

Fundamental rights at work: Overview and prospects

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Editorial

Three years after the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up by the 86th Session of the International Labour Conference, it makes sense to try and take stock of the situation. Not that this would represent a definite exercise, but analysing trends, improvements or setbacks would help determine immediate and future work. This is the aim of this issue of *Labour Education* which has relied heavily on support from trade union experts and ILO specialists, including colleagues from the Bureau for Workers' Activities as well as relevant departments at headquarters.

There is no doubt that the Declaration and its Follow-up represent a milestone in the ILO quest for the realization of core labour standards everywhere. It has a twofold significance, as many of our contributors underline. First, it recognizes that all member States have an obligation to respect "in good faith and in accordance with the Constitution" the principles concerning the fundamental rights of workers. This applies to freedom of association, 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.

Secondly, the Follow-up mechanisms include the production of reports on progress achieved by member States which have not yet ratified the Conventions in implementing the principles enshrined in them. This calls for an active role by national trade union organizations in ensuring that their own comments and views are taken into account when reviewing implementation in their respective countries. In this respect, it is worth recalling that the Bureau for Workers' Activities has produced a special education guide to assist trade unions in making optimal use of the Declaration.¹

On the positive side, the promotion of the Declaration has led to improving the record of ratifications. Out of 175 member States, 174 have now ratified at least one of the eight core Conventions referred to in the Declaration, and 47 of them have ratified all the instruments concerned. This means that beyond committing themselves to respecting the principles of the instruments, they have accepted that their achievement or lack of it be scrutinized by the ILO supervisory bodies. The role of the supervisory system remains therefore central in the standards activities of the ILO.

In addition, the first two Global Reports under the Follow-up to the Declaration have led to major action programmes to encourage and assist countries in meeting their obligations.

Yet, as can be seen from the contributions to this issue of *Labour Education*, much remains to be done. Nobody in fact believed that violations of basic workers' rights would disappear with the stroke of a pen. But the increasing number of abuses is, and should be, a cause for deep concern. And not only for the ILO Workers' group but for all of its constituents. Attacks on trade unions and trade unionists, the persistence of high levels of child labour and forced labour and continued discrimination represent a threat to economic and social stability and to peace. They represent a major obstacle to progress in all spheres related to work.

While making full use of the Declaration and its Follow-Up, trade unions have chosen additional avenues to promote basic workers' rights. On 9 November 2001, trade unions world-wide will take part in a "Global Unions Day of Action" at the call of the International Confederation of Free Trade Unions. The Day of Action, taking place during the ministerial meeting of the World Trade Organization in Doha (Qatar), will be built around the principle "Making Globalization Work for People". At its Congress this October, the World Confederation of Labour discussed proposals aimed at securing a world governance of the global economy.

Indeed, the respect for fundamental principles and rights at work is a challenge to the international community as a whole. It means basically that the globalization process should be given a human face and that workers in developing, transition and industrialized countries should be able to fully and equally benefit from it.

The ILO is uniquely placed to contribute to the response to this challenge. Its constituents represent not only governments but also employers' organizations and trade unions. That is, key actors in the political, economic and social fields. It also comes as no surprise, that at the present moment it is the only international forum where the social dimensions of globalization are being debated. And this November the ILO's Governing Body will be discussing the proposal by the ILO Director-General to set up a world commission of eminent personalities to help prepare a special report on this subject.

Together with its existing supervisory mechanisms, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up has definitely contributed to enhancing the visibility of the ILO in the present debates over globalization. By making full use of these instruments, in particular through the reporting systems, trade unions will help promote the leadership of the ILO and its authority as it seeks to encourage other international organizations to support its efforts in the field of fundamental workers' rights.

The ILO Declaration and the Organization's supervisory mechanisms are no substitute for trade union action. But they will remain a powerful tool in the shared objective of promoting development and social justice based on respect for universal labour standards.

Manuel Simón Velasco
Director
ILO Bureau for Workers' Activities

Note

¹ ILO: *ILO Declaration on principles: A new instrument to promote fundamental rights*, a workers' education guide by Monique Cloutier, Bureau for Workers' Activities, Geneva, 2000. (Available in Arabic, English, French, Portuguese, Russian and Spanish.)

Core labour standards: A level playing field for all countries

The follow-up mechanisms of the ILO Declaration and the supervisory bodies should work in tandem to achieve the aims and objectives enshrined in the ILO Constitution.

William Brett

Chairman of the ILO Workers' group
Vice-Chairman of the ILO Governing Body

When in 1998, the International Labour Organization (ILO) adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up, the ILO Workers' group, and actually most of the Government and Employers' delegates at this 86th Session of the International Labour Conference, saw the move as being "truly historic", and rightly so. In fact, as the General Secretary of the International Confederation of Free Trade Unions (ICFTU), Bill Jordan, put it, the Declaration and its Follow-up could help give more teeth to the ILO in its efforts to secure a social dimension and a human face to globalization, both of which are sorely lacking.

The Declaration makes clear that all ILO member States have an obligation, by the sole virtue of their membership of the Organization, "to respect, to promote and to realize" workers' fundamental rights, defined as: 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. And this whether or not they have ratified the relevant Conventions.

The Declaration goes on to say that the ILO itself has an obligation to assist its

members to attain these objectives and to encourage other international organizations to support its efforts.

At the time of its adoption, I said, speaking on behalf of the Workers' group, that "the verdict of history will turn on how effectively the Declaration and Follow-up are used. That will require more political will than was shown in some quarters during this debate". It is no secret that for some the adoption of the Declaration was seen as a way to confine the debate on core labour standards to the ILO at a time when pressure was growing (and still is) to promote respect for labour rights in international forums, in particular international financial and trade institutions. Others may have concluded (hastily) that the Declaration may have represented some sort of a licence not to ratify Conventions or a means of diluting the essential role of the ILO supervisory mechanisms or even of weakening the possibility for the ILO to adopt new standards.

Let us be clear. The Declaration and its Follow-up are to be considered as a powerful, yet additional, tool to assist in the task of ensuring respect for fundamental principles and rights at work in all countries and indeed in improving working and living conditions for workers and their families everywhere.

Initial resistance to the adoption of the Declaration was also based on the fears and concerns, undoubtedly real but definitely unfounded, that elements in it could be used for protectionist purposes. While the Workers' group in the 1998 Conference opposed reference to trade issues as lying outside of the ILO's competence, the Declaration states that it is not to be used for protectionist trade purposes. That hopefully will reassure those who expressed such preoccupations.

Certainly, to ask to belong to a trade union and for it to bargain on your behalf is not protectionism; to seek an end to child labour is not protectionism; to wish to eradicate discrimination at the workplace is not protectionism; to call for an end to the slavery of forced labour is not protectionism. But to deny those rights to workers in the name of comparative advantages — that is truly protectionism. In fact, the Declaration deals a blow to the real protectionists because it points the finger at those who extract commercial advantages from abuse of workers' rights.

And unfortunately there are still too many of them. Elsewhere in this issue of *Labour Education* evidence is brought to the increasing number of violations of basic trade union rights. An ICFTU report, published only recently, and referred to by one of our contributors, shows that the number of trade unionists killed in the line of duty in 2000 has again risen over the previous year. Child labour is still rampant, affecting more than 200 million girls and boys who are deprived of their right to a childhood and to education. Export processing zones proliferate and with them the number of workers, mainly women workers, trapped into no-right areas. Discrimination in employment is increasing while privatization of prisons is adding to the number of people victims of forced and compulsory labour. The first two Global Reports published in 2000 and 2001 under the Follow-up to the Declaration, on Freedom of Association and Forced Labour respectively also indicate that much remains to be done for these rights to be fully realized everywhere.

By adopting the Declaration in 1998, the ILO Workers' group, and indeed most of the delegates, recognized that abuses will not disappear with the stroke of a pen, even at the bottom of a powerful document. If anything the ILO Declaration represents a strong searchlight illuminating those areas that have previously remained in darkness. The illumination will provide for technical assistance to be directed to assisting in the task of ensuring that wrongs are corrected.

There are, however, three aspects to bear in mind when assessing the purport of the Declaration. First, the objectives of this document should not be construed as limiting the ILO's moral persuasion to its own constituency. By voting for the Declaration, the Workers' group was intent on increasing the authority of the sole organization within the UN system where workers have a direct input. It is clear from that that action to bring about a cohesive and concerted approach to globalization means that core labour standards have to be on the agenda of all international institutions whose policies and action have an impact on workers and their living conditions. In short, governments cannot say one thing in the ILO and speak another language in institutions such as the World Trade Organization (WTO) or the Bretton Woods institutions, where understanding for labour rights and workers' legitimate concerns have been limited. At the moment, much to the credit of the ILO, our Organization is the unique place where the social dimensions of globalization are being discussed. The recent initiative by the Director-General to set up a World Commission of eminent personalities to help prepare a special report on this subject and the agreed proposal to use the ILO's Working Party on the Social Dimensions of Globalization as a permanent forum for exchange and dialogue on the issue could help increase the authority and leadership of the tripartite agency in the UN system and beyond. As my French colleague, Marc Blondel, Workers' delegate from France, put it at the 1998 Conference, "I dream of the day when we will find a footnote attached to WTO dec-

larations and deliberations that states that the said declarations and deliberations can have no impact on international labour standards". Globalization needs a concerted response that fully integrates concerns for workers' fundamental rights.

There is another important condition for the Declaration and its Follow-up to deliver on their objectives: the strengthening of the supervisory mechanisms for the application of international labour standards. Besides the new Declaration, the supervisory bodies, the Conference's Committee on the Application of Conventions and Recommendations and the Committee on Freedom of Association, which celebrates its 50th anniversary this year, have definitely played a major role to promote respect for workers' rights worldwide. Their contribution to the restoration of democracy in such countries as Chile, Indonesia, Nigeria, Poland, Portugal, South Africa and Spain is only the most visible part of an extraordinary record of achieving tangible progress in the pursuit of ILO objectives. If these mechanisms did not exist, they would have to be invented. Today, they need support and strengthening in the face of the devastating side effects of globalization in the lives of working people. The Declaration is an additional tool, but is no substitute for them. The follow-up mechanisms of the Declaration and the supervisory bodies should work in tandem to achieve the aims and objectives enshrined in the ILO Constitution.

Thirdly, the very notion of fundamental workers' rights should not be read as giving secondary status to other equally important international labour standards. They are fundamental in the sense that without respect for core labour standards, other standards will either be inaccessible

or under threat. In fact, fundamental workers' rights are enabling rights without which other objectives stand in jeopardy. What are the chances for respect for ILO standards on social protection, on maternity protection, on migrant workers, on occupational safety and health or the prevention of major industrial accidents, if workers are denied the right to form unions or to bargain collectively? What are the chances for improvement of the conditions of working women if discrimination in employment is allowed to persist? What are the chances for the employment promotion conventions if child labour is allowed to continue? International labour standards are the lifeblood and *raison d'être* of this Organization, and the Workers' group will thwart any attempt coming from any quarters to weaken or dilute the supervisory system of the ILO.

Fundamental workers' rights and principles are both a means and an end in themselves. They are human rights at work that must be respected. And they are the only means of achieving social progress in all spheres of labour for all.

As we enter the third millennium, the accelerating globalization of the economy renders ever more urgent the mission of the ILO, which is to establish and promote global minimum social rules, without which there can be no sustainable development, political and social stability, social justice or peace.

Including labour standards on the globalization agenda is not to be considered as a problem. It is a central component of the solution. The sooner the proponents of liberal capitalism understand that the better. In any case Seattle, Geneva, Prague and more recently Genoa sent very clear signals to them.

Relevance of fundamental principles and rights and the dynamics of international labour standards

Standard-setting activities, whether taken at national or international level, must be consistent and passionate as well as diverse in form and appropriate. It is a question of perpetual renewal, a crucial struggle for freedoms, the full enjoyment of which is conditioned by the rule of law.

Jean-Claude Javillier

Director of the International Labour Standards Department
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The law is a single entity. It must be relevant and consistent. Legal standards are intended to provide concrete and appropriate solutions to the daily problems with which citizens are confronted. Accordingly, international labour law must help to protect workers and their organizations effectively. It must guarantee decent work and do so in a wide range of different economic and social contexts. This is the social conscience that is expressed by the International Labour Organization, now as in the past, in this era of globalization just as during the Cold War. International labour standards are a reflection of these requirements; indeed, they are the indispensable, if not favoured, instrument for achieving these ends. Any legal standard derives its strength from its roots in genuine convictions and shared beliefs. For the ILO, they can only be universal.

Let us start off by saying that we have every reason to be proud of these principles and international standards. We have no reason whatsoever to doubt their relevance. The struggle embarked on at the end of the First World War and relentlessly pursued and stepped up since the end of the Second World War, still requires deepening, renewing, promoting and sharing. By the same token, we must fervently endeavour to ensure that all the various standards are explicitly and permanently

linked. It is this complementarity between the standards and mechanisms developed to promote their application that generates the very special momentum of international labour law. Indeed, even if this body of laws is open to criticism and further progress can be made, especially in the years to come, this unique dynamism in the international system of standards will ultimately triumph over all scepticism. However, to facilitate this, we must focus on what is essential, strive for creativity, demonstrate our unstinting determination and a pedagogical approach at both the international and national levels.

