point in the 1980s, fell significantly, because of fundamental political change in the countries concerned. Thus, from 1990 onwards the reports of the Committee of Experts[18] registered 22 cases of abolition of trade union monopoly or of compulsory subjection to the ruling party or the State in the following countries, in chronological order: Poland (1990); Algeria, Bielorussia, Bulgaria, Hungary, Madagascar, Romania, Ukraine, USSR (1991); Belarus, Congo, Ethiopia, Mongolia and Rwanda (1993); Mauritania (1994); Azerbaijan, Gabon and Latvia (1996); Albania and Slovakia (1997); Sao Tome and Principe, and Seychelles (1998).

[18] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Geneva, for the years 1990-98.

A summary is provided below of selected cases of progress registered over the past 15 years, in chronological order. This list gives a better idea of the sorts of problem observed by the Committee of Experts and the types of solution found.[19] The year indicated in the heading is the year of publication of the Committee's report covering the cases described; the relevant pages of the report are given in brackets.

1983

Bolivia. Presidential decree No. 18957, of May 1982, rendered ineffective the order of suspension of trade unions, employers' organizations and professional associations. Trade union organizations restored their activities to normal, and former trade union officers were reinstated, as were workers dismissed for political or union reasons (pp. 117-118).

Greece. Act No. 1264, of July 1982, rendered ineffective the laws which obliged civil servants to join organizations representing them alone. This Act also abolished the ODEPES organization which had centralized all trade union contributions through a "check-off" system. It also considerably widened the protection against anti-union discrimination afforded to trade union officers (pp. 131, 174).

Peru. Presidential Decrees Nos. 003-82-PCM and 026-82-JUS, of 1982, granted to public servants the right to form trade union organizations (p. 144).

1984

Argentina. After the return to democratic rule, the adoption of Act. No. 22825, of June 1983, restored the exercise of the right to strike (p. 134).

Nicaragua. A Decree adopted in May 1983 amended various provisions of the Regulations on Trade Union Associations, rendering ineffective the provisions concerning the impossibility of forming national trade unions, the removal of members of trade union executives by administrative action, the representation of the labour administration at meetings of trade unions, restrictions on the elections of executive members and restrictions on the right to establish federations and confederations (p. 150).

1985

Nicaragua. Decree No. 1480, of August 1984, re-established the right to strike (p. 170).

1986

Burkina Faso. The Ordinance of January 1982 governing the right to strike was repealed (p. 138).

[19] For more details, see the individual issues of the Committee of Experts' report.

1987

Guatemala. Under the new Constitution which came into force on 14 January 1986, the right to organize a trade union and the right to strike were granted to state employees and workers in decentralized and autonomous bodies. Workers' right to strike for economic and social reasons was also recognized (p. 185).

Uruguay. By Act No. 15738, of March 1985, the provisions of the military regime as regards occupational associations and the right to strike were declared null and void (p. 241).

1988

Guinea. Presidential Ordinance No. 114/PRG/SGG/86, of August 1986, recognized the independence of the National Confederation of Workers of Guinea in respect of the State and its bodies (p. 160).

1989

Argentina. Act. No. 23551, of April 1988, on trade union associations repealed Act No. 22105 which had been adopted in 1979 during the period of military rule (p. 125).

1990

Poland. Act No. 105, of April 1989, amended the trade union act of 1982 and introduced the possibility of trade union pluralism; Act No. 106, of April 1989, made the same provision in the area of agriculture, and Act No. 179, of May 1989, annulled all convictions imposed in respect of strikes committed after 31 August 1980 (pp. 205-206). Act No. 172, of May 1989, enabled the reinstatement of persons dismissed for strike activity (p. 243).

1991

Algeria. Act No. 90-14, of June 1990, on the procedures for exercising the right to organize and Act No. 90-11, of April 1990, respecting labour relations put an end to the trade union monopoly and introduced the possibility of trade union pluralism (p. 143).

Bielorussia. Section 6 of the Constitution, which had set out the leading role of the Communist Party in mass organizations, including trade unions, was amended (p. 153).

Bulgaria. Section 1 of the Constitution was amended as in the preceding case (p. 152).

Colombia. Act No. 50, of December 1990, amended the Substantive Labour Code in various ways: the registration of trade union organizations was speeded up; all trade union organizations started to enjoy legal personality as from their establishment and constituent assembly; the protection of trade union officers was improved; negotiation with non-unionized workers

was prohibited when more than one-third of workers in an enterprise were represented by one or more trade unions; both official employees and public servants were permitted to be jointly represented by mixed trade union organizations (pp. 159-160). The sanctions against acts of anti-union discrimination were increased (p. 253).

Finland. Act. No. 503, of January 1990, prohibited the suspension of associations by administrative authority (p. 173).

Hungary. The new Constitution of October 1989 established the possibility of trade union pluralism and Act No. VII of the same year recognized the right to strike (p. 181).

Peru. Presidential Decree No. 076-90-TR, of December 1990, simplified the registration procedures for trade unions and the conditions for the establishment of federations and confederations, made trade union pluralism possible and set out the right to organize of casual self-employed workers (p. 201).

Romania. The Legislative Decree of 28 December 1989 abolished the leading role of the Communist Party and Legislative Decree No. 147, of 11 May 1990, introduced the possibility of trade union pluralism (p. 207).

Ukraine. Section 6 of the Constitution which had set out the leading role of the Communist Party over mass organizations, including trade unions, was repealed and a new section 7 enshrined the principle of political pluralism (p. 215).

USSR. Amendment of section 6 of the Constitution; the Law of the USSR on trade unions of 10 December 1990 recognized the possibility of trade union pluralism, as well as the free establishment and administration of trade unions, as laid down in Convention No. 87 (p. 216).

Venezuela. The new Labour Act, of November 1990, contained major improvements suggested by the Committee of Experts: reduction of the minimum number of workers required to establish enterprise unions and occupational unions; removal of a restriction on the re-election of trade union officers; removal of the provision making trade union organizations subject to administrative dissolution or suspension; repeal of administrative control over trade unions, etc. (p. 223).

1992

Colombia. The new Constitution of July 1991 and various subsequent legal provisions repealed the provisions which had permitted the dissolution and removal from the trade union register of trade unions by administrative authority; administrative interference in trade union independence and trade union bookkeeping; restrictive regulations with respect to trade union meetings, and the prohibition of trade unions from taking part in political matters (pp. 206-207).

Nicaragua. Properties expropriated from leaders of the employers' organization COSEP were returned, on the grounds that the expropriation had amounted to discrimination or persecution (p. 224).

Poland. The Acts of 23 May 1991 concerning trade unions, employers' organizations and the settlement of collective labour disputes set out in law the possibility of trade union pluralism and the right to strike (pp. 235-236).

1993

Belarus. The Act on trade unions of April 1992 recognized the right of workers to establish independent organizations of their own choosing and the right to strike (p. 174).

Congo. The new Constitution of March 1992 abolished the trade union monopoly and Decree No. 911672, of June 1991, repealed the compulsory check-off of dues in favour of the Congolese Trade Union Confederation alone (p. 184).

Ethiopia. Labour Proclamation No. 42, of January 1993, removed the trade union monopoly (p. 194).

1994

Costa Rica. Legislative Decree No. 7348, of June 1993, repealed those sections of the Penal Code punishing public officials and employees who went on strike with imprisonment and fines. Act No. 7360, of November 1993, prohibited solidarist associations from undertaking trade union activities, especially collective bargaining. The same Act introduced various penalties for anti-union discrimination (pp. 203-204).

Mauritania. Act No. 93-038 of 1993 guaranteed the possibility of trade union pluralism and, in January 1994, the constitution of a new confederation was declared legal (pp. 215-216).

1995

Germany. Following the decision of the Federal Constitutional Court of 2 March 1993, no public servant was to be requisitioned to replace workers taking part in a strike (p. 168).

1996

Austria. A ruling by the Supreme Court on 11 August 1993 declared the dismissal of a worker in an enterprise with fewer than five employees to be null and void, on the grounds of contravention of the moral law (p. 188).

Ethiopia. The Constitution of December 1994 granted civil servants the right to organize (p. 197).

Gabon. The Labour Code of November 1994 guaranteed workers protection against acts of anti-union discrimination (p. 199). Together with Act No. 18/92, of May 1993, it repealed the obligation to join an organization designated by name in the law, thus establishing the possibility of trade union pluralism; restrictions on the right to strike were also lifted (p. 148).

1997

Australia. Provisions introduced in 1992 amending the criminal law abolished restrictions on the right to strike (pp. 146-148).

Namibia. The Labour Act of April 1992 guaranteed various trade union rights all covered in Convention No. 87 (pp. 182).

1998

Chad. The new Labour Code of December 1996 removed the prohibition on strikes, recognized public servants' right to organize, lifted the ban on all political activity by trade unions, and reduced the length of residence in the country required for foreign workers wishing to stand for trade union office (p. 171).

Seychelles. Act No. 17 of 1994 guaranteed the possibility of trade union pluralism (p. 193).

These cases of progress indicate a clear advance in labour law affecting trade unions, but they are not evidence either that the situation in law and practice in many of the countries mentioned complies with the principles and standards concerning freedom of association, or that legal measures taken subsequently will not amount to a retrograde step. However, the regular supervision by the Committee of Experts does imply a constant monitoring of these problems and it does impose a kind of alertness and self-monitoring obligation on the national authorities as regards the adoption of any such measures.

The Committee on Freedom of Association

The Committee on Freedom of Association was set up in 1951 by the ILO Governing Body; unlike the Committee of Experts, it is tripartite in structure, and is composed of members of the Governing Body. It has had an independent chairperson since 1978. The Committee meets three times a year to examine complaints of infringement of freedom of association received from workers' organizations and, to a much lesser extent, from employers' organizations. The procedure followed gives the governments of the countries involved the opportunity to reply to the complaints and to present any evidence to refute them. It is important to note that the Committee examines both complaints against countries which have ratified the Conventions on freedom of association and complaints against countries which have not yet done so. In practice, the vast majority of governments cooperate with the work of the Committee — even though they sometimes delay in replying — since they are thus able to defend themselves against what they may consider to be unfounded accusations or to explain why they have adopted the measures objected to. In fact, the number of cases (approaching 2,000) ex-

amined by the Committee since it was established are a measure of its broad acceptance and also of its popularity.[20]

The procedure is basically carried out in written communications, but the Committee may also avail itself of preliminary contacts with the relevant authorities in especially serious cases, of direct contact missions to gather information on the spot and of hearings with the parties involved. Of all the supervisory mechanisms, direct contact missions (in their strict sense) are by far the ones most widely used. Since these began in 1962, 67 such missions have been undertaken to 41 countries.[21]

There are marked regional differences in the number of cases submitted to the Committee. The following situation emerges from the 616 cases considered between March 1985 and June 1996: 325 cases concern countries in the Americas (53 per cent); 104 countries in Europe (17 per cent); 91 countries in Africa (15 per cent); 82 countries in Asia (13 per cent); and 14 countries in Oceania (2 per cent).[22] Traditionally, the countries of Latin America are the ones with the greatest number of cases lodged with the Committee, although this trend has changed recently, perhaps partly as a result of changing political circumstances. In any case, the percentages shown are no indication of the greater or lesser degree of respect for freedom of association in the countries concerned; indeed, it has even been argued that an abundance of complaints is itself evidence of trade unions' lesser fear of reprisals following their recourse to an international authority.

The Committee examines questions relating to the law affecting trade unions, collective bargaining, and strikes, but most of the problems arise from actual measures taken by governments or employers which affect trade unions, their officers and members.

Data gathered from 324 selected cases examined by the Committee between March 1985 and June 1997 show that 29 per cent of the allegations concerned anti-union discrimination; 24 per cent human rights; 11 per cent collective bargaining; 8 per cent the right to strike; 8 per cent the right to establish organizations; 7 per cent trade union statutes, elections and activities; 6 per cent acts of interference by employers in trade union organiza-

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[20] On the procedure followed by the Committee, see ILO: *ILO principles, standards and procedures concerning freedom of association*, Geneva, 1989; and ILO: *ILO law on freedom of association: Standards and procedures*, Geneva, 1995. The wide-ranging "jurisprudence" of the Committee is described in ILO: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fourth (revised) edition, Geneva, 1996.

[21] Direct contact missions are carried out by officials of the Office or by independent persons. This year, for the first time, a tripartite mission was carried out, in a case involving the Republic of Korea. Contacts occur at the initiative of the Committee or at the request of governments, but always with the consent of the latter. In some countries, such missions were carried out on a number of occasions: Argentina (6), Colombia (5), Poland and Uruguay (4), Bolivia, Costa Rica, Tunisia and Turkey (3).

[22] Data gathered by the Freedom of Association Branch of the ILO.

tions; 5 per cent legislation and bills; and 2 per cent the suspension or dissolution of organizations.[23]

The number of cases of violation of human rights and civil liberties affecting trade union rights largely depend (though with some notable exceptions) on whether the country concerned has an authoritarian regime. In fact, when institutions function normally again or there is a return to democracy, the complaints cease or at least become less serious. The numerous cases concerning the detention or sentencing of trade unionists are very much influenced by the principle the Committee applies, whereby the burden of proof is on the governments to show sufficiently precisely that the measures were in no way occasioned by trade union activities, but solely by activities outside the trade union sphere that were either prejudicial to public order or political in nature. Only if the government provides precise information about the detentions, the legal proceedings initiated and the results thereof, can the Committee decide to stop examining the case. The Committee is famous for its persistent requests for information about trade unionists who have been murdered or detained, or have "disappeared".