We are currently learning a great deal from this point of view for we can now see clearly that the fundamental principles have never lost their relevance. It is fortunate that this relevance has recently been underscored by those who give us our mandate. Likewise, we should highlight how closely such principles are linked to other, more limited, more technical, but equally vital standards. We should not be astonished at this, for every legal body has a heart, limbs, arteries and cells. Moreover, beyond the body we must also speak of a soul, a spirit, the breath of international labour law. Any education, especially workers' education, tends not only to analyse the instruments and techniques behind international labour standards, but

also – indeed above all – to reconstruct these key aspirations of workers and, more generally, of all human beings.

Accordingly, we are all called upon to ensure that these principles and standards are known, appreciated and implemented by all. And to contribute toward the success of these efforts, from which we will *all* benefit, not just workers, but also employers and governments, we must untiringly convince others of the relevance of these fundamental principles and of the complementarity of international labour standards. We are necessarily prompted to do this as a consequence of the major upheavals of an economic and technological nature, in particular, which are rocking the world at the dawn of this new millennium.

For these changes constitute both challenges and opportunities. What we must do is return, in a way, to the historical roots of international labour standards. From this point of view the re-reading of works dating from the last century dealing with both labour law and social security, will enable us to find out just how constant some debates are and also whether or not there is a need to adapt the standards in question to prevailing political, economic and, of course, social situations. Standard-setting activities, whether taken at national or international level, must be consistent and passionate as well as diverse in form and appropriate. Here too it is a question of perpetual renewal, a crucial struggle for freedoms, the full enjoyment of which is conditioned by the rule of law.

We must never yield to the temptation to lose heart, particularly under the pressure of a few disenchanted remarks, especially targeting international labour law, regardless of where they come from. Instead we should highlight the clear advances made by the rule-of-law around the world, a striking appeal to the legal domain for questions which, until just a short time ago, were associated with arbitrariness and violence. Fortunately, the last century – which saw so much violence and so many crimes committed against humanity – ended with a certain breath of fresh air in the domain of international law, especially criminal law.

Relevance and complementarity

The universal ratification of basic Conventions has not yet been attained. It is true that some progress has been made, especially since the ratification campaign was launched by the Director-General in 1995. Those who give us our mandate managed to seize an opportunity to make more headway by taking a decisive political step in 1998, namely proclaiming absolutely unequivocally both the universal relevance and topicality of the fundamental rights and principles underlying work. The economic situation, as well as the social and international context, demand that the principles applied in fundamental Conventions once again, and emphatically, be promoted and respected in good faith by all the Organization's member countries. The main principles here are freedom of association (the right to organize), the prohibition of forced labour, protection against discrimination and, finally, child labour.

Lawyers still have to flesh out these fundamental principles and rights, which are not just stars in the prescriptive firmament, but rights and obligations that are meant to be implemented and that are found in international labour standards and especially in Conventions and Recommendations. Thus, in 1998 eight fundamental standards covering four topics, whose relevance and topicality need no highlighting, were placed at the heart of international labour law. It will come as no surprise to anybody that these topics included freedom of association (Conventions Nos. 87 and 98), forced labour (Conventions Nos. 29 and 105), discrimination (Conventions Nos. 100 and 111) and child labour (Conventions Nos. 138 and 182). The constant aim is to promote (trade union) freedom, combat discrimination (of all kinds) and eradicate forced labour and child labour.

However, as William Brett, Chairman of the ILO Workers' group, so usefully highlights elsewhere in this publication (see page 1), the complementarity of the instruments, and more generally of all the

standards, has to be underlined. The aim of a Declaration adopted in 1998 cannot and will never be able to weaken the other standards, any more than the system for monitoring the application of all the standards can. On the contrary, it is a precious instrument on the road to securing the ratification of the aforementioned international labour standards. We can guess at all the synergies that will inevitably be freed up in practice and to which the Standards Department can bear witness, whether in connection with implementing the right to organize or the fight to eradicate forced labour.

Moreover, we must never consider that the only Conventions requiring our attention from now on are those dealing with these fundamental principles and rights. Any legal expert specializing in labour law and any sociologist concentrating on labour relations knows from his or her own experience that there is a strong link between all standards.

Any standard, irrespective of how modest or technical it may be, is important. The whole body of law not only rests on the pillars constituted by fundamental principles and rights, but also reposes on an indispensable common foundation. There will be no decent work – the battle for which has been so ardently and convincingly fought for by ILO Director-General Juan Somavia – without the standards in question being taken into account in all kinds of different domains.¹ Suffice it to mention the standards governing health and safety, wages, work inspections and social security. What could general principles and rights that were not converted into minimal forms of protection with respect to employment and labour possibly mean to workers?

Defining characteristic and dynamism

A clear defining characteristic and dynamism are overwhelmingly conveyed by the 1998 Declaration and international labour Conventions. All the Conventions are shaped and fostered by tripartism. No

international labour institution or standard can exist without tripartism. None of the three parties involved in nurturing and implementing this concept – employers, workers and government – can act alone. Three keys are essential for opening up any door to standard-setting. This defining characteristic must be stressed unerringly, for if it does not function satisfactorily then the whole structure will be seriously prejudiced. On the other hand, if there is a real desire for tripartism then the result is a formidable and concerted drive towards new standards.

This very much applies to the control mechanisms for monitoring the application of fundamental principles and rights such as international labour standards. Constant worker intervention is required. Each year, in the general section of its report, the Committee of Experts lists the comments made by the trade union organizations, but the control system can only benefit from greater involvement.

The efficiency of the monitoring procedure, and more generally the full application of international labour standards, depends on the effective involvement of these trade union organizations. The information provided and comments made by workers when these reports are published are vital, both when following up on the Declaration and when monitoring the application of international labour Conventions. Indeed, such direct participation greatly reduces the danger of reports being treated too bureaucratically or inefficiently.

However, workers' intervention cannot be envisaged solely in the context of follow-up and monitoring procedures. Tripartism, at both national and international levels, must contribute efficiently to the resolution of issues, especially those relating to the domestic application of fundamental principles and rights as well as state-ratified Conventions. After all, it is through a (sometimes even institutionalized) social dialogue of this kind that considerable progress has been made in the past. Indubitably, there is close interdependence between the effectiveness and

efficiency of international labour law and any national system governing labour relations. In other words, any progress made in the development of social dialogue generates impetus in the application of fundamental principles and rights, like international labour standards. Constantly, and in a very practical sense, we can note the extent to which the action taken by the International Labour Office depends, both for its relevance and its intensity, on the full recognition and implementation of tripartite social dialogue techniques.

Moreover, the future will tell us whether the tripartite approach can play an even more decisive role in monitoring the application of standards by implementing innovative and well managed procedures.

And since there is no life without projection into the future, let us also draw everyone's attention to the importance of reconsidering the "role" played by the law in enhancing workers' protection and its "link" with the necessary promotion of companies and jobs without which the concepts of the right to work and social security would be more or less dead in the water. Documents recently adopted by the Governing Body speak of an "integrated" policy. This, of course, is something that concerns legal experts at both the national and international levels. It certainly makes sense, because the process entails using various techniques, rather than merely standard-setting mechanisms, to bring about an improved and fuller application of international labour standards. The International Labour Office thus finds itself called upon to envisage such standards from a more general and critical point of view. "Critical" here, of course, means with concern for their understanding and implementation, taking account of the

complexity of singularly technical situations. Health and safety will be the first area where this outlook on international labour standards is tried out.

From all that has been said above regarding fundamental principles and rights, and also international labour standards, we should note that relevance goes hand in hand with dynamism. We should also note that, at the dawn of a new millennium, we all find ourselves called upon to lend fresh impetus to renewed and serious dynamism with respect to standards.

As Juan Somavia so forcefully stresses in his reports and speeches, the objective is clear: "reinvigorating the ILO's contribution".² The 1998 Declaration also marked an important milestone. It cannot be viewed as calling into question a standard-setting system to which those who give us their mandate are so attached. Rather, it is one more step down the road of international labour law. The promotion of fundamental principles and rights goes hand in hand with the application of international labour standards.

Ensuring constant linkage between international labour standards is a never-ending task in which workers, employers and governments must all play their part, ardently and steadfastly. We must do all we can to boost the opportunities for decent work, to the benefit of all. For this is the significance of international labour law.

Notes

¹ Using this very simply definition: "Decent work means work which is carried out in conditions of freedom, equity, security and human dignity" in ILO: *Perspective on Decent Work: Statements by the ILO Director-General*, Geneva, 2000.

² ILO: *Perspective on Decent Work: Statements by the ILO Director-General*, Geneva, 2000.

Fundamental rights at work: A greater role for trade unions

The new order spawned by globalization and the rise of communication technologies has prompted the ILO to acquire new instruments for promoting observance of fundamental rights at work. Trade unions have contributed to this development. Today, they must do more to utilize the supervisory mechanisms provided by the Organization.

Monique Cloutier

Bureau for Workers' Activities
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Fundamental rights have always occupied a pre-eminent place in actions designed to improve the lot of men and women workers. These rights are enshrined in the Conventions dealing with freedom of association, the prohibition of forced or compulsory labour, protection against discrimination and the effective abolition of child labour.¹

When the International Labour Organization (ILO) observed its 75th anniversary in 1994, the Director-General took the occasion to make an assessment of the situation of the fundamental rights of workers in his Report to the International Labour Conference. Making an assessment also entailed proposing alternatives for the future in the light of outcomes whilst keeping the focus on the ideal to be attained, that of improved social justice.

The world of work was undergoing sweeping changes at the time. The gathering pace of economic globalization and technological changes called for a new approach to the concept of defence and observance of the fundamental rights of workers. Means had to be found to reinforce these rights even as economic liberalization and fiercer world market competition were leading to attempts to curtail them in some quarters. Initially, this new approach to the promotion of fundamental labour rights took the form of an ex-

tensive campaign for the ratification of the fundamental Conventions, which numbered seven at the time, as the Worst Forms of Child Labour Convention (No. 182) was adopted only in 1999.

Launched in 1995 by the Director-General, this campaign for the universal ratification of the fundamental Conventions on workers' rights yielded very encouraging results. It must be said, however, that much more could justifiably have been expected from member States. Hence, although ratified by 137 member States, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), undoubtedly the most fundamental of all, did not cover (and still does not) half of the world's workers, as some of the most populous nations have failed to ratify it. Besides, the rights and principles enshrined in the other fundamental Conventions continue to be flouted in far too many countries, regardless of whether or not they have ratified these Conventions.

It is true that in the cases of member States that had ratified these fundamental Conventions, the Organization could intervene by means of its supervisory system in an attempt to enforce the rights prescribed in them, and this it has indeed done. But by not ratifying the Conventions, the other countries remained to

some extent beyond the reach of the supervisory mechanisms put in place by the ILO, except, of course, for cases of infringements of Conventions Nos. 87 and 98, when even in cases of non-ratification, worker organizations are entitled to lodge complaints with the Committee on Freedom of Association (see article by Bernard Gernigon, p. 17). But what was the situation with respect to the rights set out in the other fundamental Conventions? Trade union bodies had been provided with no possibility of compelling their governments to improve the situation.

Impelled by globalization and the growing number of infringements, these concerns became increasingly central to discussions within the Workers' group in the ILO. So much so that in order to lend added weight to the ILO fundamental Conventions, trade union organizations proposed to the World Trade Organization that it should build a "social clause" into its trade agreements. The effect of such a clause would have been to make the grant of privileges under trade agreements contingent upon observance of the core labour standards (see articles by Jean-Louis Validire, p. 51, and by James Howard, p. 55). Accordingly, to benefit from international market access, countries would have to show a clean record with respect to observance of fundamental labour rights.

As the relevant discussions failed to produce a satisfactory conclusion, the WTO, having to some extent returned the ball to the ILO's court, the Organization's three constituents (governments, employers and workers) started a debate as to the possible adoption of a Declaration on Fundamental Principles and Rights at Work. In 1998, at the height of the trade union campaign vis-à-vis the WTO, the Declaration was adopted by the International Labour Conference. Its set objective was to remind member States that they "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". Associated with the Declaration, a system of reporting was thenceforth put in place to enable the ILO to have a realistic overview of the situation with regard to core labour standards and in some way to take to task those countries guilty of breaches of the Conventions even in cases of non-ratification.

The ratified Conventions, the campaigns for new ratifications and the adoption of the Declaration therefore provided the ILO and, naturally workers', and employers' organizations, with a set of mechanisms for promoting the fundamental rights. They have yet to be fully utilized. Trade union organizations must not wait passively for their governments to act. One of the best ways of effectively improving the situation is by active participation in the national social dialogue. National tripartite forums may not be the ideal settings in which to resolve all the issues pertaining to respect of fundamental human rights and they could sometimes induce conflict between the government and the social partners, but they could afford the opportunity for resolving some conflictive situations. Tripartism must be a reality and not just the object of lip service as is still too often the case.