The Resolution concerning Trade Union Rights and their Relation to Civil Liberties adopted by the International Labour Conference in 1970 is especially relevant in the area of human rights. Special emphasis is placed there on the civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights.[24]

Directly or indirectly, over the short or long term, the intervention of the Committee has led to the release of trade unionists in very many cases. It is well known that a show of interest by the ILO and other organizations in detained trade unionists has a protective and supportive impact. A study carried out in 1982 maintained that over the four preceding years more than 500 trade unions had been released following the direct or indirect intervention of the ILO.[25] Since then, the Committee on Freedom of Association has continued to record the release of individual trade unionists in its reports. Recent examples occurred in Côte d'Ivoire (Cases Nos. 1594 and 1846),

[23] Data gathered by the Freedom of Association Branch of the ILO.

[24] ILO: *Record of proceedings*, International Labour Conference, 54th Session, Geneva, 1970, pp. 733-736. The Resolution listed the following civil liberties:

(a) the right to freedom and security of person and freedom from arbitrary arrest and detention;

(b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(c) freedom of assembly;

(d) the right to a fair trial by an independent and impartial tribunal;

(e) the right to protection of the property of trade union organizations.

[25] See Anna J. Pouyat: "The ILO's freedom of association standards and machinery: A summing up", in *International Labour Review* (Geneva), Vol. 121, 1982, No. 3 (May-June), pp. 287-302.

Republic of Korea (Cases Nos. 1629 and 1865), Swaziland (Case No. 1884), India (Case No. 1468) and China (Case No. 1652).[26]

Over the last 25 years there have been more than 120 cases of progress in meeting the recommendations of the Committee, covering about 60 countries across the different regions. These are both cases involving complaints of factual infringement of freedom of association, which are handled exclusively by the Committee, and cases involving the law governing trade unions and collective labour relations, which have been followed up either by the Committee itself or by the Committee of Experts. To this end, in its reports the Committee on Freedom of Association draws the attention of the Committee of Experts to the legal aspects of the cases considered at all its meetings.

As regards complaints on questions of fact, the 1982 study mentioned above cites a series of cases in which positive results were achieved in connection with reinstatement of workers dismissed because of anti-union discrimination measures and the lifting of official intervention in trade unions. As shown above, the Committee very frequently deals with cases involving anti-union discrimination. Recent examples concern countries such as Malaysia (Case No. 1552), Congo (Case No. 1870), Guatemala (Case No. 1823), Côte d'Ivoire (Case No. 1594), Hungary (Case No. 1742), Romania (Case No. 1788), the Dominican Republic (Case No. 1732), Turkey (Case No. 1755), and Panama (Case No. 1569).

Other recent cases of progress concern the registration of trade union organizations in order to function according to law, which had previously been refused by the competent authorities in Argentina (Case No. 1777), Bangladesh (Case No. 1862) and Pakistan (Case No. 17216).

On various occasions governments have modified or rendered ineffective their legislation or bills on trade union matters and labour relations, in order to meet the recommendations of the Committee: Argentina (Case No. 1899), Peru (Case No. 1796), Sweden (Case No. 1760), Fiji (Case No. 1622) and Zambia (Case No. 1575). In Paraguay, the Supreme Court declared unconstitutional a decree restricting the free elections of trade union officers, in direct application of Convention No. 87 which, by virtue of that country's Constitution, has supralegal effect.

Other recent examples concern a variety of questions, such as the progress noted by the Committee in the redistribution of trade union property in Poland (Case No. 1785) and trade union elections in the Philippines, where contested elections were annulled and new ones held (Case No. 1826).

During the 1980s and 1990s, systematic monitoring by the Committee of its recommendations on the cases examined enabled it to show a substantial increase in cases of progress. At present, three or four such cases of progress are recorded at each meeting of the Committee.

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[26] For further information on these cases and on those mentioned below, see "Reports of the Committee on Freedom of Association" published in ILO: *Official Bulletin* (Geneva), Series B.

Fact-finding and inquiry commissions

A wider-ranging examination of complaints of infringement of trade union rights can be made on the basis of the work of two other organs, namely, the Commissions of Inquiry set up under article 26 of the ILO Constitution, and the Fact-finding and Conciliation Commission on Freedom of Association. In both cases, these Commissions are composed of independent persons appointed to consider each case by the Governing Body, and their procedures, which are determined by the Commissions themselves, generally include the examination of documentary proof, hearings of the parties involved and of witnesses, and on-the-spot visits to meet government authorities, representatives of employers' and workers' organizations, detained trade unionists, representatives of the Church, journalists, professors, indeed anyone they consider can furnish useful information.[27]

Commissions of Inquiry

Commissions of Inquiry are set up by the Governing Body in order to consider complaints of violation of ratified Conventions submitted by delegates to the Conference, or by one State against another when both have ratified the Conventions in question, or at the initiative of the Governing Body itself. When problems are discussed by an international commission with the national authorities in the country itself, it makes them difficult to ignore. Results are not usually immediately forthcoming because of resistance from vested interests, but they do eventually occur.

In connection with Conventions Nos. 87 and 98, Commissions of Inquiry were set up to examine the cases of Greece (1968-70), Poland (1983-84), the Dominican Republic and Haiti (1981-83), and Nicaragua (1989-90). All these cases had already been examined to a certain extent by the Committee on Freedom of Association or by the Committee of Experts before being submitted to the Commission of Inquiry involved.

Recommendations made by a Commission of Inquiry to the States concerned are monitored according to the normal supervisory procedure described earlier. Thus, the reports of the Committee of Experts indicate how cases evolve and any progress made in the application of the recommendations of a given Commission of Inquiry. In the case of Greece, the Committee of Experts recorded progress in its reports of 1977 and 1983; in that of the Dominican Republic and Haiti in its reports of 1985, 1986 and 1995; and in that of Nicaragua, in its 1992 report.[28]

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[27] See Geraldo von Potobsky: "On-the-spot visits: An important cog in the ILO's supervisory machinery", in *International Labour Review* (Geneva), Vol. 120, 1981, No. 5 (Sep.-Oct.), pp. 581-596.

[28] See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Geneva, for the years indicated.

The situation in Poland attracted particular attention within the ILO as a whole. Upon receipt of a complaint in July 1978 and in view of the background to the case, the Committee on Freedom of Association suggested that a direct contacts mission be undertaken. This was done in May 1980 by a representative of the Director-General (Nicolas Valticos, then Assistant Director-General). In August, the Agreements of Gdansk were signed, in which the Government recognized the principles of Conventions Nos. 87 and 98. As difficulties were encountered with the registration of the new trade union Solidarity, despite changes to the Polish trade union law, Mr. Valticos made another visit to Poland in October 1980, and in November that organization was duly registered and officially recognized. In May the following year, the Director-General himself, Francis Blanchard, accompanied by Mr. Valticos, carried out a further mission to Poland, during which a bill being drafted on trade union matters was examined. At that time the Rural Solidarity trade union also gained recognition. In June 1981, Lech Walesa, President of the National Committee of Solidarity, attended the International Labour Conference in the capacity of titular delegate of the Polish workers.

By December, the political climate had changed in Poland, with the proclamation of martial law and the suspension of trade union activities. After another complaint had been lodged with the Committee on Freedom of Association, Mr. Valticos travelled to Poland once again, in May 1982, for meetings with the authorities and various trade union organizations, and also with Mr. Walesa, who at that time was interned. In June 1982, during the Conference, various Worker delegates submitted a complaint against Poland in accordance with article 26 of the Constitution. The matter continued to be handled by both the Committee on Freedom of Association and the Committee of Experts. The Polish Deputy Minister of Labour himself was heard by the Committee on Freedom of Association and, subsequently, the Government asked for the representative of the Director-General to visit Poland again. As it proved impossible to obtain guarantees that the representative would be able to meet freely with all the trade union leaders, the mission did not take place. Finally, in March 1983, the Governing Body decided to refer the whole matter to a Commission of Inquiry. The Government of Poland, for its part, announced that it was suspending its cooperation with the ILO.

The Commission of Inquiry carried out its work between July 1983 and May 1984, when it presented its final report, with conclusions and recommendations.[29] The Commission had requested and received documentary evidence from the complainants, from trade union organizations and from various governments, and had held hearings in Geneva to take evidence from witnesses. The Government of Poland had not taken part in this process, but had received copies of the documents and written reports of witnesses' evidence. It had not allowed the Commission to continue its inquiries in Poland. It had even officially announced its withdrawal from the Organization, a decision it later revoked.

[29] ILO: *Official Bulletin* (Geneva), Special Supplement, Vol. LXVII, 1984, Series B.

In 1987, the Director-General went on another mission to Poland for meetings with the Government and with workers' organizations (including the Solidarity trade union) and employers' organizations to discuss the evolving trade union situation and the question of Poland's continuing membership of the ILO.

The Committee of Experts and the Committee on the Application of Standards were also monitoring the situation on their side such that, in 1990, the Committee of Experts was able to note with satisfaction (see cases of progress, above) the various measures taken by the Government of Poland in connection with the questions examined by the Commission of Inquiry regarding the reinstatement of striking workers, the lifting of sentences for strike action and the establishment of trade union pluralism in all sectors, including agriculture.

The Fact-finding and Conciliation Commission on Freedom of Association

This was set up by the Governing Body in January 1950, shortly after the adoption of Conventions Nos. 87 and 98; its terms of reference are to examine complaints of infringement of freedom of association even if the countries concerned have not ratified these instruments. That same year, the Economic and Social Council of the United Nations (ECOSOC) accepted the offer made by the ILO to make the services of this Commission available to ECOSOC; a special procedure was laid down whereby ECOSOC could refer to the ILO complaints made against States which are Members of the United Nations but not Members of the ILO. As explained above, the following year saw the creation of the Committee on Freedom of Association, which gradually became the specialist body regularly examining complaints about freedom of association.[30]

The Commission itself, however, did not become active until 1964, in a case concerning Japan. That country had ratified Convention No. 98 but not Convention No. 87, and in 1964 the Government agreed to allow the Commission to examine complaints filed in connection with the trade union situation in the public sector. Consent by the government is required in cases involving countries which have not ratified the Conventions on freedom of association; in previous cases, the governments of the countries concerned had refused their consent. The Commission followed the normal procedure outlined above and in January 1965, at the end of its visit to Japan, made a number of preliminary suggestions to enable the Government and trade unions to continue negotiating and to find solutions to the problems encountered. Its main proposal was that the Government ratify Convention No. 87 as soon as possible. The Commission presented its report with its conclu-

[30] On the origins of both bodies, see in particular: C. Wilfred Jenks: *The international protection of trade union freedom*, London, Stevens & Sons Ltd., 1957.

sions and recommendations in July 1965,[31] but Japan had already ratified Convention No. 87 a month before.

The second case concerned Greece, in 1965-66; in this case, the complainants withdrew their complaint before the Commission's visit to the country.[32] The following case of Lesotho (1973-75) involved intervention by ECOSOC, as that country had stopped being a Member of the ILO.[33] No hearings were held in Geneva, and the Commission instructed its chairman to obtain the necessary information on the spot. A similar procedure was followed in 1978-81 in the case concerning the United States/Puerto Rico, another country which temporarily withdrew from membership of the Organization, between 1977 and 1980.[34]

In 1974-75, the full procedure was applied in the case of Chile, which was accused of serious violations of both human rights and trade union rights. The report of the Commission[35] contained its detailed findings, conclusions and recommendations, and a request that the Government continue providing information to the ILO about the state of its law and practice in the matters being examined (in accordance with article 19 of the Constitution). The Committee on Freedom of Association was entrusted with monitoring the situation and, in its report of November 1979,[36] noted with satisfaction the repeal of the legislation adopted after the coup d'état of 1973, when serious restrictions had been imposed on freedom of association. New laws on trade unions and collective bargaining came into force in June 1979 and, despite certain inadequacies regarding freedom of association, were considered by the Committee to be an important first step towards the application of the Commission's recommendations.

The last case examined by the Commission concerned the Republic of South Africa, which had ceased to be a member of the ILO in 1966. The complaint submitted in 1988 by the Congress of South African Trade Unions (COSATU) was based on the discrimination inherent to apartheid, then official policy in South Africa. Two years later, political parties were legalized and important aspects of apartheid were repealed. So, in February 1991, at the request of ECOSOC, the Government agreed to the matter being referred to the Commission. In the course of the procedure, agreement was reached

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[31] ILO: *Official Bulletin* (Geneva), Special Supplement, Vol. XLIX, No. 1, Jan. 1966.

[32] ILO: *Official Bulletin* (Geneva), Special Supplement, Vol. XLIX, No. 3, July 1966.

[33] ILO: *Official Bulletin* (Geneva), Vol. LVIII, 1975, Series A, No. 3, p. 222, and Vol. LIX, 1976, Series A, No. 3, p. 139.

[34] The case was referred to ECOSOC in 1978 and from there to the Fact-finding and Conciliation Commission on Freedom of Association (see the 177th Report of the Committee on Freedom of Association, in ILO: *Official Bulletin* (Geneva), Vol. LXI, 1978, Series B, No. 2, pp. 5-6, paras. 20-25). The report of the Commission was presented to the Governing Body of the ILO at its 218th Session (17-20 Nov. 1981), doc. GB.218/7/2 (mimeo).

[35] ILO: *The trade union situation in Chile: Report of the Fact-Finding and Conciliation Commission on Freedom of Association*, Geneva, 1975.

[36] 197th Report of the Committee on Freedom of Association, Case No. 823, in ILO: *Official Bulletin* (Geneva), Vol. LXII, 1979, Series B, No. 3, pp. 85-114.

to extend the Commission's mandate to include the examination of the labour situation in South Africa, with particular emphasis on freedom of association. The Commission undertook a visit to South Africa where it also held hearings with the parties involved and with witnesses. Its report was presented in May 1992; it contained a detailed examination of the trade union situation and of collective labour relations as well as the situation of workers and territories excluded from the Labour Relations Act.[37] In July that year, ECOSOC noted with satisfaction the findings, conclusions and recommendations of the Commission. It also requested the Government of the Republic of South Africa to provide information on the measures to give effect to the conclusions and recommendations of the Commission. The ILO, for its part, was to provide the technical cooperation needed for the Government to undertake reform of its labour legislation.

Meanwhile, the political situation continued to evolve and, in April 1994, the first multiracial elections were held and Nelson Mandela was elected President. The Republic of South Africa resumed its membership of the ILO in May of that year. The Office undertook to develop a technical assistance programme and seminars on questions relating to freedom of association and industrial relations. In 1995, the Government adopted a new Labour Relations Act and, in February 1996, ratified Conventions Nos. 87 and 98, in accordance with the Commission's recommendations.

Conclusions

Although freedom of association and the right to organize appeared in the Constitution of the ILO in 1919, it was not until the end of the 1940s, shortly after the Second World War, that a general consensus emerged enabling the adoption of the two relevant basic instruments, Convention No. 87 and Convention No. 98. They are both among the ILO's Conventions on basic human rights and today, after 50 years, there is still broad consensus within the Organization on how topical and relevant they remain and on how important it is to secure their application.

The principles of freedom of association and the right to organize appear in all the international instruments on questions concerning human, political and social rights. These principles are always evoked in discussions on the social dimensions of the liberalization of world trade, and freedom of association and the right to collective bargaining are included in the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its 86th Session in 1998.[38]

[37] ILO: *Official Bulletin* (Geneva), Special Supplement, Vol. LXXV, 1992, Series B.

[38] The text of the Declaration is appended to this issue of the *Review*.

These two Conventions contain the most comprehensive set of standards on freedom of association to be found at international level, and the ILO has a highly developed system of supervisory machinery and procedures with which to promote them and to oversee their application.

This article has reviewed the activities of the different supervisory bodies, the main obstacles they encounter and the remarkable progress they achieve. The effectiveness of ILO action on freedom of association has been shown to depend on a whole range of factors, from how serious the actual problems are, to the balance of power, to a government's ideological or political line, and to the prevailing economic situation.

Any evaluation of action by the bodies charged with examining complaints or protests about infringements of freedom of association must also take account of the dissuasive or preventive effect often brought about when news breaks that complainants have taken their case to the ILO. In other words, when measures violating freedom of association are halted — or reduced — before or during examination of the case by the competent bodies, so as to prevent the country concerned or its government from being exposed to publicity or criticism from the international community.

It is important to understand that international public pressure is the ILO's most powerful weapon, for the ILO does not have power to sanction and its Constitution does not allow it to exclude a State in punishment for the violation of international labour standards or principles. Nevertheless, the persistence and perseverance of the supervisory bodies are an extremely powerful weapon in the ILO's armoury.

The complexities presented by the political, ideological, cultural, historical, economic and social contexts in which problems of freedom of association arise are often difficult to overcome. Though problems are finally solved over time, new ones then appear — proving that in this area the work of the supervisory bodies is never done, that they must work ceaselessly and over the long term. Indeed, today, they must be even more vigilant, for in most countries of both North and South the trade union movement is losing ground and is being seriously questioned in certain sectors and countries, including those where it had seemed most firmly established.

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The ILO Declaration of 1998 on fundamental principles and rights: A challenge for the future

Hilary KELLERSON *

After several years of discussion and intense negotiations, on 18 June 1998 the International Labour Conference adopted a Declaration on fundamental principles and rights at work and its follow-up to promote the implementation of these principles and rights (ILO, 1998a).[1]

The principles thus given expression are those concerning the fundamental rights of (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation (Article 2).[2]

This Declaration[3] is the culmination of a process which, within the ILO, has its origins in proposals for establishing a procedure similar to that of the Committee on Freedom of Association for the other rights recognized as fundamental. The freedom of association procedure, like the Declaration, is based on the principles laid down in the ILO Constitution but, unlike the Declaration's follow-up, is a complaints-based procedure and thus will continue to operate in parallel with the Declaration.

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* Former Deputy Legal Adviser of the ILO.

[1] The full text of the "ILO Declaration on fundamental principles and rights at work" with its annexed "Follow-up to the Declaration" is appended to this issue of the *International Labour Review*.

[2] These rights are the subject of the ILO's fundamental Conventions, namely, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105); the Minimum Age Convention, 1973 (No. 138); the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

[3] This is the third solemn Declaration adopted by the International Labour Conference. The Declaration of Philadelphia (the "Declaration concerning the aims and purposes of the International Labour Organisation") — adopted in 1944 — was a milestone in the development of the ILO and has been incorporated into the Constitution. The Declaration on Apartheid (the "Declaration concerning the Policy of 'Apartheid' of the Republic of South Africa") — adopted in 1964 and subsequently updated — was abrogated in 1995, once it had achieved its purpose.

Concurrent with the debate within the ILO, discussions on the economic and social implications of the globalization of the world economy in other fora were reaching consensus on the identification of fundamental workers' rights. At the World Summit for Social Development, held in Copenhagen in March 1995, the Heads of State and Government committed themselves to "Pursue the goal of ensuring quality jobs, and safeguard the basic rights and interests of workers and to this end, freely promote respect for relevant International Labour Organization Conventions, including those on the prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination."[4] The following year, the World Trade Organization's (WTO) Ministerial Conference at Singapore, in its Final Declaration, stated, "We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards" (World Trade Organization, 1996, para. 4).

It was in this context that, in his Report to the 85th Session (1997) of the International Labour Conference on *The ILO, standard setting and globalization* (ILO, 1997), the Director-General put forward proposals for the adoption by the Conference of a solemn Declaration of fundamental rights.[5] The discussions at the Conference that year led the Governing Body to add to the agenda of the 1998 Session of the Conference the question of the adoption of such a Declaration.

The content of the Declaration

The first element in the Declaration is the reaffirmation of the obligation of Members of the Organization to respect the principles concerning fundamental rights. As was repeatedly emphasized during the discussions, the Declaration does not seek to impose any new obligations on member States. It is based on the fact that, in voluntarily joining the ILO, each Member has en-

[4] Commitment 3 (i) (United Nations, 1995, p. 15). See also paragraph 54 (b) of the Programme of Action adopted by the summit, which reads: "Safeguarding and promoting respect for basic workers' rights, including the prohibition of forced labour and child labour, freedom of association and the right to organize and bargain collectively, equal remuneration for men and women for work of equal value, and non-discrimination in employment, fully implementing the Conventions of the International Labour Organization (ILO) in the case of States parties to those Conventions, and taking into account the principles embodied in those Conventions in the case of those countries that are not States parties to thus achieve truly sustained economic growth and sustainable development" (United Nations, 1995, p. 62).

[5] Formally, it first emanated from a proposal by the Employers' Group in the Governing Body in March 1997 to make the mandate of the ILO more explicit "by means of a document, which might take the form of a Declaration, which could be adopted by the Conference. This document would not modify the Constitution, but would clarify its meaning in relation to the fundamental principles" (ILO, 1998b, p. 7. This report summarizes the background to the submission of the draft Declaration and its follow-up to the International Labour Conference in 1998).

dorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia which expressly, or implicitly in the case of the abolition of forced labour, recognize the rights enshrined in the 1998 Declaration (Article 1). Thus, while these principles and rights have been expressed and developed in the fundamental ILO Conventions, member States, even if they have not ratified these Conventions, have an obligation, as Members, to respect, to promote and to realise the principles concerning these fundamental rights (Article 2). Their recognition moreover confirms the status of the Conventions embodying them as core labour standards.

The reason why these principles and rights are regarded as fundamental is spelled out in the Preamble, which affirms that "in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential." They are thus an essential cornerstone in a world of growing economic interdependence, in which economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty.

An issue addressed in the Declaration in this context is the relationship between social progress and trade liberalization. It was repeatedly emphasized during the discussions that the Declaration should not be seen as creating a link between labour standards and international trade or as providing a pretext for protectionist measures. On this issue the Declaration, echoing the Singapore Ministerial Declaration of the WTO, "stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration or its follow-up" (Article 5).

The second major element of the Declaration is its promotional character. This finds expression in the recognition of the obligation of the ILO to assist its Members to attain the objectives of the Declaration, by offering technical cooperation and advisory services to promote ratification and implementation of the fundamental Conventions, by assisting Members' efforts to realize the principles concerning the fundamental rights which are the subject of the fundamental Conventions, and by helping Members create a climate for economic and social development. It obliges the ILO to make full use of its constitutional, operational and budgetary resources for this purpose and encourages other organizations to support these efforts (Article 3). The broad context of this promotional effort is expressed in the Preamble "confirming the need for the ILO to promote strong social policies, justice and democratic institutions".

The Declaration thus envisages a new emphasis in the use of ILO resources — constitutional, operational and budgetary as well as external — on promoting respect for the principles and rights reaffirmed in the Declaration.

The follow-up

There was agreement from the outset that the Declaration should be accompanied by a meaningful and effective follow-up, which would be strictly promotional in nature and not involve any punitive aspect, duplication of existing procedures or new obligations. Its aim is to encourage member States to promote the fundamental principles and rights reaffirmed in the Declaration, and for this purpose to allow the identification of areas in which the ILO's technical cooperation may be useful in supporting the efforts of member States. Certain details of its implementation are still to be determined by the Governing Body at its 273rd Session in November 1998, but the essentials are clearly laid down in the "Follow-up to the Declaration" annexed to the Declaration and adopted integrally with it.

The follow-up will consist of two complementary elements.

The first element is an annual follow-up in which States will be asked to provide reports every year on each of the fundamental Conventions which they have not ratified. The purpose of these reports is to provide an opportunity to review, every year, the efforts made in the four areas of fundamental rights and principles specified in the Declaration by States which have not ratified the relevant Conventions. This process concerning non-ratified fundamental Conventions is based on article 19, paragraph 5 (e), of the Constitution under which member States are required to report, when requested by the Governing Body, on the position of their law and practice in regard to the matters dealt with in a Convention which they have not ratified.

These annual reports, whose promotional character was highlighted during the discussions, will be compiled by the Office and reviewed by the Governing Body. The procedure envisages the appointment by the Governing Body of a group of experts to present an introduction to the reports received, drawing attention to any aspects which might call for a more in-depth discussion.

The second element is a global report which will cover, each year, one of the four categories of fundamental principles and rights in turn, and review developments during the preceding four-year period. Its purpose will be, firstly, to provide a general overview of the situation in all member States (since ratification does not necessarily imply full implementation, and non-ratifying States do not necessarily fail to respect the fundamental principles) and establish the major trends and developments. Secondly, it will serve to assess the effectiveness of assistance provided by the ILO for the furtherance of the implementation of this Declaration in the period covered and determine priorities for technical cooperation in the following period. It will be based on the above-mentioned annual reports; for States which have ratified the core Conventions, on their reports under article 22 of the Constitution; and on other official information or that gathered and assessed in accordance with established procedures.

This global report, which will take the form of a report of the Director-General to the annual (tripartite) International Labour Conference, will be discussed in a manner to be determined by the Conference, which may take the form of a special sitting or referral to a tripartite committee or some other appro-

priate way. The Governing Body will then, on the basis of the Conference discussion, examine priorities and plans for technical cooperation in the following four-year period. The purpose of the global report is thus to identify progress, problems and needs, and to provide a basis for directing the ILO's resources and activities towards the full realization of the principles of the Declaration.

The dynamic approach of this follow-up is illustrated by the final provision that the Conference is, in due course, to review its operation to assess whether it has adequately fulfilled its overall purpose.

The significance of the Declaration

There is intrinsic value in this solemn Declaration in that it represents a reaffirmation, by governments and both social partners, of the universality of fundamental principles and rights at a time of widespread uncertainty and questioning of those rights. That is not a small achievement.

There is also great potential value in the Declaration which depends on a dynamic implementation of its follow-up. The promotional effort called for in this Declaration implies a reorientation of the ILO's constitutional, operational and budgetary resources in support of the priorities determined in the global reports, themselves based on annual reports and other official information available to the ILO.

A remarkable aspect of this approach is that it represents a collective decision to pursue social justice by the high road — drawing on people's aspiration for equity, social progress and the eradication of poverty — rather than by sanctions which can be abused for protectionist purposes in international trade.

While affirming the importance of linking social progress to economic growth, in adopting the Declaration the International Labour Conference places the whole question of the promotion of fundamental labour standards and their underlying principles squarely in the framework of the constitutional principles and procedures of the ILO. The full value of the Declaration, which depends on the active implementation of the follow-up by many in and outside the ILO, will only emerge in the course of time. The challenge facing the ILO in the next millennium will be to ensure that the Declaration achieves the significance and the impact it offers.

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CONTENTS | VOLUME 33 NUMBER 4 APRIL, 1998

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International Labour Review, Vol. 137 (1998), No. 2

APPENDIX I

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)[1]

Adopted by the International Labour Conference
on 9 July 1948 in San Francisco.

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress";

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

[1] The full title is the Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise.

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said Article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office as soon as possible after ratification a declaration stating —

(a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs *(a)* and *(b)* of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs *(b)*, *(c)* or *(d)* of paragraph 1 of this Article.

4. Any Member may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office —

(a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

(b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General of the International Labour Office a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first

comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 19

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its thirty-first Session which was held at San Francisco and declared closed the tenth day of July 1948.

IN FAITH WHEREOF we have appended our signatures this thirty-first day of August 1948.

The President of the Conference
Justin Godart

The Director-General of the International Labour Office
Edward Phelan

International Labour Review, Vol. 137 (1998), No. 2

APPENDIX II

Universal Declaration of Human Rights

Adopted and proclaimed by United Nations General Assembly resolution 217 A (III) of 10 December 1948, in Paris.