In spite of efforts deployed in some countries to enhance social dialogue and as tripartism is non-existent in a good many others, the traditional role of trade union bodies in the defence of workers' rights entails very active participation in the ILO's supervisory mechanisms. This participation by trade union bodies is indispensable to ensuring the necessary objectivity and efficaciousness of the procedures for monitoring the observance of the standards. For the fundamental rights that are not guaranteed by ratification of the relevant Conventions, participation in the mechanism for the follow-up of the Declaration on fundamental principles and rights at work is just as important for trade union organizations. Hence, a range of possibilities is provided to trade unions for ensuring that the provisions of the Conventions are reflected not only in their national laws but also in practice.

Reports on the Conventions ratified

First of all, in virtue of the Constitution of the ILO (article 22), governments are required to submit regular reports on the Conventions that they have ratified. For the so-called fundamental Conventions, these reports are due every two years. The same applies to those described as priority Conventions, dealing with employment policy, labour inspection and tripartite consultations.² By way of example, the reports pertaining to the fundamental Conventions due in 2002 will cover Conventions Nos. 29, 87, 100 and 138, whilst in 2003 the Conventions concerned will be Nos. 98, 105, 111 and 182, and the cycle will continue in the ensuing years.

These reports are submitted on the basis of a questionnaire prepared by the Governing Body. They must reach the Office each year between 1 June and 1 September. The full list of the Conventions for which the reports are due each year is available at the ILO's Bureau for Workers' Activities. Indeed, whilst the fundamental Conventions, as their name suggests, are highly important, the Workers' group always insists that all Conventions warrant the attention of trade union organizations as they all contain provisions for the protection of workers.

In the countries that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the governments are obliged to consult employers' and workers' organizations in preparing their reports. But even in those countries that have not ratified this Convention, the governments are required under article 23(2) of the Constitution to submit a copy of their reports to representative trade union organizations, thus enabling them to make their own comments.

From the perspective of workers, all trade union bodies should make it a point of duty to submit their comments to the International Labour Office so that it can gauge the situation exactly. In the absence of these comments, only those submitted by the governments will serve to determine the situation in a given country.

These comments are studied by a committee of independent experts from a legal standpoint. The analysis of that Committee is published in the report of the Committee of Experts on the Application of Conventions and Recommendations, which is circulated to all member States, to governments and employers' and workers' organizations. Each year, the Committee on the Application of Conventions and Recommendations, which meets during the International Labour Conference and reports to the latter, studies the cases mentioned by the experts and, at the proposal of the Workers' and Employers' groups, may call on governments to come and give account of the situation in their country. Not a single year goes by without the Committee of Experts deploring the paucity of comments received from trade union organizations in its general remarks. Yet it is a crucial stage in the hierarchy of means made available to trade union organizations as it very often serves to prevent more extensive violations. Clearly, governments generally do not very much relish having to appear before the Committee or, worse yet, being cited in the famous "special paragraphs" of its report dealing with cases in which "problems" (read infringements) have arisen. Besides, publicity of this kind is often enough to rectify the situation.

Reports on non-ratified Conventions

As pertains to non-ratified Conventions, the Governing Body decides each year on a subject (Convention and Recommendation, as appropriate) for detailed reporting by member States, even if they are not party to the Convention in question. Here again, trade union organizations can play a critical role by sending their own comments and thereby enabling the Committee of Experts to prepare the most objective possible global study, which will also be discussed during the annual session of the Committee of Experts for the Application of Conventions and Recommendations. The outcome of these discussions

will make it possible to assess the effectiveness and current value of the instruments, provide governments with an opportunity to review their policy if necessary or even to ratify new Conventions and to consider the formulation of new standards if need be. By way of example, a global study on freedom of association and collective bargaining conducted in 1994 is still serving to this day as the baseline for all matters pertaining to the principles of freedom of association.

Representations

In the event of more serious infringements, trade union organizations may resort to the representations envisaged in article 24 of the Constitution. Representation is a special procedure and is subject to strict criteria of receivability.³

When the receivability criteria are met, the representation is transmitted to a tripartite committee appointed by the Governing Body for examination. The committee reports back to the Governing Body and formulates conclusions and recommendations. The government in question is invited to send a representative to take part in the deliberations on its case. The Governing Body decides on the appropriateness of publishing the representation and any answer from the government, and communicates its decision to the organizations and to the government concerned.

Complaints

In cases of very serious breaches of ratified Conventions, a complaint may be filed pursuant to article 26 of the Constitution. This procedure may be initiated by a government against another government under certain conditions, but such cases are extremely rare. It may also be started by the Governing Body, whether *ex officio* or, as in most instances, in response to a complaint filed by a party delegated to the Conference. In such a case, the Governing Body appoints a Commission of Inquiry to

examine the matter raised and make a report accordingly. That report is communicated to the government concerned, which must state whether it accepts the conclusions therein. Should it not accept them, it must signal whether it wishes to submit them to the International Court of Justice, as the only competent body to rule on legal disputes. The decision of the International Court is final.

This complaint procedure is applicable only in cases of grave violations of trade union rights. It has been used in recent years against Colombia with respect to freedom of association, and Myanmar (Burma) in connection with forced labour. As the situation showed no improvement in Myanmar, the Conference decided, for the first time in the history of the ILO, to invoke article 33 of its Constitution. This means that at each Conference, a session of the Commission on the Application of Standards will be specially devoted to this case, that the Organization's constituents must review their relations with this country so as to ensure that they do not contribute to perpetuating forced labour, that the Director-General must advise other international organizations of the infringements ascertained and ask the United Nations to place the case on the agenda of the Economic and Social Council.

Complaints to the Committee on Freedom of Association

All these special procedures may be used only when the Conventions have been ratified. Nevertheless, there is an exception to this principle. It is the case of complaints to the Committee on Freedom of Association. This Committee examines complaints of violations of freedom of association regardless of whether the government in question is bound by the Conventions on freedom of association. In fact, the principles set out in Conventions Nos. 87 and 98 are also enshrined in the Constitution of the ILO and by the mere fact of membership, all member States of the Organization must observe them.

The complaints are examined by a tripartite committee that sits three times a year and reports to the Governing Body. These reports are made public.

Follow-up to the Declaration

With the exception of complaints filed with the Committee on Freedom of Association, the procedures made available to trade union bodies are applicable only in connection with ratified Conventions. In the case of non-ratified Conventions, the annual follow-up of the Declaration constitutes another possibility for pressure and intervention by trade union bodies. Indeed, governments are required to indicate each year on the forms prepared by the Governing Body the *de jure* and *de facto* situation with regard to principles contained in the fundamental Conventions that they have not ratified. It goes without saying that in the absence of comments from trade union organizations, the Office will have only a partial view of the facts. In theory, governments must consult trade union organizations in preparing their replies. Having said that, nothing prevents trade union organizations from sending their comments directly to the ILO. Two precautions are doubtless worth more than one.

The fact is that this information is crucially important. Amongst other things, it will be drawn on for the drafting of the global report which each year addresses one of the four principles of the Declaration (discrimination, freedom of association, forced labour or child labour) and, as the name suggests, paints a picture of the situation throughout the world. It is thanks to all this information that the ILO will be able to make judicious use of its resources in setting the priorities when it comes to technical assistance and cooperation to help member States to better fulfil their obligations.

In fact, although the effectiveness of the ILO is sometimes questioned in some circles, it is also a matter for the trade union organizations. They have contributed towards equipping the ILO with a package of unique instruments at the multilateral level. It is therefore also incumbent on them to ensure the optimal use of all this potential. Trade union bodies must always be mindful of the reason for their existence: the defence of workers' rights. This defence also necessarily entails a greater degree of involvement on their part and a stronger commitment to secure observance of the fundamental Conventions of the ILO and to denounce breaches of them. It is time to act!

Notes

¹ The so-called core labour standards are contained in eight Conventions: the Forced Labour Convention, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Equal Remuneration Convention, 1951 (No. 100), Abolition of Forced Labour Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Today, these Conventions are grouped according to four themes: freedom of association (Conventions Nos. 87 and 98), forced labour (Nos. 29 and 105), discrimination (Nos. 100 and 111) and child labour (Nos. 138 and 182).

² There are four Conventions described as priority Conventions: the Labour Inspection Convention, 1947 (No. 81), Employment Policy Convention, 1964 (No. 122), Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

³ To be receivable, a representation must: be communicated to the International Labour Office in writing; emanate from an industrial association of employers or of workers; refer expressly to article 24 of the Constitution; pertain to an ILO Member; be related to a Convention ratified by the Member in question and indicate the respect in which the Member has failed to secure the effective observance of the said Convention within its jurisdiction.

The Declaration and technical cooperation: The example of French-speaking Africa

As a new tool at the service of the core labour standards, the Declaration implies a pragmatic move in which all the ILO constituents in the countries concerned must become involved.

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All the provisions of the ILO Declaration on Fundamental Principles and Rights at Work have been the subject of arduous negotiations amongst the various groups, as shown by the provisional record of proceedings of the International Labour Conference of 1998.¹ The obligation on the part of member States “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” is matched by another “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 Conven-

tions; and (c) by helping the Members in their efforts to create a climate for economic and social development”.²

This third article of the Declaration is fundamental in that it states clearly that this obligation on the part of member States must go hand-in-hand with an unprecedented effort by the International Labour Office to help them fulfil that obligation. Alongside the Organization’s traditional functions of drawing up standards and monitoring their application, this text accords a very special place to the different forms of assistance that it must provide to its members. Indeed, this function is not new, but with the adoption of the Declaration it has assumed another dimension, at least in so far as it pertains to the implementation of international labour standards.

It is important to reaffirm at this stage that the Declaration is of a promotional nature and should not therefore be confused with the traditional system of supervision of standards. It cannot be used in any way to sanction States that fail to abide by the commitments they assumed with the ratification of the fundamental Conventions. Instead, it can serve to help them respect fundamental principles and rights at work, regardless of whether they have ratified the corresponding Conventions.

Governments must be willing

If the Organization's assistance is to have a chance of success, it will first require a clearly expressed will on the part of governments. For States that have not ratified one or another fundamental Convention, this can be done by means of the report that they must submit each year as part of the annual reporting under the follow-up of the Declaration. Accordingly, the Malagasy Government, for instance, has requested the help of the International Labour Office in dealing with the comments addressed to it by the Committee of Experts on the Application of Conventions and Recommendations concerning the implementation of the Forced Labour Convention, 1930 (No. 29), and in ratifying the Abolition of Forced Labour Convention, 1957 (No. 105).

But this will may also be expressed in an entirely different manner, as has been done by other countries that have ratified all the fundamental Conventions but which need assistance in applying them, over and above the purely legal aspects that have always been the subject of assistance from the Office. This clearly expressed will must be construed as strong political volition on the part of the governments concerned, not only to accept this technical cooperation but also to face all the consequences.

Involvement of social partners

It is difficult to overstate just how much it is in the interest of employers' and workers' associations to become involved in this process, first and foremost for the purposes of determining needs on the basis of any comments they may make in the reports sent by their governments in connection with the Declaration. They have an equal stake in the implementation of activities of cooperation, which could then be more responsive to the expectations of all ILO constituents in the countries concerned.

A pragmatic approach

The various technical cooperation activities carried out in the French-speaking African countries are based on the simple realization that a State's ratification of an international Convention denotes, *a priori*, its intention to apply it and that in consequence, any problems arising cannot boil down to mere political or legal shortcomings, even though these do exist in most cases. On the contrary, governments are often confronted with other types of obstacles that are more difficult to identify and even more difficult to overcome. The now universally acknowledged connection between child labour and poverty will spring immediately to mind, even though poverty alone does not account for all forms of child labour.

As was done in Benin, Burkina Faso, Mali, Mauritania, Niger and Togo, it was important to make a diagnosis of the real implementation of the fundamental Conventions in these countries and to devise a plan of action for helping to overcome the problems encountered. The studies were entrusted to independent experts and were carried out on a tripartite basis with the full involvement of employers' and workers' organizations, but also, whenever appropriate, entailing the analysis of other civil society players who could be instrumental in realizing the fundamental principles and rights at work. In each of these countries, except for Mali, the study covered all four categories of fundamental principles and rights, namely 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. In Mali, it was the Government's wish that the Office's assistance should be confined strictly to the fourth category of principles regarding the various forms of discrimination in respect of employment and occupation.

To begin with, the studies, which the Office will publish, were prepared in such a manner as to enable the consultants to

gather all the opinions that they deemed fitting to request. These were then discussed, amended and improved upon at tripartite validation seminars. In so far as possible therefore, the final documents embody inputs from employers' and workers' organizations, as well as those from government experts. The studies are accompanied by an action programme drawn up and discussed in the same manner, setting out the activities and policies to be implemented so as to overcome the obstacles identified. They may pertain directly to government policy reforms to be effected, legal reforms being the most obvious though not necessarily the simplest. They could also concern the social partners themselves, as there is a manifest lack of conversance, barring a few "specialists", with the content of the international labour Conventions and more specifically of the fundamental Conventions.

Some provisional lessons

Naturally, it is difficult and would be illusory to attempt to draw general conclusions based on each of the studies and on the development of the programme. Yet it does seem possible to identify some provisional leads for reflection.

First of all, as demonstrated by the examples cited, it must be reaffirmed that the express will of the governments and social partners is the key, not only to the start-up of these projects but also to their proper execution.

The second lesson is that these projects have brought out the need for a social dialogue that works. Fortunately, and despite the up and downs – differing practices cannot be eliminated in a matter of a few months or years – all these countries benefit under other International Labour Office programmes that reinforce social dialogue. This is more particularly the case of the Programme for the Strengthening of Social Dialogue in French-speaking Africa (PRODIAF),³ which covers the same countries. In these countries, and such is our hope at any rate, the project implemented

under the InFocus Programme on Promoting the Declaration will have served as practical work and strengthened social dialogue. Accordingly, two International Labour Office programmes – though not the only ones – can mutually support each other in concrete terms and help to attain the same objective. All this is the least that might be expected, one may say, but it is yet to materialize. Besides, our programmes have placed the emphasis where it was still needed, that is on the importance of ratifying and implementing other international labour Conventions in addition to the fundamental Conventions, such as the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Beyond reinforcing the coordination mechanism, it seems to us that the chosen method has made for greater frankness in the discussions and some convergence of views on the topics concerned amongst ILO constituents in each country. Of course, it has not been and by no means is a matter of wishing to diminish the responsibilities of each one in applying the fundamental principles and rights at work, but of agreeing to work together to produce the most honest possible diagnosis of the actual situation and seeking to arrive at desirable solutions. Each party would then assume its own responsibilities in full awareness of what is at stake.

It seems too that these programmes pertaining to the application of the fundamental principles and rights at work should represent an invaluable opportunity for workers' organizations to look into their own practices. How, for instance, do they take account of the gender dimension in their day-to-day functioning if they wish to make warranted demands in this regard on governments and on employers' organizations?

These studies have further revealed a crucial need for awareness-building on these issues. The programmes have brought out the need to expand considerably the groups at which the information is targeted. Training the professional staff in the Ministry of Labour is a good thing,

but ensuring the training of all the players concerned is even better. We are thinking more specifically of labour inspectors, judges, as well as all those throughout all the administrations who at one time or another may have to take a decision in regard to these principles. This is why it seemed timely, in all these countries with administrative schools that train all these categories of staff, to incorporate in their initial and continuing education programmes an introduction to international labour standards and more specifically to the core labour standards. By the same token, it is imperative for actions to be taken for the benefit of organizations of workers and employers so as to increase the number of activists capable of devoting themselves to these issues.

All these ideas represent future courses of action. Studies and action programmes having been adopted, other projects will

now begin, through which the International Labour Office and others will attempt to assist States and social partners in implementing the actions recommended. The problems encountered are not about to disappear as if by magic, but it is to be hoped and at any rate counted on that these programmes will be of substantial help to member States in living up to their constitutional commitments.

Notes

¹ *Provisional Record of Proceedings*, Nos. 20 and 22, International Labour Conference, 86th Session, Geneva, 1998.

² *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, article 3, International Labour Conference, 86th Session, Geneva, 1998.

³ PRODIAF is a technical cooperation programme funded by Belgium and the International Labour Office.

The Committee on Freedom of Association of the ILO

Amongst the fundamental freedoms and human rights that concern the ILO, freedom of association is unique in that given the tripartite nature of the Organization, it is an essential prerequisite for its proper functioning.

Bernard Gernigon

Chief of Freedom of Association Branch
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Freedom of association is but one of several domains addressed by international labour standards. In this regard, all the Conventions on the matter, whether the more general ones such as Nos. 87 and 98 or the more specific ones such as the Workers' Representatives Convention, 1971 (No. 135), the Rural Workers' Organisations Convention, 1975 (No. 141), the Labour Relations (Public Service) Convention, 1978 (No. 151), or the Collective Bargaining Convention, 1981 (No. 154), are subject to regular monitoring of their application by the Committee of Experts on the Application of Conventions and Recommendations and by the Commission on the Application of Standards of the International Labour Conference. The ILO nevertheless deemed it necessary to supplement the regular supervisory mechanism with a special procedure for the protection of freedom of association, the 50th anniversary of which is being observed this year.

Justification of the special procedure

Recognized in principle in the preamble to the Constitution of the ILO, strongly reaffirmed in 1944 in the Declaration of Philadelphia, and embodied in 1998 in the Declaration on Fundamental Principles and Rights at Work, freedom of association is an indispensable prerequisite for steady progress based on social justice. It

affords workers a means of expressing their aspirations; it boosts their collective bargaining power and, by extension, restores a certain balance between the forces involved. By enabling them to take part in elaborating and applying economic and social policy, it provides a necessary counterweight to the power of government authorities; it exerts a stabilizing influence on labour relations and thus helps to foster social peace and social justice.

Moreover, when Conventions Nos. 87 and 98 were adopted, many ILO constituents, the workers in particular, feared that these would elicit few ratifications or at any rate would be ratified only by democratic countries that were already applying the broad lines of the principles set out in the Conventions. That fear proved to be largely unfounded, as these Conventions are now amongst the most ratified ones.

Nevertheless, the workers believed at the time that the ILO should institute a procedure that could be initiated even against countries that had not ratified the freedom of association Conventions. Thus, in response to a memorandum submitted by various trade union organizations, the ILO concluded an agreement with the Economic and Social Council of the United Nations. That agreement recognized the competence of the ILO in the sphere of freedom of association and set forth the broad outlines of a procedure designed to ensure the protection of freedom of association in all member States of the Inter-

national Labour Organization and even in States not belonging to the ILO but which were members of the United Nations, regardless of their situation with respect to the ratification of the relevant standards. In other words, the procedure instituted by this agreement was applicable to most countries of the world. Initially, the complaints filed under this procedure were submitted in the first instance to the Office of the Governing Body of the ILO for preliminary examination so as to determine whether the matter warranted referral to a specialized committee comprised of independent persons – the Fact-Finding and Conciliation Commission on Freedom of Association. But given the number of complaints received, the Governing Body decided to set up an internal Committee on Freedom of Association to undertake this examination. Thereafter, by general agreement within the Governing Body, the procedure for the preliminary examination of complaints alleging freedom of association infringements – hitherto the responsibility of the Committee – was converted in successive stages into a procedure for the in-depth examination of all the cases brought before it.

Features of the Committee on Freedom of Association

The Committee on Freedom of Association is thus one of the Governing Body's permanent committees. Nevertheless, by comparison with the Governing Body's other committees, it displays certain characteristics that set it clearly apart, in particular as regards its composition, functions and procedure.

One specific aspect of the Committee is its small membership. Since its creation, the Committee on Freedom of Association has been made up of nine regular members appointed by the Governing Body from within its own ranks and drawn in equal numbers from the Government, Employers' and Workers' groups. The Governing Body also appoints substitute members. Originally, the latter were called upon

to participate in meetings only if, for whatever reason, the regular member was not present, so that the initial composition would always be maintained. Under present practice, however, substitute members who have so requested may participate in the discussion of the cases submitted to the Committee, whether or not all the regular members are present, if the Chairman so agrees. The Committee's meetings are exclusively *in camera*, which means that members of the Governing Body that are not members of the Committee may not attend its meetings, even as observers. Besides, there is a complementary rule prescribing that Committee members operate as such in a personal capacity and therefore represent no specific country or organization. It has also been agreed that no representative or citizen of the State against which the complaint has been lodged or any person having signed the complaint may participate in the work of the Committee, or even be present during the examination of the case in question.

Another current feature of the Committee on Freedom of Association that distinguishes it from the other committees of the Governing Body is that its chairperson, appointed by the Governing Body, is an independent person, non-member of the Governing Body. An independent chairperson was elected for the first time in 1978. In adopting this rule, the Governing Body had underlined that it was desirable for the composition of the Committee on Freedom of Association, in general and in so far as possible, to make for continuity and that its members must be fully conversant with the relevant principles and procedures.

As pertains to its functions, which have been described as "quasi-judicial", the Committee has repeatedly found it necessary to clarify the exact nature of its terms of reference. It has underscored in this regard that the ILO's function with regard to freedom of association and the protection of the individual is to contribute towards the effective implementation of the general principles of freedom of association as one way of safeguarding peace and social justice. Its role is to guarantee and promote

the right of association of workers and employers; it is not to level accusations at or condemn governments. Besides, in discharging its functions, the Committee has always taken the utmost care to avoid dealing with matters that do not fall within its specific remit.

In parallel to its essential function of endeavouring to shed light on the facts and to propose solutions for the cases brought before it, the Committee, in examining the roughly 2,100 cases that have been submitted to it, has given rise to a substantial body of decisions showing how the principles of freedom of association should be applied in various circumstances. The constant references to decisions thus adopted in previous cases is one of the key guarantees of the objectivity and impartiality of the Committee's conclusions. The necessary reference to previously examined cases and to the principles that were brought out on those occasions also explains why the Governing Body adopts the reports of the Committee on Freedom of Association with no modifications whatsoever.

Bearing in mind its special functions, the Committee has found it fitting to take all its decisions by unanimity. In adopting the conclusions and recommendations, all the members therefore seek a consensus that will underscore the moral authority of the Committee on Freedom of Association beyond question.

Procedure of the Committee on Freedom of Association

To discharge the responsibilities entrusted to it by the Governing Body, the Committee on Freedom of Association laid down some rules of procedure upon its creation in 1951. It has frequently reviewed its procedures since then so as to make improvements and speed up the examination of cases and to ensure that its recommendations are followed up. Over the years, the Committee has to this end adopted a number of measures that have been ratified by the Governing Body.

The procedure is still essentially based on written communications, namely complaints and supporting information submitted by the complainant organizations and replies from governments. It is very difficult for the Committee to take a decision when it receives factually contradictory statements. Such cases call for more direct methods of investigation. They take the form of consultative missions or direct contacts missions carried out by a representative of the Director-General who may be an ILO official or an independent outside person.

In some cases, the Committee may also use an oral procedure to hear representatives of the complainants and of the government. This possibility has been only very rarely used, however (four times in the Committee's entire history). In contrast, the Committee makes much more frequent use of on-the-spot missions, having conducted some 80 of these since the mid-1970s when that possibility was introduced into the procedure. Upon receipt of a complaint containing particularly serious allegations, preliminary missions may also be sent to the country involved so as to convey the ILO's disquiet to the government concerned, explain the principles of freedom of association in question, obtain information and comments from the government and urge it to cooperate fully with the procedure. This procedure was again used recently in a case pertaining to Belarus. The countries that have been visited by missions belong to all the regions of the world and all political and economic systems. The Committee has made an innovation in the types of mission that may be dispatched to a country. It took the form of a tripartite mission by the Committee itself – employer, worker and government – that was sent to the Republic of Korea as part of the examination of a case pertaining to that country, with the consent of the government. This form of mission has proved especially useful in demonstrating the identity of views existing within the Committee despite the special sensitivities of each group. It is also an excellent means of making each national

social partner understand the content and significance of the conclusions previously adopted by the Committee, considering that the workers or employers of the country concerned will no doubt be more inclined to listen respectively to the explanations given by the worker or the employer member of the Committee.

All these missions, regardless of their nature, cannot really be efficacious unless the ILO representatives can carry them out in full freedom. This is why it has always been agreed ahead of the dispatch of a mission to a country that the mission's members would be able to meet with all the parties concerned. If this condition is not met, the mission is simply not sent.

Lastly, some complaints may even be sent to a special commission provided for under the procedure: the Fact-Finding and Conciliation Commission on Freedom of Association, comprised of independent experts. This Commission met for the first time in 1964 and has since then examined six cases, concerning Japan, Greece, Lesotho, Chile, the United States/Puerto Rico and South Africa. In each of these cases, the Commission undertook an exhaustive assessment of the situation after hearing witnesses and in most cases sending a mission to the countries concerned. Nevertheless, the small number of cases dealt with by the Commission stems from the fact that the consent of the government is required for it to be submitted to a particular case and perhaps also from the lengthiness of its proceedings and the relatively high cost entailed.

Many features of the Committee's procedure are only rarely found in other international investigative and dispute settlement procedures. First of all, as regards the receivability of complaints, the Committee does not consider itself bound by the national definition or by recognition within the country of a workers' or an employers' organization. This is what has enabled organizations in exile or clandestine organizations to submit complaints to the Committee, cases in point being the UGT in Spain under Franco, Solidarnosc in Poland, or more recently the Korean Con-

ederation of Trade Unions (KCTU) or the SBSI in Indonesia. Indeed, a procedure open only to officially recognized trade unions would be virtually pointless, especially in countries with a single trade union movement whose allegiance lies entirely with the government. Even if the Committee can always be called upon by an international organization of workers or employers, it is important for organizations that are not recognized nationally to know that they can turn directly to the ILO.