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX III

Excerpt from the Report of the Committee of Experts[1]:

50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Universal Declaration of Human Rights

A. 50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

41. At its San Francisco Conference, the representatives of governments, employers and workers from the 40 member States which then constituted the International Labour Organization adopted, on 9 July 1948, by 127 votes in favour, zero votes against and 11 abstentions, Convention No. 87 on freedom of association and protection of the right to organize. The celebration of the 50th anniversary prompts the Committee today to assess the impact of half a century of freedom of association protection.

Status of ratifications

42. As of 12 December 1997, Convention No. 87 had been ratified by 120 member States of the ILO. While this is a high number of ratifications, unfortunately it remains insufficient. Since the Committee prepared its sixth General Survey on freedom of association and collective bargaining in 1994, the number of member States has increased from 170 to 174, and the number of ratifications of Convention No. 87 has continued to increase, from 109 to 120. Although the call of the Copenhagen World Social Summit in March

[1] Excerpt from the *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Report III (Part 1A), International Labour Conference, 86th Session, Geneva, ILO, 1998.

1995 and the repeated action of the Director-General to promote the ratification of the seven fundamental Conventions, including Convention No. 87, by the member States has borne fruit, there remain 54 member States that have not yet ratified the Convention.[2] Some are very industrialized countries while others are not. These countries represent a variety of industrial relations systems, some being very advanced while in others there is not even any recognition of the fundamental principles of freedom of association. The Committee must underline in particular that a large number of the most populated countries have not yet ratified this fundamental Convention, affecting more than half of workers and employers worldwide. This gives rise to considerable concern. The Committee, therefore, addresses an urgent appeal on the occasion of this 50th anniversary to those governments that have not yet ratified the Convention to do so. The Committee recalls that freedom of association is an essential objective of the Organization which is recognized in its Constitution and is the basis of tripartism. The Committee stresses in addition that the Declaration of Philadelphia, adopted in 1944 and incorporated into the Constitution two years later, recognizes the clear link between civil liberties and trade union rights in proclaiming that freedom of expression and of association is essential to sustained progress. The Committee, therefore, expresses its firm hope that, in the near future, there will be significant progress regarding the ratification of Convention No. 87.

Progress achieved

43. For the ILO, the ratification of a Convention is only the first step in its implementation; the essential part of the process is clearly its application in law and in practice. Fortunately, a significant number of questions regarding Convention No. 87 that had been the subject of comment by the super-visory bodies of the ILO for many years have been, or are in the process of being, resolved. Over the 50-year period, the Committee has expressed its satisfaction in more than 110 cases with respect to the measures taken by 67 governments from all regions of the world aimed at introducing modifi-cations necessary to improve, in law and in practice, the application of the Convention. During the last decade, the number of cases of progress has increased considerably, growing by more than 60 since 1987.

44. The suppression of a legally imposed trade union monopoly and the abolition of the directing role of the party under the government rule represent without doubt the most frequent cases of progress regarding the appli-

[2] There are in particular 38 countries that have been Members of the ILO for at least 20 years, namely, Afghanistan, Angola, Bahamas, Bahrain, Brazil, Cambodia, Chili, China, Democratic Republic of the Congo, El Salvador, Fiji, Guinea-Bissau, India, Indonesia, Islamic Republic of Iran, Iraq, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Mauritius, Morocco, Nepal, New Zealand, Papua New Guinea, Qatar, Saudi Arabia, Singapore, Somalia, Sudan, United Republic of Tanzania, Thailand, Uganda, United Arab Emirates and United States.

cation of the Convention during these last years. Other improvements achieved relate to the re-establishment of freedom of association following the lifting of a state of emergency and the return to the rule of law and democracy in countries that had been under dictatorships. There has also been an expansion of the right of association in a number of countries: public employees, nurses, teachers, employees of religious or charitable institutions, fire-fighters, homeworkers, domestic workers, rural workers, seafarers, workers in the informal sector and foreign workers have been granted the right of association that had long been denied them.

45. Other progress is evident in the lifting of restrictions on the right of workers' and employers' organizations to elect their representatives freely. A significant number of legislative changes have been introduced aimed at ensuring that there is no longer undue interference regarding eligibility, election procedures and the discharge of trade union officials. The right of trade unions to draw up their rules and to organize their administration and activities has also been marked by positive developments. In certain countries, the administrative supervision of trade unions has been withdrawn, or wide powers of control or inquiries of the authorities into union activities, trade union meetings or the management of union funds, have been lifted. In some cases, the general prohibition of strikes has been revoked and the penalty of imprisonment for strike-related activities removed. Legal avenues of administrative dissolution have been closed. Private and public sector unions have achieved the right to join federations and confederations. Finally, the right to affiliate with international organizations of their own choosing without interference of the public authorities has been granted to occupational organizations in a number of countries.

46. The Committee can only hope that these favourable developments will continue and grow. This appreciable progress is the fruit, not only of persistent and continual dialogue of the Committee and the tripartite Conference Committee with the governments, but also of the patient work of the Committee on Freedom of Association of the ILO Governing Body. The community of ideas that should flow between the three supervisory bodies will ensure continuing progress.

47. Despite such considerable advances in the implementation of the Convention, serious problems still remain in achieving its full application.

Long-standing difficulties and new obstacles

Trade union monopoly or right to establish the organization of one's own choosing

48. Imposed trade union monopoly was identified during the drafting of the Convention as one of the significant obstacles to freedom of association. It was as clear then as it is today that the right of employers and workers to establish and join organizations of their own choosing is in no

way intended to assume a position favouring either the theory of the single organization or that of plurality of organizations, but rather that the choice should rest with those directly concerned. Despite the progress achieved in this area, the problem of trade union monopoly imposed directly or indirectly by law persists in some countries and is, in certain cases, one of the principal obstacles to the ratification of Convention No. 87. Legislatively imposed trade union monopolies have forced some independent trade unions underground or into exile. In other cases, it has been observed that some organizations which worked within the framework of a monopolistic system, have later been dissolved by administrative authority and their leaders arrested and detained for pursuing their members' interests in a manner independent of the government authorities. Such situations reinforce the continuing relevance of the 1952 International Labour Conference resolution concerning the independence of the trade union movement and the fundamental importance of ensuring a labour relations system which allows for trade union pluralism, if desired by those concerned.

Restrictions for certain categories of workers and sectors of activity

49. At the time of the adoption of the Convention, public servants were restricted with respect to their right to organize in several regions of the world. It was therefore clearly indicated in the *travaux préparatoires* that the guarantee of the right of association should apply to all employers and workers in the public or private sectors including public servants and high-level officials as well as workers in state-owned industries. While, as noted above, several countries have since guaranteed the right to organize to public servants, this right remains restricted in a number of member States and has been cited by some of them as an impediment to ratification. Furthermore, the right to organize of all workers without distinction whatsoever continues to raise difficulties in some countries which still limit this right for agricultural workers, domestic workers, seafarers, fire-fighters, prison staff and sometimes for foreign workers.

The right to strike

50. Restrictions continue to be placed on the means which can be used by workers' organizations for the furtherance and defence of their members' interests. This is particularly flagrant with respect to the right to strike. In some countries this right is still subject to a general prohibition or is prohibited in a large number of sectors which cannot be considered essential. Some legislation grants broad powers to public authorities to impose compulsory arbitration or imposes excessive conditions rendering strikes virtually impossible. Moreover, sometimes such legislation also imposes penal sanctions for legitimate and peaceful strike action.

The significance of freedom of association in a globalizing world economy

51. In the last decade, new situations have given rise to restrictions in respect of freedom of association for certain workers. The most notable of these concerns the creation of export processing zones. In several countries EPZs are either explicitly excluded from national labour legislation or are covered by specific regulations expressly excluding the right to organize and/or the right to strike. Unfortunately, the number of workers in EPZs affected by such legislation is increasing given the current practice of competitive economies within the context of globalization.

52. The globalization of trade also renders restrictions on trade union affiliation and restrictions concerning nationality for election to trade union office all the more disturbing. Even though there is an increasing number of migrant workers around the world, their right to organize and the possibility for their election to posts within the union leadership are called into question in certain countries. Such restrictions have been invoked by certain governments as an obstacle to the ratification of the Convention.

53. Finally, the world labour market also highlights the relevance of the right to affiliate to an international organization of employers or workers. Representation at the international level with a global perspective has always been of fundamental importance to the trade union movement. Thus, when taking into account the increased vulnerability of displaced workers, as well as the complexity of legal and social issues to be faced by multinational enterprises, the right to affiliate to international organizations is more important than ever and every effort must be taken to guarantee respect for it.

54. While globalization and its repercussions on trade union rights could not be foreseen at the time of adoption of Convention No. 87, the Committee has not ceased to recall the universal nature of the standards laid down in the Convention.

55. In conclusion, the Committee welcomes the considerable progress made since the adoption of Convention No. 87 towards ensuring the respect of its provisions. While noting that, in several cases, results have been obtained with the technical assistance of the Office and given that there are important obstacles remaining to the full application of the Convention, the Committee invites the governments concerned to avail themselves of such technical assistance in order to identify the problems hindering the application and/or the ratification of the Convention, thus exploring new approaches towards the resolution of these problems.

B. 50th anniversary of the Universal Declaration of Human Rights

56. The year 1998 is also the 50th anniversary of the Universal Declaration of Human Rights, which was adopted on 10 December 1948, a few months after Convention No. 87. The Universal Declaration is now considered to reflect customary international law. It is generally accepted as a point of reference for human rights throughout the world, and as the basis for most of the standard setting that has been carried out in the United Nations and in many other organizations since then.

57. The ILO's standards and practical activities on human rights are closely related to the universal values laid down in the Declaration, and are entirely consistent with it. Except for the Forced Labour Convention, 1930 (No. 29), all of the ILO's fundamental human rights Conventions were adopted either at the same time as the Declaration or in the years closely following it, and all are in conformity with the philosophy and principles laid down in that important document.

58. Most important, the ILO's standards on human rights along with the instruments adopted in the UN and in other international organizations give practical application to the general expressions of human aspirations made in the Universal Declaration, and have translated into binding terms the principles of that noble document. The Universal Declaration reflects in turn many of the principles laid down in the ILO's own Declaration of Philadelphia adopted in 1944 and incorporated into the Constitution of 1946. The fact that the ILO instruments on the human rights that fall within its mandate have been so widely ratified is further evidence of the degree to which they reflect the universal values laid down in the Declaration.

59. It is not only those instruments which the ILO has designated "human rights" which apply the precepts of the Universal Declaration. Clearly Article 4 of the Universal Declaration on slavery and servitude is implemented under the ILO's Conventions on forced labour, and the prohibition of discrimination in Article 7 finds application in ILO standards on discrimination in employment and occupation. The statement in Article 23, paragraph 4, that "Everyone has the right to form and to join trade unions for the protection of his interests" relates even more directly to the ILO's standards on freedom of association. The Universal Declaration also brings into the sphere of human rights many of the subjects that the ILO has dealt with in its own framework of "social justice", including the right to social security in Article 22, the right to decent conditions of work in Article 23, the right to rest and leisure and a limit on working hours and holidays in Article 24, and other rights.

60. The Committee therefore reaffirms its appreciation of the important step taken by the United Nations in 1948 when it adopted the Universal Declaration, and celebrates the impact this document has had on the achievement of human rights and social justice in the world since then. The Committee will continue, as it always has done, to keep the Universal Declaration's precepts in mind as it carries out its own tasks.

International Labour Review, Vol. 137 (1998), No. 2

APPENDIX IV

ILO Declaration on Fundamental Principles and Rights at Work

Adopted by the Conference at its Eighty-sixth Session,
Geneva, 18 June 1998.

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:
   (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;
   (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:
   (a) freedom of association and the effective recognition of the right to collective bargaining;
   (b) the elimination of all forms of forced or compulsory labour;
   (c) the effective abolition of child labour; and
   (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:
   (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

(b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex

Follow-up to the Declaration

I. OVERALL PURPOSE

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e) of the Constitution; and the global report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. ANNUAL FOLLOW-UP CONCERNING NON-RATIFIED FUNDAMENTAL CONVENTIONS

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e) of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.

4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. GLOBAL REPORT

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. IT IS UNDERSTOOD THAT:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

IN FAITH WHEREOF we have appended our signatures this nineteenth day of June 1998.

The President of the Conference,
Jean-Jacques Oechslin

The Director-General of the International Labour Office,
Michel Hansenne

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Daphne Gottlieb Taras, Tsuyoshi Tsuru and Motohiro Morishima

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Don Bellante, Barry Hirsch and David MacPherson, Dwight Lee and Ronald Warren,
James Long, LaDonna Pavetti, Nicholas Williams, Bradley Wimmer

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International Labour Review, Vol. 137 (1998), No. 2

AN ANNOTATED BIBLIOGRAPHY: INTERNATIONAL PROTECTION OF FREEDOM OF ASSOCIATION

PART I
UNIVERSAL SOURCES OF INTERNATIONAL LAW AND RELATED MATERIAL

INTERNATIONAL LABOUR ORGANIZATION

Basic international instruments

Constitution of the International Labour Organization and Standing Orders of the International Labour Conference. Geneva, ILO, 1998. ISBN 92-2-011053-9.