Second very specific aspect: the procedure does not provide for the exhaustion of domestic remedies as a precondition for the submission of a complaint. If it so deems useful, the Committee may of course postpone the examination of a case if a procedure is in progress before a national body. In some cases, in examining the merits of a case, it may also take into account the non-utilization of national remedies. But it is important for employers' or workers' organizations, when they believe that there is no possibility of seeing their legitimate rights recognized by national judicial bodies, to be able to take their case immediately to the Committee on Freedom of Association. Proceeding otherwise, by requiring the exhaustion of domestic remedies, would doubtless be tantamount to a denial of justice, bearing specifically in mind the often very protracted nature of national procedures and the highly relative degree of independence of the judiciary from the executive in some countries.

Third original feature: the possibility for the Committee to examine matters brought before it, even in the absence of a response from the government. Even though in the vast majority of cases the governments concerned do cooperate in the examination of complaints, they sometimes fail to reply as promptly as might have been desirable. In such cases the Committee sends an urgent appeal to the government indicating that it will examine the allegations even in the absence of its comments. Governments generally follows up this appeal. They understand that it is in their own interests to submit their

point of view so that the Committee can consider it as well. This explains why the cases examined without answers from governments do not exceed 2 to 3 per cent of the caseload.

Lastly, the procedure followed by the Committee contemplates the possibility of inviting governments to state the measures that they have taken in the wake of recommendations approved by the Governing Body. The Committee has been making ever more frequent use of this possibility, which allows it to preserve the dynamism of its activities and to gauge the effect of its recommendations. Amongst the positive accomplishments noted by the Committee in recent years in cases brought before it, mention should be made of the freeing of a large number of trade unionists who had been arrested or detained, the reinstatement of workers dismissed in the wake of industrial conflicts, the annulment of decisions dissolving an organization or removing trade union leaders from their positions, the recognition or restoration of the legal personality of trade unions, the restoration of the right to strike, the elimination of government control over trade unions and, in some cases, major reforms in trade union laws, sometimes owing to a change in a country's political leadership.

Apart from the results thus obtained, it should be borne in mind that the success of the procedure ultimately depends on the possibility of securing the cooperation of the States concerned. The methods used must therefore ensure a fair balance be-

tween moral suasion exerted by the Organization to secure the observance of freedom of association, and acceptance by governments that it is in their own interests to participate in the procedure. Governments and complainants alike must be convinced that all cases will be treated with the utmost care and fairness. This could explain why concern with having the best possible knowledge of the facts thanks to the information furnished by all the parties might well have to take precedence over that of accelerating the procedure.

Yet activities to further the cause of freedom of association should not be considered strictly from the viewpoint of procedures for monitoring the application of the Conventions adopted in this sphere and for looking into instances of infringements of trade union rights. It is appropriate to recall that one of the purposes of the procedure was to provide avenues for conciliation in cases of disputes. This aspect of the complaints procedure has perhaps been obscured by the fact that a large number of complaints are dealt with strictly on the basis of documents, although the direct contacts missions have often opened the way for new solutions thanks to the discussions with the various parties. Obviously, it would be desirable to develop further all the forms of action by which the Organization can contribute to dispute settlement in this key area. This is undoubtedly one of the main issues that the ILO will have to consider and act upon in the near future.

Fighting discrimination with the ILO Declaration

Despite a relatively high number of ratifications for ILO Conventions dealing with equality, women still experience pay discrimination in most countries and discrimination in employment still exists all over the world.

Amrita Sietaram

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ILO

The promotion of justice and the improvement of working conditions of women and men have always been the guiding principles of the ILO. These principles were first expressed in the ILO Constitution in 1919 and explicitly confirmed and further elaborated by the Declaration of Philadelphia in 1944. The Declaration of Philadelphia stated that:

...all human beings, irrespective of race, creed or sex have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

In June 1998 the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which marked a renewed universal commitment to respect the fundamental rights of workers. Two of the eight core Conventions under the Declaration deal with discrimination: the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Under the ILO Declaration, all member States have an obligation to "respect, promote and realize" the elimination of discrimination in respect of employment and occupation as part of a package of mutually reinforcing fundamental principles.

Equal Remuneration

During the First and Second World Wars, women in many countries were drawn into the employment market in large numbers to meet urgent demands for labour. They replaced men in some occupations and were employed in new occupations, particularly for war industries.

From the 1950s onwards, in most countries, an increasing number of women entered the labour market, whether the economy was predominantly agricultural or industrial. At the time of the adoption of Convention No. 100 in 1951, it was recognized that the differential between men's and women's wage rates arose rather from traditional attitudes towards women and work and could not simply be justified in terms of the respective efficiency and capability of the two groups. It was also recognized that the application of the principle of equal remuneration could not be applied under general conditions of inequality. Equal pay was seen not only as a measure to promote social justice, but also as a means to foster labour mobility and the efficient utilization of the labour force.

States which have ratified the Convention agree to promote the principle of equal pay for women and men workers for work of equal value. They must ensure its application to all workers in a manner consistent with the national methods used for determining rates of pay.

The Convention applies to basic wages or salaries and to any additional emolu-

ments (supplements, bonuses, allowances, etc.) which the employer pays directly or indirectly to the worker in cash or in kind as a result of his or her work. The Convention defines equal pay for work of equal value as a rate of pay fixed without discrimination based on sex. This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. One of the means specified in the Convention is the objective appraisal of jobs on the basis of the work to be performed. Governments are required to cooperate with employers' and workers' organizations to help put the provisions into practice.

Convention No. 100 requires ILO member States to ensure the application to all male and female workers of the principle of equal remuneration for work of equal value. It requires a *continuing* programme of action, rather than the achievement of the Convention's objectives prior to ratification.

Discrimination in Employment and Occupation

After the Second World War, there was a greater awareness of human rights concerns. The emergence of new countries and widespread migration meant that many countries had to face difficult problems of inter-group relations. In the context of the labour market, the need to prohibit discrimination on specifically designated grounds was seen as a necessary step for a State in order to promote a socially just and productive society. It was considered timely to adopt a Convention to assist States develop non-discriminatory national policies and legislation designed to promote equality in employment and occupation. Convention No. 111 was adopted in 1958 and stipulates that each ratifying State must adhere to the basic goal of promoting equality of opportunity and treatment by means of a national policy which aims to end all forms of discrimination in employment and occupation.

Discrimination is defined as any distinction, exclusion or preference based on "race, colour, sex, religion, political opinion, national extraction or social origin (or any other ground determined by the State) which nullifies or impairs equality of opportunity or treatment in employment or occupation". The definition includes direct and indirect discrimination. Any distinction, exclusion or preference based on the inherent requirements of a particular job is not considered to be discrimination under the Convention. The Convention covers access to vocational training, access to employment and particular occupations, and terms and conditions of employment.

A ratifying State agrees to do away with any laws and change any administrative instructions or practices which are not in line with this policy, and to enact laws and promote educational programmes in cooperation with employers' and workers' organizations. The policy is to be pursued under the direct control of a national authority and its vocational guidance and training and placement services.

Convention No. 111 requires parties to prevent discrimination in employment and occupation and advises that the principle of remuneration for work of equal value should be upheld and implemented.

The application of these instruments

Both Conventions No. 100 and No. 111 are ILO instruments and are ratified by most of the ILO member States. As at 1 September 2001, Convention No. 100 has been ratified by 153 member States while Convention No. 111 has received 151 ratifications.

Convention No. 100

Equal pay is a critical issue, especially for women workers. Women experience pay discrimination and in every country of the world continue to receive lower pay than men. The extent of this pay discrimination varies, but its existence is universal. In

general, women on average earn approximately two-thirds of what men earn on a monthly basis. Despite the fact that Convention No. 100 has been widely ratified, the practical application of the Convention has proven difficult particularly in the area of equal pay for work of equal value.

The latest general survey by the ILO on the application of Convention No. 100 was in 1986. This report found that:

Although the reports submitted by governments show that the principle of equal remuneration is generally accepted a matter of public policy..... there are still a number of hesitations and shortcomings in the implementation of the principle.¹

The report goes on to identify the lack of methods to establish comparable worth as a key barrier:

To compare the value of different jobs, it is important that there exist methods and procedures of easy use and ready access, capable of ensuring that the criteria of sex is not directly or indirectly taken into account in the comparison.

The report emphasizes the importance of the social partners and collective bargaining in achieving tangible results. This is an important conclusion; too often women are marginalized from the mainstream trade union agenda. Even today, issues of special concern to women, such as pay equity, are not addressed sufficiently by trade unions. In addition, women often feel that they lack the experience or the skills to intervene. This problem emerges particularly in relation to equal pay, as the methodologies promoted to resolve the problem can be very "disempowering" if they are overly technical and intimidating.

One of the problems trade unions face is the lack of understanding of the principle of equal pay for work of equal value. It is often understood to mean equal pay for equal work. This more limited concept of pay equity is more widely applied and therefore many unions, employers and governments are of the view that pay equity has been achieved. This is clearly not

the case: there remains an extensive problem in many countries of undervaluing of work traditionally done by women and gender discrimination in benefits and entitlements.

It is against this background that, in March 2001, Public Services International (PSI), the international trade union federation for public sector workers, launched a two-year global campaign on pay equity issues. The ILO, through different departments, is contributing to this endeavour.

The objective of this campaign is to place pay equity concerns high on the agenda of PSI and develop a capacity-building programme to equip members of PSI with the knowledge and skills required to effectively advocate for greater gender equity in respect of pay. The ultimate objective is to increase the incomes and status of women through reducing the institutionalized under-valuation of women's paid work in the public sector.

Convention No. 111

In the past 43 years of its existence, Convention No. 111 has demonstrated its pioneering role in the elimination of discrimination and the promotion of equality. To date, 151 countries have ratified this Convention. Discrimination in employment and occupation, however, still exists all over the world.

The latest general survey by the ILO on the application of the Convention was in 1996. This report found that: "Despite the fact that not all member States have ratified Convention No. 111, it is encouraging to note that almost all States have included anti-discriminatory provisions in their national legislation or constitution".²

The report continues:

Some States still hesitate to ratify a Convention which, although offering considerable flexibility, deals with a subject often considered sensitive and which has political, socio-cultural and even economic implications. To date, no country, however advanced in this

respect, can boast of having achieved full equality in employment. The subject is constantly evolving, furthermore, the extent and complexity of the problems involved in discrimination increase the difficulties in application, in particular regarding the effectiveness of a national policy to promote equal opportunity and treatment.

It is also noted in the report that when a country has succeeded, through its legislation and a policy to promote equality, in eliminating discriminatory factors, others are likely to emerge and give rise to further difficulties. New grounds for discrimination which have been emerging are: age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation and state of health. In general, the forms of inequality that exist today are not the result of legislation (or the absence of it) but of *de facto* situations and relations between people in practice.

Combating discrimination is a continuous process and equality in employment can only be achieved within a general context of equality. According to the 1996 survey, a general context of equality will depend on two conditions: respect for the rule of law and the development of a climate of tolerance. Constant attention should be given to the need for continuous action adapted to changing attitudes and social behaviour.

How the ILO Bureau for Workers' Activities promotes equality

The promotion of fundamental rights for workers, has always been high on the agenda of the activities of the ILO Bureau for Workers' Activities (ACTRAV). This has been translated into various activities such as advocacy, training and advisory services. In addition to that, projects are being executed to promote fundamental workers' rights. Below are some examples of these activities carried out since the adoption of the Declaration in 1998.

National and regional

- The Confederation of Independent Trade unions in Bulgaria has launched a nationwide campaign to promote the Declaration, which includes cooperation with the labour inspectorate in order to draw attention to serious cases of violations of workers' rights. In Croatia a national workshop was held, which focused on trade union rights, and gender and ethnic discrimination. In Moldova a research project has just started where child labour and discrimination against women will receive special attention.
- Following training and information sessions, national awareness campaigns have been launched in Brazil, Chile, Costa Rica and Peru to promote the Declaration and the ratification and application of international labour standards.
- In Mali a project has started which focuses on equal pay for work of equal value. In Mauritania a national action plan has been developed to promote the eight core Conventions which fall under the Declaration.
- A high level symposium on international labour standards, globalization and social dialogue was held in China. A national workshop for trade union officials was held in Cambodia on international labour standards and the Declaration. A sub-regional seminar on trade unions and the Declaration was held in Jakarta, Indonesia.

Global

- At the international level, a one-week seminar was recently organized for representatives from the World Confederation of Labour (WCL) on how to use the Declaration. As a follow-up activity, the WCL will develop a training guide for trade unionists.
- The Bureau for Workers' Activities published a workers' education guide

on the Declaration. This guide should enable trade unions all over the world to understand and make full use of the follow-up mechanism of the Declaration. For the moment, the guide is available in English, French, Spanish, Portuguese, Arabic and Russian.³

What can trade unions do?

The Declaration and its Follow-up are promotional instruments; they do not replace existing instruments. They are complementary, so that workers' rights are better respected.

That is why trade unions cannot afford to miss the opportunity to play an active role in the follow-up to the Declaration and should at least consider the following.