Contains the full text of the Constitution of the ILO, including the 1944 Declaration concerning the Aims and Purposes of the International Labour Organization (known as the Declaration of Philadelphia and incorporated into the ILO's Constitution in 1946). Pursuant to the Preambles both to the Constitution and to Part XIII of the Treaty of Versailles, which mention "recognition of the principle of freedom of association" among the objectives to be promoted by the Organization, the Declaration of Philadelphia "reaffirms the fundamental principles on which the Organisation is based and, in particular, that ... freedom of expression and of association are essential to sustained progress". By virtue of their membership of the International Labour Organization, member States undertake to respect the principles enshrined in its Constitution, including those relating to freedom of association. This undertaking forms the legal basis for the work of the Committee on Freedom of Association (see below), which examines alleged violations regardless of whether or not the countries concerned have ratified the relevant international labour Convention(s).

International Labour Conventions and Recommendations, 1919-1995. Geneva, ILO, 1996. Three volumes. ISBN 92-2-109192-9.

This compilation contains the full texts of the Conventions, Recommendations and Protocols adopted by the International Labour Conference, with the three volumes respectively covering 1919-1951, 1952-1976 and 1977-1995. Pending publication of the next volume, the texts of more recent Conventions and Recommendations and other instruments adopted by the International Labour Conference are published regularly in the *Official Bulletin, Series A* (ISSN 0378-5882).

The main Conventions concerning freedom of association are: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Workers' Representatives Convention, 1971 (No. 135); the Rural Workers' Organisations Convention, 1975 (No. 141); the Labour Relations (Public Service) Convention, 1978 (No. 151); the Right of Association (Agriculture) Convention, 1921 (No. 11); and the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84).

Lists of ratifications by Convention and by country (as at 31 December 1997). Report III (Part 2), International Labour Conference, 86th Session, 1998. Geneva, ILO, 1998. xi + 304 pp. ISBN 92-2-110653-5/ ISSN 0074-6681.

Updated annually for submission to the International Labour Conferences, this report contains a list of Conventions adopted by session of the Conference; a list of ratifications by Convention; a list of ratifications by Protocol; and a list of ratifications by country.

Handbook of procedures relating to international labour Conventions and Recommendations. Rev.2/1998. Geneva, ILO International Labour Standards Department, 1998. v + 44 pp.

This enlightening handbook is primarily intended for the officials of national administrations responsible for the discharge of their governments' obligations under the ILO Constitution relating to international labour standards. But it may be recommended to anyone wishing to form a complete picture of how the ILO's system of standards works, from procedures for the adoption of Conventions and Recommendations by the International Labour Conference to special procedures for making representations and complaints as to the observance of ratified Conventions or complaints as to the infringement of freedom of association.

ILO law on freedom of association: Standards and procedures. Geneva, 1995. xii + 170 pp. ISBN 92-2-109446-4.

This book presents an extensive collection of extracts from the ILO Constitution, numerous international labour Conventions and Recommen-

dations and other instruments. Two resolutions of the International Labour Conference are reproduced in full, namely, the 1952 Resolution concerning the Independence of the Trade Union Movement and the 1970 Resolution concerning Trade Union Rights and their Relation to Civil Liberties, which explicitly links freedom of association to respect for the rights and freedoms protected by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of the United Nations.

The book also outlines the procedures of which governments and employers' and workers' organizations may avail themselves when they feel that rights to freedom of association have been violated, including the procedures of the Fact-Finding and Conciliation Commission established in 1950 by agreement between the ILO and the Economic and Social Council of the United Nations and those of the ILO Committee on Freedom of Association.

ILO principles, standards and procedures concerning freedom of association. Geneva, ILO, 1989. 23 pp. ISBN 92-2-107078-6.

Offers a clear and succinct overview, beginning with an outline of the contents of the Conventions and other ILO instruments relating to trade union rights, followed by a section on promotional and supervisory machinery. The various aspects of freedom of association are then examined in succession (recognition of the right to organize, establishment of organizations without prior authorization, election of leaders, etc).

Summaries of international labour standards. Second edition (updated in 1990). Geneva, ILO, 1991. vii + 133 pp. ISBN 92-2-107812-4.

Grouped by subject, the summaries in this book are aimed primarily at helping employers' and workers' organizations to provide information to their members, though the clarity with which they are presented will also appeal to other non-specialist readers.

ILOLEX on CD-ROM: A database of international labour standards. Geneva, ILO, 1997. ISBN 92-2-010608-6 (DOS version);
ISBN 92-2-010604-3 (Windows version).

This single CD-ROM contains English, French and Spanish versions of the ILO Constitution; all ILO Conventions and Recommendations; the reports of the Committee on Freedom of Association, from 1985; the comments of the Committee of Experts on the Application of Conventions and Recommendations, from 1987; the annual reports of the Conference Committee on the Application of Standards, from 1987; the reports of the committees and commissions established under Articles 24 and 26 of the ILO Constitution to examine representations and complaints, from 1985; and lists of ratifications of Conventions by Convention and by country. The docu-

ments are divided into chapters, enabling users to search within specific categories of ILO documents. In addition, the whole database can be searched by subject classification, country, Convention or free text query using words or expressions.

Reports and documents of the supervisory bodies

Reports of the Fact-Finding and Conciliation Commission on Freedom of Association, published in ***Official Bulletin*** (Geneva), **Series B** (ISSN 0378-5890).

The Fact-Finding and Conciliation Commission was set up in 1950 following consultations with the Economic and Social Council of the United Nations (see ECOSOC Resolutions No.239(IX), of 2 August 1949, and No. 277(X), of 17 February 1950). It examines complaints of violations of trade union rights referred to it by the Governing Body, subject to the consent of the government concerned if the country has not ratified the relevant Conventions. Under a special procedure the Economic and Social Council may transmit to the Governing Body for referral to the Commission allegations of infringements of trade union rights received by the United Nations. If the country concerned is not a member of the ILO, however, such referral remains subject to the government's consent. Until 1964 none of the governments so requested consented to submit to the referral procedure with the result that the Commission has been convened only rarely. Though essentially an investigatory body, it may also examine, together with the government concerned, the possibility of settling the difficulties involved by agreement. Its reports are published in Series B of the *Official Bulletin*, e.g. "Prelude to change: Industrial relations reform in South Africa — Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa", in *Official Bulletin* (Geneva), Series B, Vol. 75 (1992).

Reports of the Committee on Freedom of Association of the Governing Body of the ILO, published in ***Official Bulletin*** (Geneva), **Series B** (ISSN 0378-5890).

Established in 1951 as a tripartite body comprising nine members of the Governing Body, and chaired since 1978 by an independent personality, the Committee on Freedom of Association meets three times a year to examine complaints concerning alleged violations of the Conventions on freedom of association, regardless of whether or not the countries concerned have ratified those instruments. Examination of a complaint by the Committee is not subject to the consent of the government concerned. The legal basis for this procedure resides in the Constitution of the ILO and the Declaration of Philadelphia, whereby member States are bound to respect the Organization's constitutional principles, particularly those relating to freedom of as-

sociation, even if they have not ratified the relevant Conventions. Thus the Committee systematically examines the substance of the cases submitted to it and presents its conclusions thereon — unanimously adopted — to the Governing Body, recommending, where appropriate, that it draw the attention of the governments concerned to any principles at issue and, in particular, to any recommendations made with a view to settling the difficulties raised in the complaint. Where a legislative problem arises and the country concerned has ratified the Convention to which the complaint refers, the Committee can — and, in fact, often does — bring these aspects of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations (see below), thus enabling the latter to follow up the situation in the course of its regular examination of the reports submitted by the Government on the Convention in question.

The full texts of the reports of the Committee on Freedom of Association and related material are published in the *Official Bulletin* of the ILO (in Series B since 1975). Each of its reports recapitulates the cases examined during the corresponding session of the Committee, typically presenting a statement of the complaint and/or allegations made, the reply of the government concerned, the Committee's conclusions and, lastly, the Committee's recommendations.

Over the years, the Committee's work has produced a full and coherent body of principles on freedom of association and collective bargaining, based on the provisions of the Constitution of the ILO and of the relevant Conventions, Recommendations and resolutions. Described as "a kind of customary rule in common law, outside or above the scope of any Conventions or even of membership of one or other of the international organizations" (ILO: *Minutes of the 121st Session of the Governing Body*, 3-6 March 1953, p. 39), this body of principles has acquired a broadly recognized authority both internationally and at the national level, where it is increasingly being used for the development of national legislation.

Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fourth (revised) edition. Geneva, ILO, 1996. xi + 238 pp.
ISBN 92-2-109456-1.

This essential publication is a thematically arranged consolidation of the principles established by the Committee on Freedom of Association through its examination of more than 1,800 cases over a period of 44 years. Each principle of law — indeed each paragraph — is cross-referenced either to the previous edition of the Digest (1985) or directly to the relevant report of the Committee (see above) with specific case citations. A chronological index of cases is given in an annex.

Of particular interest is the extensive chapter on the right to strike — a right not expressly provided for in any ILO Convention, but which has become firmly entrenched in international law on account of the constructive

work and authority of the Committee on Freedom of Association. Thus, subject to only a few very specific restrictions, the right to strike is now regarded as constituting a fundamental right of workers and their organizations.

Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries. Report III (Part 1A), International Labour Conference, 86th Session, 1998. Geneva, ILO, 1998. xviii + 511 pp. ISBN 92-2-110651-9/ISSN 0074-6681.

The linchpin of the ILO's supervisory machinery, the Committee of Experts on the Application of Conventions and Recommendations reports annually to the International Labour Conference on member States' compliance with their constitutional obligations in regard to international labour standards, i.e. annual reporting on ratified Conventions (article 22 of the Constitution); application of Conventions in non-metropolitan territories (articles 22 and 35, paras. 6 and 8); and submission to the competent authorities of Conventions and Recommendations adopted by the International Labour Conference (article 19). The bulk of each of the Committee of Experts' annual reports consists of a country-by-country account of the latest developments in the Committee's on-going exchanges with governments concerning the conformity of national law and practice with the provisions of ratified Conventions.

Part one of the Report contains an up-date on the ILO's cooperation with other international organizations in the field of standards, including its contributions to supervision of the application of international instruments (notably the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter and its Additional Protocol). In addition, the 1998 Report contains an assessment by the Committee of Experts of the impact of half a century of freedom of association protection since the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). While the progress achieved has been substantial, especially over the past decade, the Committee notes with concern that a large number of the most populated countries have not yet ratified this fundamental Convention, affecting more than half the world's workers and employers.

Freedom of association and collective bargaining: General survey of the reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Report III (Part 4B), International Labour Conference, 81st Session, 1994. Geneva, ILO, 1994. xi + 157 pp. ISBN 92-2-108947-9/ISSN 0074-6681.

Each year, part three of the Committee of Experts' report to the International Labour Conference (published separately) is devoted to a general sur-

vey of national law and practice relating to a specific ILO standard or, as was the case in 1994, related standards. Previous general surveys on freedom of association and collective bargaining were published in 1983, 1973, 1959, 1957 and 1956.

General surveys are based not only on the reports submitted in accordance with articles 22 and 35 of the Constitution by States which have ratified the relevant Convention(s) — in this case Conventions Nos. 87 and 98 — but also on reports specifically requested by the Governing Body under article 19 of the Constitution on the legislation and practice of member States which have not yet ratified those Conventions. Though the primary aim of the survey is to review national law and practice, the material is arranged so that each of the aspects of freedom of association covered by Conventions Nos. 87 and 98 is taken up in turn. In the 1994 survey, the Committee of Experts endeavoured to respond to questions and concerns expressed in the Conference Committee on the Application of Standards (see below) as to the scope of the two Conventions. In particular, it considered that "the guarantees ... relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, notably the International Covenant on Civil and Political Rights, are genuinely recognized and protected" (para. 43). On the subject of strikes, the Committee of Experts "has always considered that strikes that are purely political in character do not fall within the scope of freedom of association. However, the difficulty arises from the fact that it is often impossible in practice to distinguish between the political and occupational aspects of the strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers; ... organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general" (para. 165).

While welcoming the new ratifications and many cases of progress recorded since its previous general survey on the subject, the Committee of Experts concludes on a note of concern over the emergence of trends that could have detrimental consequences for freedom of association and collective bargaining. These include growing emphasis on the right of the individual as opposed to collective rights; the establishment of "free trade zones" largely or completely excluded from the application of national law; and attitudes and planning which increasingly regard workers merely as an "item of resource" or a "cost factor".

Reports of the Conference Committee on the Application of Standards, published in the ***Record of Proceedings*** of the International Labour Conference.

The tripartite Committee on the Application of Standards of the International Labour Conference devotes the major part of each of its annual

sessions to the examination of the observations contained in the Report of the Committee of Experts (see above). For the examination of individual cases, the officers of the Conference Committee draw up a list of countries with serious problems on one or more Conventions or on submission, taking account of the proposals of the Committee of Experts. The list is then put before the Conference Committee for approval.

The government representatives of the countries on the approved list are invited to respond to the observations of the Committee of Experts. They may do so in writing, but the Conference Committee can request additional oral explanations. The government concerned is allowed to present all the information it wishes on the case and to indicate the difficulties it encounters in meeting its obligations. The discussion of each case ends with a conclusion by the Committee, read out by the Chairperson. The proceedings are reproduced, in slightly condensed form, in the Committee's report, which is then submitted to the Conference for adoption. Important cases of non-compliance are pointed out in the general part of the report, including failure to comply with formal obligations (e.g. submission to the competent authorities, reporting on ratified Conventions) and failure to apply ratified Conventions. The reports of the Committee are published in the *Record of Proceedings* of each general session of the International Labour Conference (third item on the agenda).

UNITED NATIONS

Basic international instruments

Human Rights: A compilation of international instruments. Volume I (1st part, 2nd part): Universal instruments. UN-ST/HR/1/Rev.5.
New York, NY, United Nations, 1994. xii + 950 pp. ISBN 92-1-154099-2.

This invaluable compilation contains the full texts of all the major international instruments protecting human rights under the auspices of the United Nations and its specialized agencies. Aside from the ILO's standards, the earliest to cover freedom of association and trade union rights is the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948 (see Eide et al., 1992, for a commentary). Though not legally binding, it paved the way for the development of other sources of international law in this field, including regional instruments (see, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms). In particular, the Universal Declaration provides that "everyone has the right of peaceful as-

sembly and association" and "no one may be compelled to belong to an association" (Art. 20), and that "everyone has the right to form and to join trade unions for the protection of his interests" (Art. 23).

The other relevant instruments are legally binding. Under Article 5(e)(ii) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, which entered into force in 1969, States Parties undertake "to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... [t]he right to form and join trade unions". While not actually creating the many rights listed in its Article 5, this Convention assumes their existence.

Article 8 of the International covenant on economic, Social and Cultural Rights (adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966 and in force since 1976) sets forth more elaborate guarantees to protect trade union rights. Thus, the exercise of "the right of everyone to form trade unions and to join the trade unions of his choice" cannot be subjected to any restrictions "other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others" (para. 1(a)). Paragraph 1(d) of the same article is particularly significant in that it contains the only express provision under universal international law for protection of the right to strike, "provided that it is exercised in conformity with the laws of the particular country".

The limitation of the scope of permissible restrictions on the exercise of freedom of association is reaffirmed in the International Covenant on Civil and Political Rights (adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966), which also provides that: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" (Art. 22, para. 1). For an in-depth analysis of this Covenant and its two Optional Protocols, see Nowak, 1993.

The Proclamation of Teheran, adopted by the International Conference on Human Rights in May 1968, stresses the interdependence of the rights protected by the 1966 Covenants in the following terms: "Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development" (Art. 13). In December 1977, on the eve of the 30th anniversary of the Universal Declaration of Human Rights, the General Assembly of the United Nations formally decided that those concepts — indivisibility, interdependence, inalienability and link to economic order — would henceforth be taken into account in dealing with human rights questions throughout the United Nations system. On the subject of interdependence, see Scott, 1989. For an overview of the United Nations' current priorities in the field of human rights, see Annan, 1997.

Multilateral treaties deposited with the Secretary-General: Status as at 31 December 1997. New York, NY, United Nations, 1998.

Updated annually, this publication gives dates of entry into force, lists of States Parties and other information on the status of United Nations and League of Nations treaties. It also reproduces the full texts of declarations and reservations made by States Parties.

Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Geneva, United Nations.

Based on the preceding publication, this document is updated periodically and carries the symbol CCPR/C/2/Rev. (followed by the number and date of the revision).

Documents of treaty bodies and other organs concerned with human rights

In contrast to the standards adopted by the ILO — a specialized agency of the United Nations — the instruments of the United Nations itself generally lay down broad principles, standards of general application. This distinction is of course reflected in the nature and scope of their respective supervisory procedures. Accordingly, much of the material presented in the documents of the supervisory bodies of the United Nations may be only of marginal interest to readers concerned strictly with freedom of association and trade union rights. However, this detracts nothing from the importance of these sources for any serious research on the subject. Relevant resolutions, decisions and other important material occur *passim* in the reports and other documents of the Economic and Social Council, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. For a detailed study on each of these bodies (including a rich bibliography), see Alston, 1992a.

A good starting point for research into United Nations documents concerning human rights is: **<http://www.unhchr.ch/>**. Also useful for general information and research are the periodical publications of the Geneva-based non-governmental organization International Service for Human Rights: **Human Rights Monitor** (Geneva, ISHR, since 1988) provides information updates on meetings and developments concerning human rights throughout the United Nations system, while **HR Documentation DH** (Geneva, ISHR, since 1989) lists the documents of many United Nations human rights bodies by session/symbol, sometimes with a brief description of their contents, and presents the agendas of forthcoming meetings.

Reports and documents of the Economic and Social Council

Article 60 of the Charter of the United Nations makes the Economic and Social Council responsible — under the authority of the General Assembly — for promoting "universal respect for, and observance of, human rights and fundamental freedoms" (Art.55(c)). Given the wide range of topics dealt with by the Council, however, its sessional documents and reports to the General Assembly — like the documents of the General Assembly itself — constitute the most general of the United Nations sources. Much of the Council's work on human rights is channelled through the Commission on Human Rights, while the monitoring of the application of specific instruments is entrusted to specialized committees. In addition to being more detailed, the documents of these bodies therefore constitute a set of more focused sources.

Reports and documents of the Commission on Human Rights

Set up by the Economic and Social Council as one of its functional commissions under Article 68 of the Charter of the United Nations, the 53-member Commission on Human Rights is the United Nations' main policy-making body dealing with human rights issues (see Alston, 1992b). Reporting annually to the Council, it conducts studies, adopts resolutions and decisions, and makes recommendations (in the form of draft decisions and resolutions for adoption by the Council) for the protection and promotion of human rights.

Its annual reports are part of the Economic and Social Council's Official Records (Supplement No. 3) and therefore carry both the ECOSOC symbol (e.g. E/1997/23 for the Report on the Commission's Fifty-third Session, 10 March-18 April 1997) and a symbol in the E/CN.4/ series used for the documentation of the sessions of the Commission itself (e.g. E/CN.4/1997/150 for the same report). Particularly useful for bibliographical and research purposes is Annex IV to each session report, which lists all the E/CN.4-series documents issued for the session, specifying the agenda item to which each document relates. In addition to the (draft) resolutions and decisions reproduced in full in the sessional reports, useful documents in the E/CN.4 series include notes and reports by the Secretary-General of the United Nations, country-specific or thematic reports by Special Rapporteurs, and submissions by non-governmental organizations. While the sessional reports do give an overview of the proceedings of the Commission, indicating which countries took the floor during the discussion of a particular question, the researcher seeking deeper insight into the debate (e.g. statements by government or NGO representatives, discussion of amendments) will have to turn to the summary records of the relevant meeting (published under the symbol E/CN4/[year]/SR-).

Recommendations by the ILO to the World Conference on Human Rights: A description of ILO action on human rights, published as United Nations document A/CONF.157/PC/6/Add.3 (September 1991). A further contribution by the ILO was published under the symbol A/CONF.157/PC/61/Add.10 (March 1993). The first of these documents explains the ILO's procedures for adopting and supervising standards. The second contains an annex on the specific groups protected by the ILO, including the workers' and employers' organizations protected by the ILO's instruments on freedom of association (pp. 4-6). Also provided is a select bibliography of ILO publications concerning human rights.

Reports and documents of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Sub-Commission reports to the Commission on Human Rights, and its documents are published in the E/CN.4/Sub.2/ series. Its sessional reports carry a double symbol: one for the documentation of the Sub-Commission and one for that of the Commission. For example the report on its forty-eighth session (1996) was E/CN.4/1997/2-E/CN.4/Sub.2/1996/41.

Though a marginal source for research focusing on freedom of association, the documents of the Sub-Commission on Prevention of Discrimination and Protection of Minorities occasionally include material on related broader issues among its resolutions and decisions and the studies and reports by its Special Rapporteurs, e.g. **The realization of economic, social and cultural rights**, Final Report by D. Turk, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, document E/CN.4/Sub.2/1992/16.

Reports and documents of the Committee on Economic, Social and Cultural Rights

While freedom of association *per se* is but one of the many rights protected by the International Covenant on Economic, Social and Cultural Rights, the broader relevance of this instrument for the exercise of freedom of association and trade union rights has been stressed repeatedly by the ILO's Committee on Freedom of Association. Responsibility for implementing the Covenant rests with the Economic and Social Council, and until 1986 it was assisted in this task by a Sessional Working Group of Governmental Experts. Since 1987, however, the task of monitoring the application of the Covenant has been entrusted to the Committee on Economic, Social and Cultural Rights established for that purpose. The working documents of the Committee are published in the E/C.12- series. The Committee holds two three-week sessions per year and examines the reports that States Parties are required to submit under Article 16 of the Covenant on the measures which they have adopted and the progress made in achieving the observance of the rights recognized therein (on States' obligations under the Covenant, see

Alston and Quinn, 1987). Pursuant to ECOSOC Resolution 1988/4, which reformed the reporting procedure, States Parties are now required to submit an initial report dealing with the entire Covenant within two years of its entry into force at national level, followed by a comprehensive periodic report every five years thereafter (on the reporting process and examination of reports by the Committee, see Alston, 1997). States' reports are published in the E/- series. The reports of the Committee to ECOSOC are published in annexes to the Council's official documents; they carry a double symbol: E/-, for ECOSOC, and E/C.12/-, for the Committee. The summary records, one per session, are also published in the series E/C.12/[year]/SR.[#]. The Committee's "concluding observations" on each of the country reports are included in its sessional report.

At each of its sessions, the Committee devotes one day to a "general discussion", typically focusing on a particular right or question, in order to clarify the issues raised by specific provisions of the Covenant. These discussions are also presented in the Committee's sessional reports and often serve as the starting-point for drafting a "General Comment". Unlike the concluding observations on a particular State's report, General Comments reflect the general experience gained by the Committee over time and are addressed to all States Parties. In its General Comment No. 5 (1994), for example, the Committee examines the question of persons with disabilities, stressing inter alia that "trade union-related rights (Art.8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market". General Comment No. 6 (1995) focuses on the rights of older persons, who are also covered by the provisions of Article 8 of the Covenant. These general comments are contained in an annex to the Committee's report to the Council.

At its thirteenth session, in 1995, the subject of the Committee's general discussion was a draft optional protocol to the Covenant; and in 1997 the Committee submitted to the Commission on Human Rights a report on a draft optional protocol for consideration of communications concerning non-compliance with the Covenant (document E/CN.4/1997/105). If this initiative is taken to its logical conclusion, the procedures of the Committee could come closer to those of the Human Rights Committee (see below).

Reports by the International Labour Organization on progress in achieving observance of the provisions of the International Covenant on Economic, Social and Cultural Rights

Under Article 18 of the Covenant, "the Economic and Social Council of the United Nations may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities". The ILO's reports to the Council have been published as ECOSOC documents. Those of the past ten years carry the symbols E/1989/6, E/1990/9, E/1991/4, E/1992/4, E/1993/4, E/1994/5, E/1994/63, E/1995/5,

E/1995/39, E/1996/40, and E/1997/55. They include a list of the principal ILO Conventions relevant to Articles 6-10 and 13 of the Covenant and information on the situation of individual countries. An annex contains a list of countries with references to previous ILO reports in which their situation was examined.

Reports and documents of the Human Rights Committee

The International Covenant on Civil and Political Rights, which entered into force in March 1976, established an 18-member Human Rights Committee to examine the reports submitted by States Parties on measures taken to implement its provisions (for background and a comprehensive study of the Committee and its work, see McGoldrick, 1991). An initial report is due within one year of the entry into force of the Covenant for each State, followed by one periodic report every five years (on the reporting process and examination of reports by the Committee, see Pocar, 1997). An Optional Protocol to the Covenant also provides for consideration by the Committee of communications from individuals who claim to be victims of violations of any of the rights set forth in the Covenant (though only claims against States Parties to the Optional Protocol can be considered). For a comparison of this procedure with individual petition procedures under the European Convention on Human Rights, see Heffernan, 1997.

The Human Rights Committee holds three three-week sessions per year and reports annually to the General Assembly through the Economic and Social Council (Art. 45 of the Covenant). Its annual report is published as a Supplement (No. 40) to the Official Records of the General Assembly under the symbol A/[session No.]/40 ([year]). They contain a summary of the Committee's proceedings (examination of country reports), as well as all its decisions and recommendations, including in particular those expressed in General Comments made under Article 40(4) of the Covenant and in comments adopted at the conclusion of the consideration of each individual state report. Each annual report contains a list of all the sessional documents of the Committee, which are published in the CCPR/C/ series, including "decisions" on the admissibility of individual complaints and "views" on their merits. On the practice and "case law" of the Human Rights Committee, see Nowak, 1993.

Since 1992 the Committee has formally adopted written comments after considering each country report. These are set out in a document consisting of an introduction, a section on factors and difficulties affecting the implementation of the Covenant, a section on positive aspects, a section on main subjects of concern, and finally a section containing the Committee's suggestions and recommendations. By contrast, the Committee's General Comments deal with specific articles of the Covenant or particular issues raised under it, without making reference to any particular state report. A more detailed account of the oral comments made by Committee members

can be found in the summary records of the Committee, which are published in the CCPR/C/SR series.

Official records of the Human Rights Committee 1992/1993. Two volumes. New York, NY, United Nations, 1996. ISSN 1020-3508.

The first volume (CCPR/12) contains the summary records of the public meetings of the Committee, the second (CCPR/12/Add) the documents of the relevant sessions including the report of the Committee to the General Assembly and the periodic reports of States. The records and documents of the first to thirtieth sessions of the Committee (1977-1978 to 1986-1987) were published in **The yearbook of the Human Rights Committee** (two volumes each, New York, NY, United Nations). At its thirty-second session, however, the Committee decided to change that title to *Official Records of the Human Rights Committee* with effect from the publication of the material on its 1987/1988 sessions.

PART II
REGIONAL SOURCES OF INTERNATIONAL LAW AND RELATED MATERIAL

Human Rights: A compilation of international instruments. Volume II: Regional instruments. UN-ST/HR/1/Rev.5 (Vol. II). New York, NY, United Nations, 1997. ISBN 92-1-154124-7. ISSN 0251-7035.

This volume contains the instruments of the Organization of American States, the Council of Europe, the Organization of African Unity, the Conference for Security and Co-operation in Europe, and the Organization of the Islamic Conference.