In the first place, all trade union leaders should promote the existence of the ILO Declaration and, especially, the importance of taking part in the follow-up process.

Secondly, trade union organizations can play a far more vital role in submitting information to the ILO. Each year a Global Report is prepared by the ILO on a single category of fundamental rights. The first report came out in 2000 and focused on freedom of association and collective bargaining. The second report, in 2001, reviewed the situation of forced labour. The 2002 report will have the elimination of child labour as its subject, whilst the report to be issued in 2003 will focus on discrimination (see also article by Monique Cloutier page 8).

These global reports are based on information mainly provided by governments, employers' organizations and trade union organizations. The information is collected through:

- the annual follow-up, for countries which have not ratified the Conventions concerned;
- the various monitoring procedures for countries which have ratified the Conventions concerned;
- the reports of the Committee on Freedom of Association; and

- any other information available.

To be effective, trade union organizations should document their cases well, by providing facts and figures. A well-documented case is an effective tool for the Committee of Experts in preparing their comments.

Lastly, trade union organizations should make much more use of their right to ask for technical assistance from the ILO and in particular from ACTRAV. This can take the form of activities such as advisory services, training activities, developing campaigns, and translation of relevant documents into local languages.

The Declaration is not an end in itself but a new tool to help the ILO protect workers and to alleviate the impact of globalization on the world of work. The full value of the Declaration depends on the active implementation of the follow-up by many, in and outside the ILO, including by trade union organizations themselves.

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—: *Equality in Employment and Occupation*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th Session, Geneva, 1988.

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Notes

¹ *Equal Remuneration*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 72nd Session, 1986.

² *Equality in Employment and Occupation*, International Labour Conference, 83rd Session, 1996.

³ *ILO Declaration on Principles: A new instrument to promote fundamental rights*, A workers' education guide, ILO Bureau for Workers' Activities, Geneva, 2000.

Trade union rights at the dawn of the millennium: An overview

Every year, dozens of trade unionists are murdered throughout the world and the catalogue of repressive measures is growing steadily. It is a fact that a yawning gulf separates the principles laid down by the international community, including the ILO, and actual practice. The supervisory mechanisms are often the only recourse, even though many violations manage to slip through the net.

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All ILO member States, that is, almost all the countries of the world, have an obligation to observe freedom of association, to protect the right to organize, as well as the right to bargain collectively. It is even a unique feature of the ILO within the international community that it is able to require its Members to respect these specific standards, independently of the formal ratification of the legal instruments that guarantee them. Hence, the principles of freedom of association become binding on States by the mere fact of their membership of the Organization, which automatically exposes them to quasi-judicial proceedings before the appropriate mechanisms of the International Labour Office such as the Committee on Freedom of Association (see the article by Bernard Gernigon, page 17). The countries that have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and/or the Right to Organise and to Bargain Collectively Convention, 1949 (No. 98) also voluntarily submit to formal legal constraint, which means, inter alia, that the way in which they apply these principles will be subject to examination by the Committee of Experts on the Application of Conven-

tions and Recommendations and by the Commission on the Application of Standards of the International Labour Conference. Those that have not yet done so are covered by the Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998 and which, although merely a promotional instrument and not a formal supervisory mechanism, equally imposes on non-ratifying States the political and moral obligation to respect the four fundamental principles of the ILO, salient amongst which is freedom of association.

All over the world

Given this binding legal and institutional order, a dispassionate observer could not fail to be struck by the wide chasm, indeed the yawning abyss between the principles laid down by the international community and the practice of States. Trade union rights are being flouted practically everywhere in the world, as this article will attempt to show. And if the other principles covered by the aforementioned Declaration, namely the prohibition of forced labour and child labour, as well as dis-

crimination (including gender-based) are largely ignored in many parts of the world, infringements of trade union rights would seem to be characterized by the fact that they occur on all continents and that in most of the countries concerned they stem from the same attitudes and reflexes on the part of heads of government and employers: distrust of and even open hostility towards trade unions, the refusal to recognize or to accord rights, or the questioning of vested rights, and the complete subordination of all industrial negotiations to the overriding imperatives of competition and profit.

In this unequal battle, some are even more unequal than others. By initial estimates, the figures published in October 2001 by the International Confederation of Free Trade Unions (ICFTU) in its annual survey on violations of trade union rights provide indisputable confirmation.¹ As such, although developing countries account for almost all the victims of physical trade union repression, one continent accounts for the lion's share: of the total number of trade unionists killed worldwide in the year 2000, over 88 per cent lived in Latin America and, within this region, one country alone accounts for 82 per cent of cases. That country is Colombia. Out of a total of 186 deaths in Latin America and some 210 worldwide, no less than 153 Colombian trade unionists (leaders, activists and rank and file all together) were killed last year in discharging their functions or exercising their elementary trade union rights.

Frightening at first glance, these figures are nevertheless misleading. By a "rough" comparison with the corresponding numbers for the previous year (1999), the above figures could indeed convey the impression of a global deterioration. In fact, the total number of trade unionists killed in 1999 was 140, and the figures for 2000 show a 50 per cent increase to be almost exact. Yet, if we exclude Colombia, there were "only" 24 deaths for the year 2000 in the rest of the world, as against 50 in 1999. Those 24 deaths were distributed as follows: seven in Africa (two the year before),

15 in Asia and Oceania (39 in 1999) and two in Europe (nine the previous year). What is more striking, in contrast, is the comparison of the number of countries where trade unionists have been killed in these past two years. Thirteen countries were identified in 1999. In 2000, that number increased to 19.

A dangerous country: Colombia

A fact symptomatic of the worsening socio-political climate in Latin America is that of the ten countries in the region appearing on the list of countries violating trade union rights in 2000, only four had already been there in the preceding year, namely Argentina, Brazil, Colombia and Guatemala. Six "new" countries made their dubious entry. They were Bolivia, Costa Rica, Haiti, Mexico, Paraguay and Peru. Besides, the Dominican Republic, Ecuador and Nicaragua, all three present in 1999, disappear from the list in 2000.

But it is in Colombia, which for some time now has become a free-fire zone against trade unionists, where the brunt of the problem lies. From 76 murders of trade unionists in 1999, the number rose to 153 in 2000, a 100 per cent increase! A tragic realization for Colombian trade unionists: their country, which far outstrips all others in terms of the number of complaints filed with the Committee on Freedom of Association against a government, is also by far the one where it is most dangerous to be a trade union delegate or leader. This is a bitter finding for the international trade union movement which, on seeing no improvement in the situation in the wake of international pressures, can do no more than helplessly observe the worsening of the situation. Whilst for the past three years the Colombian Government has been successfully demonstrating diplomatic prowess in escaping in-depth scrutiny by a Commission of Inquiry called for in 1998 by worker delegates to the International Labour Conference, the new mechanisms instituted by the Organization, that is, the appointment of a

Special Representative of the Director-General, followed a few months ago by the opening of a permanent ILO office in Bogotá responsible for freedom of association issues, would so far seem to have failed in attempts to reduce the number of deaths, even if they have undoubtedly turned the spotlight on a tragic situation.²

Yet the Colombian situation cannot obscure the fact that trade unionists are also being killed in several Latin American countries. Thus, one can hardly help being disquieted by the resurgence in Guatemala's labour relations of death threats and murders of trade union activists, acts which it had been hoped had finally disappeared with the end of the "dirty war" waged by the army and the political powers (mainly against indigenous rural dwellers who make up the bulk of the population) and which accounted for tens of thousands of deaths during the 1980s. If only one illustration of this situation were needed, it would suffice to cite the case of Osvaldo Monzón Lima, General Secretary of the Escuintla Fuel Transporters' Union. Dismissed in 1998 after forming a trade union in the J. O. Gaitan transport company, he had also publicly denounced rampant corruption in the company. In June 2000, after refusing to accept severance payment, he received death threats from a member of the family that owned the company. Monzón Lima was found dead on 23 June in the woods along the Escuintla-Guatemala City highway, killed by a bullet in the back. The evening before, his lorry had been found empty, the windows down and the motor running. Monzón Lima was 62 years of age.

Whilst many trade unionists are murdered in direct connection with a specific labour dispute, most frequently in their own company, others are killed during the repression of major worker protests, general or local strikes, or large-scale demonstrations. Such was the case last year in Peru and Bolivia.

Elsewhere, it is the attempt to organize trade union structures that could lead to the murder of the prime mover. In Haiti, for example, Elison Merzilus, a member of

a trade union affiliated to the *Centrale autonome des travailleurs haïtiens* (CATH), was kidnapped from his home in the town of Gros-Morne on the evening of 4 September 2000 by about a dozen armed persons. His wife and three children looked on helplessly. Two weeks later, the trade unionist's body was found at the bottom of a ravine. Shortly before his death he had been preparing to launch a women's association within the CATH.

Despite their great number, murders of trade unionists are not exclusive to Latin America. In Africa, the ICFTU recorded murders of trade union leaders or activists in Nigeria, Sierra Leone and the Democratic Republic of the Congo (DRC) during 2000. Two cases were reported in DRC: that of Lusala Los Bolonga, General Secretary of the ACTION trade union, killed in October by uniformed men, and that of Odette Kasal Mukaj, an activist in the *Confédération démocratique du travail* (CDT) in eastern Kasai, reported missing since November 2000. With no news of this activist, who was also chairperson of the women's section of the CDT and deputy editor-in-chief of the publication *Flash-CDT*, observers believe that the security services could be responsible for her disappearance.

"Occupational murder"

Lastly, while trade union members or leaders are also dying for the cause in Asia, where Bangladesh and India alone account for 13 of the 15 cases recorded in the region, it must also be said that such murders do also occur in countries in other regions, including in Europe. In 2000, a trade unionist was killed in Cyprus and another in Romania, where Virgil Sahleanu, a trade union leader at the Tepro steel pipe factory in the city of Iasi, died in September. A company with a chequered history, Tepro had been sold in 1998 to a Czech company, Zelezarni Veseli AS, which had promised to invest 4.9 million US dollars in it and to preserve jobs, but which failed to keep either of its promises. The entire local com-

munity soon made a connection between the situation of the company and the murder of the trade union leader. His 1,500 co-workers had staged a march in the city to denounce the murder, which they described as an “occupational murder”.

While dozens of similar cases can be added throughout the world for the period covered by the ICFTU report, the magnitude of the problem becomes simply overwhelming once we turn to types of violations other than actual attempts on lives. This is true of the number of trade unionists wounded, beaten up or tortured, which is almost 3,000 across some 63 countries. The same applies in regard to trade unionists detained, arrested or sentenced, amounting to over 8,000 in 58 countries.

Death threats

According to the report, the number of workers abusively dismissed on account of trade union organization or actions, in the wake of an industrial dispute for example, is almost 20,000, also across 58 countries. As pertains to threats and harassment, last year saw over 100,000 victims, including more than 430 trade unionists who received death threats.

Once again the region of the Americas takes the lion’s share in this latter category, as 77 per cent of the death threats issued were recorded in Colombia alone, and 57 cases (14 per cent of the total) in Haiti, where dozens of activists, trainers and leaders of workers’ movements are obliged to go underground to escape murder attempts. Other worrisome countries in this regard in the region are Mexico, Brazil and Guatemala, accounting for eight, 12 and 15 instances of death threats respectively.

It should be noted that these death threats can take various forms, from the most restrained (anonymous phone calls) to the most severe (sending of a death announcement to the future victim), or even direct physical threats.

It would be wrong, however, to think that such threats and intimidation exist only in Latin America. In Russia, at the

Moscow branch of the McDonald’s transnational enterprise, where wages have fallen by one-half in the wake of the 1998 international financial crisis, Natalia Gratchova, a supervisor and employee of ten years’ standing, decided early in 2000 to create a union. Relations with the management soon deteriorated. Natalia was spied on and numerous threats of dismissal were made against a handful of courageous people who supported her struggle. In June, Natalia received an anonymous telephone call making death threats against her and her daughter. The trade union was finally recognized as a result of the combined effect of local demonstrations, press articles (which ultimately led to a parliamentary commission of inquiry) and international trade union pressure.

Unfair dismissals

Less spectacular, though with weighty consequences for those concerned and for their families, dismissal for trade union involvement or for striking, although prohibited in virtue of ILO principles and texts, is the preferred weapon of many employers and governments throughout the world, even if such occurrences seem fairly less frequent in Europe than in other regions. Just over 3,000 abusive dismissals were recorded last year in Africa, 8,000 in Asia and 8,000 in the Americas. We insist on “Americas” because, with some 1,500 of documented cases, the United States ranks second in the region (after Guatemala, with almost 2,000 reported cases).

According to a 1994 study conducted in the United States, 79 per cent of the public believes that a worker will be fired if s/he attempts to set up a union in his or her undertaking. This survey reveals the harsh reality marked by open hostility on the part of many American employers towards trade unions. It should be recalled that in the United States, the law allows employers to “take full advantage of the play of economic forces”. In plain language, this means that if they fail to arrive

at a desired outcome through collective bargaining, they may unilaterally impose their conditions, dismiss their employees and relocate production or even subcontract it to another company. For example, at the Crown Central Petroleum refinery in Pasadena, Texas, 250 workers were unable to access their workplace for the entire year 2000 because of their attempt to organize a union. Although that dispute was finally settled in 2001, one cannot help being shocked by the extent of the problem: in 30 per cent of trade union campaigns, at least one worker is illegally dismissed. Some 25,000 cases of abusive employer practices are now open before the National Labor Relations Board (NLRB), a body responsible for recording complaints from trade unions. Considering that it takes an average of 557 days to settle a case, some will take years before a solution is found. Besides, the decisions of the NLRB sometimes have no effect whatsoever. One study cited in the ICFTU report shows that of the cases of orders reinstating workers, only 40 per cent actually resume their jobs and a mere 20 per cent will keep them for more than two years.

A catalogue of intimidation

Apart from outright dismissal, employers across the world, both public and private, resort to a myriad of intimidatory or coercive measures to counter collective action by workers. Wage cuts, the suspension of bonuses, arbitrary transfers, demotions – the catalogue of harassment tactics is as varied as ever, and often highly original. For instance, in Dorohoi, Romania, the manager of a small furniture factory, SC Indor, who was legally compelled to reinstate the trade union delegate Laurentiu Cozma after his unfair dismissal, simply assigned him elsewhere, forcing him thenceforth to spend all his days in the hen house in the factory's backyard, prohibiting him from performing any task there and letting him out only once a day for 30 minutes at lunchtime.

All told, the ICFTU annual report recorded 112,000 cases of harassment for trade union involvement for the year 2000. This number nevertheless includes a raft of almost 86,000 Turkish civil servants who were subject to legal prosecution or administrative inquiries for having participated in a strike declared illegal by the Government. They were protesting against the capping of all wage increases at 10 per cent under a stringent IMF-backed anti-inflation programme, when the year-on-year inflation exceeded 44 per cent.

The 26,000 remaining cases of harassment are distributed across 67 countries including Australia and Canada.

Under the law

Lastly, it will be noted that the laws in most countries of the world restrict freedom of association and the right to bargain collectively to varying degrees, whether it is freedom of trade union association proper (106 countries), the right to bargain collectively (77), or the right to strike (114). Fifty-nine countries prohibit or curtail the right to strike based on an exaggerated and unwarranted list of essential services.

As it is not the intention of this article to provide an exhaustive list of instances of freedom of association infringements but rather a summary of the types of problems encountered in day-to-day practice, the examples given above fall far short of conveying a full picture of the situation. Given the increasing numbers, however, it is hard to avoid concluding that as pertains to trade union rights, the theory is a far cry from the practice. Yet these facts, sometimes extremely grave, are largely unknown to the international public and hence carry very little weight with governments, especially those of donor countries, or with most international organizations such as the international funding agencies and other institutional donors of funds or multilateral bodies, including the World Trade Organization.

In the light of these circumstances, it may seem regrettable, for example, that

only a fraction of the situations described in the ICFTU annual report actually come before the appropriate ILO mechanisms. Yet on the other hand, it is not difficult to imagine the avalanche of cases that would be suddenly unleashed on the bodies concerned if only one-tenth of the available information were submitted to them. The ILO's supervisory mechanisms would be practically paralysed.

Indeed, there are good reasons to welcome the fact that the number of cases already investigated by the ILO Committee on Freedom of Association – over 2,000 – has built up a huge corpus of often very detailed decisions over the years. This extensive body of precedents, which are being constantly developed, affords all the countries of the world the possibility of precisely assessing their own progress in the application of the universal principles of trade union rights. From this standpoint, the annual publication by the ICFTU of the principal problems identified in the world sends a two-fold message to these States: for one thing, it shows them that they are not the only ones being taken to task for infringement, and they can therefore not plead victimization; for another, it indicates to them the road that lies ahead, whilst giving them the assurance that they will be subject to the same rigorous scrutiny the following year.

Notes

¹ ICFTU: *Annual Survey on violations of trade union rights*, Brussels, 2001. (The full text of the 2001 Survey is available on the ICFTU web site at: www.icftu.org.)

² In June 1998, the workers' delegates to the 86th Session of the International Labour Conference filed a complaint against the Colombian Government based on article 26 of the Constitution of the ILO, requesting the appointment of a Commission of Inquiry in connection with Colombia's non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In June 2000, following the examination of the report of a direct contacts mission sent to Colombia from 7 to 16 February 2000, the Governing Body of the International Labour Office requested the Director-General to appoint a Special Representative for cooperation with Colombia, to be responsible for assisting with and verifying measures taken by the Government and employers' and workers' organizations to implement the recommendations of the ILO concerning repeated acts of violence targeted at trade unionists over the past ten years. After the submission of the report of the Special Representative, the Governing Body decided in June 2001 to set up a special programme of technical cooperation designed to promote trade union rights, to align laws with international labour standards and to strengthen social dialogue. The aim of this programme is to create a climate in which trade union freedom and the safety of trade unionists and employers would be guaranteed. This decision was based on a proposal by the Workers' group, which recalled at the time that the request for a Commission of Inquiry was in suspense and could be reactivated if no progress were made.

Core labour standards in export processing zones

Export processing zones (EPZs) are proliferating as trade liberalization unfolds. Seen as a means of attracting badly needed foreign investment in developing countries, they have become illustrations of the side effects of globalization on workers' rights. Yet respect for fundamental rights at work could turn EPZs into dynamic instruments for development and long-term investments. The picture at the moment is, however, one of continuous abuses.

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Human Rights and International Labour Standards

World Confederation of Labour

The process of global capital restructuring that the world has experienced over the past two decades has led to the emergence of a global market and changed the nature of the production process. Structural adjustment programmes of the Bretton Woods institutions, coupled with the policies of the World Trade Organization (WTO), have led to the opening up of national economies, the liberalization of trade and investment regimes, the globalization of financial markets and the emergence of transnational companies as the key motors of globalization. For the latter, production is no longer limited within national borders. It takes place at a global level in which transnational capital is organized in global and yet decentralized networks of production units, with chains of intricate relations with suppliers and consumers. At a time of declining or stagnating development aid budgets, governments are increasingly relying on foreign direct investment flows in their development strategies. It is in this context that one has witnessed a phenomenal growth in export processing zones (EPZs) which are today one of the most vibrant expressions of globalization.

These EPZs are specially designated industrial zones or plants which have been

established with special incentives or privileges in order to attract foreign investors. Even though EPZs are thriving in this era of globalization, they existed much earlier, as the 1959 example of Shannon in Ireland illustrates. From the 1970s different models of EPZs began to emerge worldwide and, with the advent of globalization, their number has increased at a phenomenal rate.

According to a recent ILO study,¹ there are currently some 850 EPZs operating throughout the world employing some 27 million people – the overwhelming bulk consisting of young female workers. The majority of EPZs can be found in North America with 320; followed by Asia with 225; the Caribbean/Central/South America region with 133; Europe with 81; and Africa with 47. The key motivating factor for governments to set up these zones has been to attract foreign direct investment into their countries in the hope that such investments would resolve issues such as job creation, transfer of technology and skills, creation of backward and forward linkages in the economy to boost growth, as well as increase and diversify exports and stimulate impoverished regions.

Once set up, these zones offer a package of incentives in order to attract in-

vestors, yet governments are constantly under pressure from transnational companies to do much more. These incentives range from the provision of infrastructure, to a host of financial incentives (e.g. tax exemptions, duty-free imports and exports, repatriation of capital), to abundant and cheap labour force, to preferential employment and industrial relations. The result of this process is that as EPZs proliferate, there is increased competition between governments to offer more attractive conditions to foreign investors. Consequently, besides increased financial benefits, countries have been competing with each other to offer lower regulatory standards, all of which has led to increased competition between national systems of social protection and to a downward spiral in the respect of international labour standards. Many governments have even resorted to advertising the comparative advantages of their EPZs and have not hesitated to publicize the fact that their zones are excluded from normal industrial relations, that workers are docile, wages are low and that trade unions are prohibited.

The proliferation of EPZs is therefore the result of the export and investment-led growth strategies championed by the Bretton Woods institutions since the 1980s, in which EPZs are seen as a means of attracting foreign investment in the hope that major development benefits would automatically be generated. Alas, experience has shown that there is no automatic relationship between the two. This strategy of EPZs has therefore provoked much debate which has sought to balance their contribution to employment and inward investments with their real contribution to overall development. This debate has been reinforced by the critique of labour relations and working conditions in these zones. For instance, whereas the zones have generally played an important role in employment generation, many key questions remain with respect to the quality of jobs offered, the conditions in which workers have to work, as well as the sustainability and cost-effectiveness of the zones. In the area of wages, a gap exists

between wages and a living wage. With respect to labour law, the critique is even harsher, as EPZs are either excluded from national labour law or applicable laws are not respected in practice. In this regard, the role of labour inspection is often found wanting and indeed in some countries labour inspectors are not even allowed to penetrate the zone. Health and safety provisions in the EPZs have also come under scrutiny as a matter of deep concern.

The application of core labour standards in EPZs

It is against this background and due to the difficulties encountered by trade unions to organize workers in EPZs, that the World Confederation of Labour (WCL) undertook a preliminary study² on the compliance with core ILO labour standards in EPZs in six countries with the goal of identifying the different areas of violations of international labour standards and the means used by trade unions to organize workers in these zones. The EPZs in Indonesia, Sri Lanka, Senegal, Madagascar, Mexico and Honduras were chosen for the study. Of these countries, Senegal and Indonesia have ratified all the ILO's core labour standards relating to freedom of association, discrimination, forced labour and child labour. Honduras and Sri Lanka have both ratified all the core labour standards with the exception of Conventions Nos. 182 and 105 respectively. Madagascar has yet to ratify Conventions Nos. 105 and 182 and Mexico has still to ratify Conventions Nos. 98 and 138.

The types of EPZs in the different countries covered by the study differ from each other, though the working conditions and types of production are very similar. Indonesia hosts the third most important EPZs in Asia after China and the Philippines and has a long history of interaction with international capital. Its EPZs cover sectors as different as garments and electronics. Sri Lanka's EPZs have attracted investments primarily in the garment sector, thus contributing to making garments the

second biggest foreign exchange earner of Sri Lanka after remittances by migrant workers. Mexico's EPZs or export processing factories (known as *maquiladoras* or *maquilas*) which are mostly along the US-Mexican border, boomed with the signing of the North American Free Trade Agreement, so much so that between 1995 and 2000, some 1,600 companies with 600,000 workers were operating in the *maquilas* in the electronics, clothing, car manufacturing and woodwork sectors. The *maquilas* in Honduras were set up in 1970 and by the end of the year 2000 they were employing some 100,000 workers. In Madagascar, EPZs have attracted foreign investors mainly from France and Mauritius which account for a third of all firms in the zones. The overwhelming bulk of industrial activity is in shoes, textiles and clothing. In Senegal the Industrial Free Trade Zone created in 1974 has evolved rather poorly though it has attracted investment in a wide range of industrial activities.

Based on this study, a series of conclusions can be drawn on the state of compliance with the ILO's core labour standards in the EPZs in these six countries.

EPZs and freedom of association

The country studies confirm that violation of trade union rights is one of the two most important violations of ILO standards in EPZs in the world. Until recently, only Sri Lanka among the countries studied had not extended the benefits of freedom of association into the EPZs. All the others extended this right; however the effective application of the provisions of Conventions Nos. 87 and 98 was poor. At the inception of the Sri Lankan EPZs, trade unions were not allowed to operate within them. Instead an "Employees Council" was set up in 1994 which hardly represented workers' interests. After years of trade union campaigns the law was finally changed permitting the recognition of trade unions in EPZs as from 23 January 2000.

Even though unions can operate in EPZs in all the countries studied, the real

problem is that of compliance with the Conventions in practice. In all the countries studied, there is ample evidence of systematic violations of trade union rights. These range from acts of anti-union discrimination, intimidation of workers, acts of interference, limitations on the right to freely organize and to strike, and repression of union activities.

For instance in Sri Lanka, if workers were accused by employers of being "troublemakers" when they exercised their right to organize, their entry passes to the zones were withdrawn by the Board of Investment that oversaw the operation of the EPZs. In this way employers were absolved of responsibility for the dismissals of workers. In Honduras, blacklists containing the names of workers involved in organizing are circulated to all companies operating in the *maquilas*, making it impossible for the persons concerned to find work in another *maquila*. In Indonesia, the security forces are regularly used in the EPZs to repress legitimate trade union activities.

In all the countries studied, unions encounter major problems in organizing workers in these zones. A first explanation for this is the deliberate effort by employers, sometimes with tacit government support, to repress unions or at least discourage unionization in EPZs. Methods used in this regard include intimidation, death threats, verbal abuse, constant threats of dismissals, the deployment of the security forces, and the use of physical violence against workers. Secondly, the type of personnel recruited, the nature of the production process and the dominant anti-union culture existing in the EPZs make organizing difficult. Workers' lack of awareness of their rights, job insecurity, fear of victimization and high rotation of personnel undermine efforts to unionize. For instance in Madagascar, workers only have Sunday off. In Senegal, casual labourers make up the bulk of the workforce. These factors place limits on the right to organize. Thirdly, a host of other factors such as trade union strategy and gender policy explain the difficulties in organizing.