THE COUNCIL OF EUROPE

Basic international instruments

European treaties. Strasbourg, Council of Europe Publishing, 1998. Volume 1: Conv. 1 to 84 (1949-1974), ISBN 92-871-3367-0. Volume 2: Conv. 85 to 168 (1949-1998), ISBN 92-871-3368-9.

These two volumes bring together more than 160 conventions and treaties concluded under the auspices of the Council of Europe since 1949. Appearing in chronological order of their opening for signature, the English, French and German texts of the instruments and their additional Protocols are presented in parallel on the same pages for easy reading and comparison. In particular, this reference includes the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the European Social Charter (Revised), and their Protocols. These documents can also be found in: **Human Rights: A compilation of international instruments, Volume II: Regional instruments**, UN-ST/HR/1/Rev.5 (Vol. II), New York, NY, United Nations, 1997, pp. 73-322. Alternatively, they can be consulted at the following Internet address: http://www.coe.fr. For direct access to the catalogue of Council of Europe publications use: http://book.coe.fr/GB/CAT/fr_index.htm.

The first of the instruments adopted by the Council of Europe is the Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention on Human Rights), which entered into force on 3 September 1953 (see Gomien, 1991). Its preamble states the resolve of "the Governments of European countries ... to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" of Human Rights. Its Article 11 protects freedom of association: "Everyone has the right to freedom of peaceful assembly and to free-

dom of association with others, including the right to form and to join trade unions for the protection of his interests." It also explicitly limits the scope of permissible restrictions on the exercise of this right.

The European Social Charter, adopted in 1961, entered into force on 26 February 1965. It was drawn up at a tripartite conference held at the initiative of the ILO and is based on the ILO standards in force at that time (see ILO, 1961a and 1961b; Valticos, 1963). An in-depth revision of the Charter, undertaken in 1991, led to the adoption in 1996 of a consolidated text incorporating the 1961 version as amended to date, the provisions of the 1988 Additional Protocol and new provisions resulting from the so-called revitalization process. However, the new text was not intended to supersede the old immediately and, pending further notice, the original and revised Charters currently coexist as similarly structured but legally separate instruments (for an analysis, see Vandamme, 1994). Part I of the Charter is a statement of policy committing the Contracting Parties to strive for "the attainment of conditions" in which certain rights and principles may be effectively realized. These include the right of all workers and employers "to freedom of association in national or international organisations for the protection of their economic and social interests" and "the right to bargain collectively". Part II of the Charter sets forth binding obligations whereby the Contracting Parties undertake, inter alia, "that national law shall not be such as to impair, nor shall it be applied so as to impair, this freedom" (Art. 5). Article 6, on the right to bargain collectively, lays down the obligation to recognize "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike".

Reports and documents of the supervisory bodies

Reports and documents of the supervisory machinery of the European Social Charter

States Parties to the European Social Charter undertake to report every two years to the Secretary General of the Council of Europe on the application of the provisions of Part II by which they are bound (subject to a minimum number of provisions accepted, Contracting Parties are not obliged to take on all the obligations provided for). Reports on the other provisions can be requested ad hoc by the Committee of Ministers of the Council of Europe.

The application of the Charter is entrusted to four supervisory bodies that act in succession. The first is a Committee of Independent Experts (appointed by the Committee of Ministers) which examines States' reports and then transmits them, together with its own report and conclusions, to a subcommittee of the Governmental Social Council, composed of representatives of all the Contracting Parties. The latter's conclusions — set out in a report to which the Experts' report is appended — are then presented to the

Committee of Ministers together with the views of the Consultative Assembly of the Council of Europe on the conclusions of the Committee of Independent Experts. The Committee of Ministers finally draws the policy conclusions of the supervisory process. Pursuant to the Turin Protocol of 22 October 1991 (see Mohr, 1992), which clarified the roles of the supervisory bodies, the Committee of Independent Experts now has exclusive competence to make legal assessments of the conformity of national situations with the provisions of the Charter. The sub-committee — now called Governmental Committee — is explicitly assigned the task of preparing the decisions of the Committee of Ministers.

The reports of the Charter's supervisory bodies are published by the Council of Europe, e.g. **Conclusions of the Committee of Independent Experts of the European Social Charter. Conclusions XIII 5 (1997)**, Strasbourg, Council of Europe, ISBN 92-871-3464-2; **European Social Charter, Governmental Committee: 13th Report (III) (1997)**, Strasbourg, Council of Europe, ISBN 92-871-3192-9; **Case-law on the European Social Charter — Supplement 1993**, Strasbourg, Council of Europe, ISBN 92-871-2298-9.

Documents of the supervisory bodies of the European Convention on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms established two bodies to oversee the application of its provisions. The first is the European Commission of Human Rights (Arts. 20-37), which examines in the first instance allegations of violations of the Convention made by one High Contracting Party against another and "petitions ... from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention" (Art. 25). Admissibility of a case before the Commission is subject inter alia to prior exhaustion of all domestic remedies. The Commission's task consists in trying to settle the cases referred to it amicably. The second body established by the Convention is the European Court of Human Rights (Arts. 38-56), which "may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement" (Art. 47) and only at the request of the Commission itself, a High Contracting Party whose national is alleged to be a victim, the Party which referred the case to the Commission or the Party against which the complaint has been lodged (Art. 48). The execution of the Court's judgements is entrusted to the Committee of Ministers. For a comparative study of individual petition procedures under the European Convention on Human Rights and the International Covenant on Civil and Political Rights, see Heffernan, 1997. A detailed analysis of the case law on the rights protected by the Convention, together with a review of the institutions supervising its application, can be found in Robertson and Merrils, 1993.

Human Rights Information Sheet No. [#]. Strasbourg, Council of Europe (Directorate for Human Rights).

Published irregularly since 1978, this series of booklets reports on developments in the human rights system of the Council of Europe, including cases before the Commission and the Court. The texts of resolutions of the Committee of Ministers and of the Parliamentary Assembly are reproduced in appendices.

Digest of Strasbourg case law relating to the European Convention on Human Rights. Cologne, Heymanns.

Annual since 1984, this publication analyses and indexes the decisions of the Court and the reports of the Commission and the Court by article of the Convention.

European Commission of Human Rights: Decisions and reports. Strasbourg, Council of Europe.

Published from 1975, this series reproduces the full texts or excerpts of the Commission's most significant decisions on the admissibility of applications and of its reports (excluding cases brought before the European Court of Human Rights). For example: **Decisions and reports 90A — European Commission of Human Rights (September 1997)**, Strasbourg, Council of Europe, 1998, ISBN 92-871-3547-9. In addition, summaries and indexes of the series are published regularly, for example: **Decisions and reports. European Commission of Human Rights — Summaries and Indexes Nos. 61-75**, Strasbourg, Council of Europe, 1996, ISBN 92-871-2933-9. Earlier material can be found in **Collection of decisions of the European Commission of Human Rights,** 46 volumes, Strasbourg, Council of Europe, 1960-1974, ISSN 0379-8461.

Minutes of the Plenary Session of the European Commission of Human Rights. Strasbourg, Council of Europe.

Each of the booklets in this series (begun in 1963) covers a session of several days, with information on the cases currently before the Commission. A separate section gives updates on the status of the Convention (ratifications, signature, entry into force of Protocols). The texts of reservations and declarations are reproduced in appendices.

Publications of the European Court of Human Rights, Series A: Judgements and decisions. Cologne, Carl Heymanns, from 1961.

Publications of the European Court of Human Rights, Series B: Pleadings, oral arguments and documents. Cologne, Carl Heymanns, from 1962.

Human Rights Case Digest. London, British Institute of Human Rights, 1990 to present.

This bimonthly publication contains summaries of Court judgements and decisions, decisions of the Committee of Ministers and decisions of the Commission. Cases are indexed by name and by applicable article of the Convention.

Jurisprudence de la Cour européenne des Droits de l'Homme. By Vincent Berger. Fifth edition. Paris, Sirey, 1996. xvi + 645 pp. ISBN 2-247-02486-6.

This selection of judgements of the European Court of Human Rights is presented thematically, its value enhanced by a case-specific bibliography at the end of each case report and an extensive general bibliography. The application of Article 11 (freedom of association) of the European Convention on Human Rights is illustrated by two cases, one of them centring on the important question of the consequences of closed shop agreements for workers who are not members of the trade union. On the right not to join a trade union under European law, see also Pettit, 1993.

Also by Vincent Berger, see the (more dated) English version: **Case law of the European Court of Human Rights.** Volume 1: 1960-1987. Dublin, Round Hall Press, 1989, 478 pp.

Fundamental social rights: Case law of the European Social Charter. By Lenia Samuel. Strasbourg, Council of Europe, 1997, 450 pp. ISBN 92-871-3190-2.

For each of the rights secured in the Charter, Lenia Samuel presents the corresponding substantive rules and the case law. With its practical examples, this book makes it easy to understand the real scope of the Charter's provisions, while at the same time reviewing the situations prevailing in the 20 States that have now ratified this instrument.

The right to organise and to bargain collectively. Social Charter Monograph No. 5, Strasbourg, Council of Europe, 1996, 110 pp. ISBN 92-871-3158-9.

This book examines the protection afforded the right to organize and to bargain collectively under the European Social Charter.

The Social Charter of the 21st Century. Strasbourg, Council of Europe, 1997, 327 pp. ISBN 92-871-3411-1.

This volume contains the reports and debates of a colloquium held in May 1997 on the theme of "The Social Charter of the 21st Century" in Strasbourg. The colloquium covered a number of the essential questions pertaining to respect for human rights including: the role of a charter of

fundamental human rights; improvements to be made to the different instruments which guarantee such rights; the usefulness of a collective complaints procedure; and the interaction between democratic security, social rights and the rule of law.

THE EUROPEAN UNION

Basic international instruments

European Union — Selected instruments taken from the Treaties. Luxembourg, Office for Official Publications of the European Communities, 1995. Book 1, Vol. 1, 897 pp. ISBN 92-824-1240-7; Book 1, Vol. 2, 591 pp. ISBN 92-824-1180-X.

This edition contains the treaties of the European Communities and of the European Union. Of particular relevance to the right of association are the Treaty establishing the European Economic Community (Treaty of Rome, 1957), the Single European Act (The Hague, 1986) and the Treaty on European Union (Maastricht, 1992), the last two amending the first.

The Treaty of Rome proclaims that "Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained" (Art. 117). It also states that the Commission shall promote close cooperation among Member States in the social field, particularly in matters relating to "the right of association and collective bargaining between employers and workers" (Art. 118). The Single European Act supplements this with an Article 118b which reads: "The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement".

The Treaty on European Union is accompanied by a Protocol and an Agreement on Social Policy, which do not apply to the United Kingdom. Article 2 of the Agreement defines the fields in which minimum requirements regarding social policy may be established either by a qualified majority or by unanimity. It stipulates that the provisions of this article "shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs" (Art. 2(6)). Article 4 of the Agreement provides that the social partners at the European level may conclude agreements that can be transformed, at their request, into directives by the Council of Ministers without being considered by the Commission. This procedure has led to the adoption of two directives, one concerning parental leave and the other part-time work. It should be noted that this social Agreement was incorporated into the 1997 Treaty of Amsterdam, thereby making its provisions applicable to all the States of the European Union, including the United Kingdom, as soon as they ratify the Treaty. For the full text of the Treaty of Amster-

dam, see **Treaty of Amsterdam amending the Treaty on European Union, the treaties establishing the European Communities and certain related acts**, Luxembourg, Office for Official Publications of the European Communities, 1997. 144 pp. ISBN 92-828-1652-4.

Community Charter of the Fundamental Social Rights of Workers. Luxembourg, Office for Official Publications of the European Communities, 1990. ISBN 92-826-0975-8.

Articles 11 through 14 of the Community Charter concern freedom of association and collective bargaining. Article 11 provides that: "Employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defence of their economic and social interests. Every employer and every worker shall have the freedom to join or not to join such organizations."

Title II of the Charter is concerned with implementation: "It is more particularly the responsibility of the Member States, in accordance with national practices, notably through legislative measures or collective agreements, to guarantee the fundamental social rights in this Charter" (Art. 27). However, the Commission is required to present an annual report on the application of the Charter to the European Council, the European Parliament and the Economic and Social Committee. It is also invited "to submit ... initiatives which fall within its powers, ... with a view to the adoption of legal instruments for the effective implementation ... of these rights" (Art. 28). In November 1989 the Commission thus submitted a programme of action.

Reports and documents of the supervisory machinery

Communication from the Commission concerning its action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers. COM (89) final. Luxembourg, Office for Official Publications of the European Communities, 1989.
ISBN 92-77-55488-6.

Noting that "[t]he right to freedom of association and collective bargaining exists in all the Member States of the Community" (p. 29), the Commission does not propose any initiative in its action programme under the relevant section of the Charter. Any problems arising from the application of the underlying principles must, in the Commission's view, be settled directly by the social partners or, where appropriate, by the Member States. Reference is also made to Article 118b of the Treaty of Rome which specifies that the Commission's role in this regard should be to improve social dialogue.

Fourth report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of the Community Charter of the Fundamental Social Rights of Workers and on the Protocol on Social Policy annexed to the Treaty establishing the European Community. Luxembourg, Office for Official Publications of the European Communities, 1996. 296 pp. ISBN 92-827-8481-9.

This is the Commission's latest report under Arts. 29-30 of the Charter. Like the earlier ones, it is divided into two parts. In the first part, the Commission reports on progress made in implementing its action programme and the Protocol on Social Policy. The second part deals with the application of the Community Charter by the Member States (excluding Austria, Finland and Sweden). Its application is evaluated by means of a questionnaire which is annexed to the report. The earlier reports have the following references: First report: COM (91) 511 final; Second report: COM (92) 562 final; Third report and supplement: COM (93) 568 final and COM (95) 184 final.

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

Basic international instruments

The main instruments adopted by the Conference for Security and Co-operation in Europe (renamed Organization for Security and Co-operation in Europe since 1995) can be found on pp. 369-473 of **Human Rights: A compilation of international instruments, Volume II: Regional instruments**, UN-ST/HR/1/Rev.5 (Vol. II), New York, NY, United Nations, 1997 (ISBN 92-1-154124-7, ISSN 0251-7035). Ever since the Helsinki Final Act of 1975, respect for human rights has indeed featured prominently in the work of the Conference, with a number of meetings subsequently devoted to its "human dimension".

Specific provision for freedom of association is made in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (29 June 1990): "The right of association will be guaranteed. The right to form and — subject to the general right of a trade union to determine its own membership — freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards" (para. 9.3). "Free and independent trade unions" are also mentioned in connection with the "extensive range of democratic institutions" upon which "vigourous democracy" depends (para. 26).

Reports of the supervisory machinery

Monitoring of the application of these and other provisions pertaining to the CSCE's "human dimension" is primarily based on an undertaking to "exchange information and respond to requests for information and to representations made ... by other participating States" (para. 1 of the section on the human dimension of the Concluding Document of the 1986 Vienna Meeting, adopted in 1989). This mechanism was then strengthened by the stipulation of a four-week deadline for responding to requests for information (para. 42.1 of the Document of the Copenhagen Meeting). The Document of the Moscow Meeting of the Conference on the Human Dimension (3 October 1991) went on to establish a "resource list" of experts appointed by the participating States and to provide that "a participating State may invite the assistance of a CSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions ... relating to the human dimension" (para. 4). "Furthermore, one or more participating States, having put into effect paragraphs 1 or 2 of the human dimension mechanism [Concluding Document of the 1986 Vienna Meeting], may request that the CSCE Institution inquire of another participating State whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimension of the CSCE" (para. 8). If the State in question fails to set up the mission within ten days or if the outcome of the mission is unsatisfactory, provision is made for a mission of rapporteurs to be sent by the CSCE Institution to "establish the facts, report on them and ... give advice on possible solutions to the question raised ... The CSCE Insti-tution will transmit [their] report, as well as any observations by the requested State or any other participating State, to all participating States without delay. The report may be placed on the agenda of the next regular meeting of the Committee of Senior Officials which may decide on any possible follow-up action. The report will remain confidential until after that meeting of the Committee" (para. 11).

ORGANIZATION OF AFRICAN UNITY

Basic international instruments

The African Charter on Human and Peoples' Rights. HR/PUB/90/1. New York, NY, United Nations, 1990. 51 pp.

Contains the text of the Charter and the Rules of Procedure of the African Commission on Human and Peoples' Rights, with signatures and ratifications listed in an annex. Although the African Charter on Human and Peoples' Rights of 1981 does not refer directly to freedom of association or

to the right of association as it applies to employers and workers, its Article 10 states that: "Every individual shall have the right to free association provided that he abides by the law."

Documents of the supervisory machinery

The Charter requires States Parties to report every two years on the "legislative or other measures" taken to give effect to the rights and freedoms it enshrines (Art. 62). In addition to the examination of periodic reports, the functions of the African Commission on Human and People's Rights include promotional activities (studies and research, information collection and dissemination, encouragement of national and local institutions, etc.), ensuring "the protection of human and people's rights under conditions laid down by the ... Charter", and interpretation of the provisions of the Charter (Art. 45). It may also be called upon to examine communications by States Parties alleging violations of the Charter and, subject to a number of conditions, communications from other sources (Arts. 46-59). The basic source on the Commission's work is: ***Review of the African Commission on Human and Peoples' Rights*** (Banjul, The Gambia, OAU). See also:

Conference on the African Commission on Human and Peoples' Rights, June 24-26, 1991. New York, NY, The Fund for Peace, 1991. 68 pp.

Conference proceedings on the work of the Commission, human rights NGOs and state compliance with the African Charter.

THE ARAB LABOUR ORGANIZATION

Basic international instruments

The Arab Labour Charter and the Constitution of the Arab Labour Organization. Cairo, Arab Labour Office, 1965.

The Arab Labour Conventions and Recommendations. Cairo, Arab Labour Office, 1994.

For a discussion of the aims of the Arab Labour Organization, see El-Hedeiri, 1973. Freedom of association is referred to in Arab Labour Convention No. 1, 1966, concerning Labour Standards; its Article 76 provides that: "Workers shall be entitled to form among themselves trade unions to defend their rights". This wording was retained in Arab Labour Convention No. 6, 1976, concerning Labour Standards, which is a revision of Convention No. 1 (pp. 20 and 82). For an analysis of Arab Labour Convention No. 1 and

how it was influenced by ILO Conventions and other international instruments, see Badaoui, 1970. Arab Labour Convention No. 8, 1977, concerning Trade Union Freedoms and Rights, is specifically concerned with the right of association (pp. 97-101).

Reports and documents of the supervisory bodies

The Arab Labour Organization has adopted the same tripartite structure as the ILO. It also has a Committee on Freedom of Association and a Committee of Experts in charge of monitoring the application of conventions, whose reports are submitted to a tripartite commission on the application of standards at each session of the Arab Labour Conference. The working documents of these bodies are published only in Arabic by the Arab Labour Office.

Work System of the Trade Union Freedoms Committee in the Arab Labour Office, in *Arab Labour Review* (Cairo), 1976, No. 7, pp. 237-245.

In this article, the Arab Labour Office presents the rules of procedure of its Trade Union Freedoms Committee as approved by the Arab Labour Conference at its fifth session in Alexandria (6 to 13 March 1976).

THE ORGANIZATION OF AMERICAN STATES

Basic international instruments

The inter-American system: Treaties, Conventions and other documents — A compilation. Annotated by F. Garcia-Amador, Secretariat for Legal Affairs, Organization of American States (Washington, DC). New York, NY, Oceana Publications, 1983. 505 pp.

Human Rights: A compilation of international instruments. Volume II: Regional instruments. UN-ST/HR/1/Rev.5 (Vol. II). New York, NY, United Nations, 1997. ISBN 92-1-154124-7. ISSN 0251-7035. pp. 5-72.

Contains the American Declaration of the Rights and Duties of Man (Bogotá, 2 May 1948) and the American Convention on Human Rights (Pact of San José, Costa Rica), signed on 22 November 1969, and its Additional Protocol in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted on 17 November 1988.

The American Declaration of the Rights and Duties of Man proclaims the right of association in the following terms: "Every person has the right to associate with others to promote, exercise and protect his legitimate interests

of a political, economic, religious, social, cultural, professional, labor-union or other nature" (Art. 22).

The Preamble of the Convention recalls the Universal Declaration of Human Rights. Its Article 16 is specifically concerned with freedom of association: "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. ... The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others." Members of the armed forces and the police are subject to a special provision whereby they may be denied exercise of the right of association.

Article 8 (trade union rights) of the Protocol of San Salvador provides that the States Parties shall ensure "the right of workers to organize trade unions and to join the union of their choice", the existence of freely functioning trade union federations and confederations, and "the right to strike". It further stipulates that: "No one may be compelled to belong to a trade union."

Reports and documents of the supervisory machinery

Under Article 33 of the Convention, "competence with respect to matters relating to the fulfillment of the commitments made by the States Parties" is entrusted to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Reports and documents of the Inter-American Commission on Human Rights

The Convention does not provide for a specific reporting procedure on the realization of the rights it protects, but States Parties are required to "transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires" (Art. 42). And under Article 26, the States Parties undertake to "adopt measures ... with a view to achieving progressively, by legislation or other appropriate means, the full realization of [those] rights". The Commission is empowered "to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights" and "to make recommendations to the governments ... for the adoption of progressive measures in favor of human rights" (Art. 41).

In addition to preparing studies and reports for the purposes of its supervisory role, the Commission's functions also include examination of and action on "petitions" (by individuals or non-governmental organizations complaining of violations of the Convention) and "communications" (from a State Party alleging a violation by another) (Arts. 44-51). Subject to admissibility under Articles 46-47 — which includes exhaustion of all domestic remedies — the Commission tries to settle complaints amicably. If it succeeds, its report on the facts of the case and the solution reached is communicated to the Secretary General of the Organization for publication. If it fails and the case is not referred to the Inter-American Court of Human Rights either, the State concerned is allowed additional time to take remedial measures in response to the Commission's recommendations, whereupon a report stating the facts of the case and the Commission's conclusions is published subject to an absolute majority vote by its members.

Only the Commission and the States Parties can submit a case to the Court subject to prior completion of amicable settlement proceedings before the Commission (Art. 61). The Court's judgements are not appealable. Like the Commission, the Court reports annually to the General Assembly of the Organization on its work during the previous year, specifying in particular the cases in which a state has failed to comply with its judgements and making any pertinent recommendations (on the history, functions and jurisprudence of the Court and a comparative perspective, see Davidson, 1992). Useful sources on the Convention's supervisory machinery include the following:

Annual Report — Inter-American Commission on Human Rights [year]. Washington, DC, Organization of American States, from 1975.

Country reports. Washington, DC, Organization of American States, from 1979.

These are Commission reports on human rights in individual countries, entitled **Report on the situation of human rights in** [name of country]. See Perkins (1990) for a list of the reports issued as from 1980.

Annual Report of the Inter-American Court of Human Rights to the General Assembly. Washington, DC, Inter-American Court of Human Rights, from 1979.

Inter-American Court of Human Rights: Series A — Judgements and opinions. San José, Costa Rica, Secretaria de la Corte, from 1982.

Inter-American Court of Human Rights: Series B — Pleadings, oral arguments and documents. San José, Costa Rica, Secretaria de la Corte, from 1983.

Inter-American Court of Human Rights: Series C — Decisions and judgements. San José, Costa Rica, Secretaria de la Corte, from 1987.

Human rights: The Inter-American System. Five volumes. By T. Buergenthal and R. Norris. Dobbs Ferry, NY, Oceana Publications, from 1982.

A periodically updated loose-leaf publication in five volumes. Volume 1 contains basic documents; volume 2 gives the legislative history of the Convention; and volumes 3-5 report on cases and decisions of the Commission and the Court.

ASIA-PACIFIC

The Asia-Pacific area is the only region that still has no binding, multilateral instrument on human rights. Of the many relevant declarations adopted by subregional organizations (mainly ASEAN and SAARC), only one mentions freedom of association: the Kuala Lumpur Declaration on Human Rights, approved by the General Assembly of the ASEAN Inter-Parliamentary Organization in September 1993. Its Article 13 proclaims that: "Everyone has the right to freedom of association. No restrictions may be imposed on the exercise of this right other than those prescribed by law." Article 21 of this Declaration goes on to say that it is "the task and responsibility of Member States to establish an appropriate regional mechanism on human rights".

The full text of the Kuala Lumpur Declaration together with an impressive collection of other material and sources on human rights in the Asia-Pacific region has recently become available in: **Asia-Pacific Human Rights Documents and Resources.** Edited by Fernand de Varennes. The Hague, Kluwer Law International, 1998. Volume 1. 320 pp. ISBN 90-411-0578-6.

This comprehensive work contains a wealth of historical documents from the 1840 Treaty of Waitangi (between Queen Victoria and the Maori Chiefs of New Zealand) to the 1922 League of Nations Mandate for Palestine. It also reproduces constitutional and treaty provisions, both historical and current, and the texts of important governmental and non-governmental declarations. The book ends with an extensive list of Asian human rights organizations and resources, with full addresses and, if available, telephone/fax numbers, e-mail addresses and websites.

PART III
INDEPENDENT REPORTING OF VIOLATIONS

In addition to the reporting of violations in accordance with the procedures provided for by international instruments, a number of human rights violations are reported by non-governmental organizations, trade union confederations or governmental organizations. Owing to the huge volume of these publications, only a selection of those dealing specifically with trade union rights, especially the right of association, are suggested here.

Annual survey of violations of trade union rights. By International Confederation of Free Trade Unions. Brussels, ICFTU, 1998, 142 pp.

This annual report summarizes the situation of trade union rights and the right of association throughout the world, presenting individual cases of violation country by country. Annexed to the report is a survey of complaints submitted by the ICFTU, national affiliates and international trade secretariats under consideration by the ILO Committee on Freedom of Association, together with the texts of ILO Conventions Nos. 87 et 98.

Report on trade union rights worldwide, 1996-1997. By World Confederation of Labour. Brussels, 1997, 64 pp.

This annual report reviews the situation of trade union rights region by region, as well as in certain countries.

Defending teacher union rights. By Jean St.-Denis. Brussels, Education International, 1994, 78 pp.

This brochure focuses on defending the right of association of teachers. It contains an explanation of the ILO's supervisory machinery, summaries of cases submitted to the Committee on Freedom of Association of the ILO, and extracts of Conventions Nos. 87, 98, 151 and 154.

International union rights. Edited by International Centre for Trade Union Rights. London, ICTUR. ISSN 1018-5909.

Quarterly since 1992, this magazine publishes short signed articles focussing on specific countries/regions or taking up broader, international issues concerning trade unions, freedom of association and related rights.

Country reports on human rights practices for 1997. Washington, DC, United States Department of State, 1998.

The Country Reports on Human Rights Practices are submitted annually by the US Department of State to the US Congress. The reports cover internationally recognized individual, civil, political and labour rights, as set forth in the Universal Declaration of Human Rights. The preface of the report specifies that: "The right to join a free trade union is a necessary condition of a free society and economy. Thus the reports assess key internationally recognized worker rights, including the right of association; the right to organize and bargain collectively; prohibition of forced or compulsory labor; minimum age for employment of children; and acceptable work conditions."

PART IV
SELECTED SECONDARY SOURCES

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