One interesting fact revealed in the studies was that the prohibition of unions in EPZs was no guarantee for social peace. Despite the initial prohibition of unions in Sri Lanka's EPZs, in 1997 alone a total of 198 work stoppages were reported. Similarly in Madagascar, the no union policy adopted by the Government in the early years of the zones did not stop spontaneous strikes. This led the Government to change its mind and accept unions without necessarily encouraging them. Another employer strategy which was noted in Honduras, Mexico and Madagascar was the creation of house unions. Similar efforts are seen throughout Central America with the creation of *solidarist* associations by employers. (Ed. Solidarist associations are promoted in some Latin American countries by employers as substitutes for bona fide trade unions. The practice has been condemned by international trade union organizations.)

Even though in each country differences exist from one EPZ to another in the severity of the working conditions and the respect for workers' rights, one can conclude that violations of trade union rights are persistent in EPZs.

EPZs and discrimination

Based on the case studies, it is clear that gender discrimination, together with violations of trade union rights, constitute the most serious violations of workers' rights in EPZs. Women suffer discrimination by virtue of their gender and as a result of their efforts to organize. One must not forget that the overwhelming bulk of workers in these zones are young women. In all the countries studied, with the exception of Senegal, there is a deliberate policy to recruit young women, preferably single and without children. The motivation for recruiting them in these countries is because they are considered to be docile, amenable to work in labour-intensive industries, can easily adapt to meticulous, monotonous, repetitive work, can work fast, are disciplined and are not inclined to

join unions. Furthermore, the fact that they are low-skilled, with low educational levels and in some countries come directly from villages, means that they can generate higher profit margins. This means that while EPZs have played a major role in the feminization of the workforce they have stereotyped women into certain categories of work.

For women workers, discrimination often starts right from recruitment. Women workers in Mexico and Honduras are subjected to pregnancy tests. Furthermore, in both countries, as well as in Madagascar, women's maternity rights in the zones are systematically violated. Women who are pregnant soon after employment are often targeted and forced to resign because of their pregnancy and their legal maternity rights are not respected. Sexual harassment of women is an endemic problem in all the countries studied. At the level of job classification, women are systematically placed in labour-intensive and low-skilled jobs while their male counterparts are given high-capital and skill-intensive jobs. Furthermore, employers are reluctant to invest in training women workers, hence blocking their chances of better jobs. At the level of wages, in Indonesia and Honduras women tend to be lower paid than men for the same job and this appears to be the same in the other countries when it comes to comparing wages for work of equal value. In any case, by virtue of their being systematically recruited into low-skilled jobs, women tend to be lower paid than men.

The studies raise a series of other problems specific to women workers, such as the availability of childcare facilities, transportation at night, social welfare provisions and accommodation.

EPZs and forced labour

Whereas hard core forced labour does not appear to exist in the EPZs studied, subtler forms of forced labour are widespread. Workers are forced to work, sometimes without adequate compensation, under

the threat of a penalty of dismissal or punishment. Generally, workers have to endure unreasonable production norms, long working hours, severe norms on punctuality and absence, restrictions on using the toilet, severe punishment for trivial offences and verbal abuse by their supervisors. The situation is particularly bad in the Korean firms studied. This harsh treatment of workers creates a climate which gives employers in the zones an overriding coercive force over workers.

Hence, in Indonesia and Honduras the study shows that workers are forced to work overtime and in many cases without appropriate compensation. In Sri Lanka, compulsory overtime is imposed on workers and they often have problems in obtaining leave. Similarly in Madagascar, there are problems of non-payment of overtime and a non-observance of paid holiday and free time off for family reasons. These forms of forced labour have also been recorded in other countries not covered by the study.

EPZs and child labour

Based on the results of the study, child labour was identified in the EPZs of Indonesia and Honduras. However, the prevalence of child labour found in these EPZs was not on the same scale as that existing in other areas of economic activity. Evidently, the search by employers for young women to work has meant that under-age girls are caught up in work in EPZs in hidden ways. The biggest problem, however, is in relation to the different linkages between the EPZs and the outside, whereby child labour is used in the production process of EPZ goods. This is particularly true for homeworkers and workers in the informal economy who interact with the EPZs. Child labour exists in the EPZs of other countries not covered by the study but it is true to note that the levels cannot be compared to the prevalence of child labour in sectors like agriculture or informal activities.

Conclusions

The WCL country case studies on the state of application of labour standards in EPZs shows that despite some slight improvements in some countries, the effective application, in law and in practice, of core labour standards in EPZs still leaves much to be desired. Furthermore, jobs created in the zones fall short of the ILO's standards on decent work. Violations of trade union rights and equality rights are the most prevalent in EPZs. However, it must be underlined that other labour standards, such as ILO Conventions dealing with health and safety, labour inspection, employment policy and workers with family responsibilities are regularly violated in these zones.

In this regard, if EPZs are to be dynamic instruments for the promotion of human development and sustainable long-term investments, the zones must end the downward spiral in competition. Bearing in mind that "... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries",³ this calls for a global effort. Hence the enforcement of core labour standards worldwide would provide basic ground rules in the global economy, secure human dignity at work and develop incentives to promote productivity and decent work in EPZs.

In this perspective, the ILO Declaration on Fundamental Principles and Rights at Work is a concrete operational framework to reconcile the demands of foreign direct investment and the promotion of decent work for all.

Notes

¹ ILO: *Labour and social issues relating to export processing zones*, Report for discussion at the Tripartite Meeting of Export Processing Zones-operating countries, Geneva, 1998.

² WCL: *Export processing zones and international labour standards*, Case Studies of Senegal, Madagascar, Mexico, Honduras, Sri Lanka, Indonesia, Brussels, 2000.

³ ILO Constitution.

When privatization means exploitation: Prison labour in privatized facilities

ILO instruments generally prohibit all use of forced or compulsory labour and the ILO instruments in question are the most widely ratified of all. Yet forced and compulsory labour persist in the world today and in some cases are on the increase. This article offers a short description of the prohibitions on forced labour and the patterns of forced labour in the world today, before focusing on a particularly troubling modern form of forced labour: the work of prisoners for the benefit of the private sector.

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An ILO Commission of Inquiry recently observed that “there exists now in international law a peremptory norm prohibiting any recourse to forced labour ... the right not to perform forced or compulsory labour is one of the basic human rights.”¹ That right is protected in the two most widely ratified of all ILO Conventions: the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). Convention No. 29 has been ratified by 158 ILO member countries. Convention No. 105 has been ratified by 156 member countries. Since 1998, all Members of the ILO are also bound to promote the principles contained in these Conventions, *whether or not they have ratified them*, by virtue of the operation of the Declaration on Fundamental Principles and Rights at Work.

What is “forced or compulsory labour”?

In ILO Conventions, forced or compulsory labour has been broadly defined. It means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”² So what makes forced labour is simply two things:

whether or not the person doing the work has chosen freely to do the work, and whether or not they are subject to sanction if they refuse. The type of penalty involved may be a criminal penalty, but it is not necessary for it to be a criminal penalty. Any loss of rights or privileges as a punishment for a refusal to perform work, whether imposed administratively or judicially, is a penalty for the purposes of this definition.³ It is also significant that payment for work is completely irrelevant to deciding whether or not the work is forced or compulsory labour. In other words, the mere fact that a person is paid for the work they do does not mean that it was performed voluntarily, and it does not mean that they performed the work free from the menace of a penalty or sanction. Payment for work does not mean that it is not forced or compulsory labour.

Is forced or compulsory labour permitted?

The origins of Conventions Nos. 29 and 105 lie in the efforts of the international community to eradicate the slave trade. There was no doubt in the minds of those who drafted Convention No. 29 and Convention No. 105 that forced or compulsory

labour can quickly deteriorate into conditions approximating slavery. Accordingly, Conventions Nos. 29 and 105 strictly prohibit recourse to forced or compulsory labour in almost all circumstances.

Generally speaking, forced or compulsory labour is *completely prohibited*. States party to Convention No. 29 are obliged to suppress the use of all forms of forced or compulsory labour “within the shortest possible period”.⁴ Not only are States required to refrain from using forced or compulsory labour themselves; they are also required to punish adequately anyone who imposes unlawful forced or compulsory labour on another person.⁵ States party to Convention No. 105 undertake to suppress and not to make use of forced or compulsory labour for the following purposes:

- as punishment for political activity or for holding certain political views, or as a means of political education;
- for economic development purposes;
- as a means of discipline;
- as a punishment for having participated in strikes; or
- as a means of racial, national or social discrimination.

There are, however, certain types of forced or compulsory labour that are exempt from the general prohibition in Article 1 of Convention No. 29. The exemptions cover:

- work of a purely military character performed under compulsory military service laws;
- work that is part of the “normal civic obligations” of a citizen, for example, jury duty;
- work by prisoners, provided that they have been convicted in a court of law, that their work is performed under public supervision, and that they are not “hired to or placed at the disposal of private individuals, companies or associations”;
- work required in response to a national emergency; and

- minor communal services from which the community itself directly benefits.

It is important to note that these types of work are *not excluded from the concept of forced or compulsory labour*. On the contrary: these are forms of forced or compulsory labour. For policy reasons, however, States are permitted to have recourse to these types of forced labour, subject to strict conditions.⁶

Is there forced or compulsory labour in the world today?

Sadly, the answer to this question is undoubtedly “yes”. In June 2001 the Director-General presented to the International Labour Conference his report *Stopping forced labour*, the second Global Report under the Follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work.⁷ There, the Director-General observed that, despite universal condemnation of the practice of forced labour, “the elimination of its numerous forms ... remains one of the most complex challenges facing local communities, national governments, and employers’ and workers’ organizations and the international community.”

Stopping forced labour provides an overview of the practice of forced or compulsory labour in the world today. In some cases, forced labour is a continuation of old, even ancient forms, such as chattel slavery. In others, it has a new, modern face, and is associated with more recent international developments, such as the rise of trafficking in people. In all cases, however, forced labour has two common features: “the exercise of coercion and the denial of freedom”.

According to the Report of the ILO Director-General, forced labour today falls into the following broad categories, and occurs in these places:

- Slavery and abductions are still problems in parts of Africa, particularly Mauritania, Liberia and Sudan.
- Compulsory participation in public works projects is a feature in certain

Asian countries, particularly Myanmar (Burma), Cambodia and Viet Nam. In some African countries (Central African Republic, Sierra Leone, Kenya, the United Republic of Tanzania and Swaziland) national legislation still provides for some types of compulsory cultivation.

- Forced labour in agriculture and remote rural areas, including coercive recruitment systems, are problems in many parts of the world. Children in particular are reportedly affected and forced to work on plantations in West African nations including Benin, Togo and Côte d'Ivoire, where some of the children working are reported to be from Mali and Burkina Faso. There are pockets of virtually unpaid labour, combined with service obligations, in Guatemala, Mexico and Peru. Both the Dominican Republic and Brazil also struggle to eradicate this form of forced labour.
- Domestic workers in forced labour situations can be found in Haiti (the *restavek* system) and Benin; here again, children are particularly affected.
- Bonded labour continues to be a problem, despite government efforts, in South Asia.
- Forced labour imposed by the military has been (and reportedly continues to be) a particular problem in Myanmar (Burma). The widespread imposition of forced labour on hundreds of thousands of civilians in Myanmar (Burma), for both military and development purposes, led the ILO in 1996 to establish a Commission of Inquiry under article 26 of the ILO Constitution. Its report concluded that the Government of Myanmar (Burma) was responsible for the widespread imposition of forced labour, and called on the Government to cease the practice (and to amend relevant laws that permitted it) immediately. The failure of the Government of Myanmar (Burma) to respond positively to the recommendations of the

ILO Commission of Inquiry led to action being taken by the ILO Conference, under article 33 of the ILO Constitution, in 1999, for the first time in the ILO's history. The Conference called on all members of the international community to review their relations with Myanmar (Burma) in light of its continuing practice of forced labour.

- Forced labour in the trafficking of persons. Associated with increased globalization, in recent years there has been a substantial increase in trafficking of persons. In many cases, the people who are trafficked complete their journey in a forced labour situation. Typically, women are trafficked into work as prostitutes, commonly in parts of South-East Asia, but also in Europe and the Americas. Work in the sex industry is not always the outcome: in some cases the people trafficked work in agriculture (as for example in the Dominican Republic, or in parts of West Africa). Trafficking in people, and the associated exploitation of those who are trafficked, including through being forced to work against their will, affects every part of the globe.
- Aspects of prison labour. The increase in the private operation of prisons in many countries raises serious issues of compliance with Convention No. 29. This issue is taken up in more detail in the following section.

The use of prison labour for private profit⁸

Particularly since the mid-1980s, there has been a worldwide trend towards the private operation of prison facilities, under contract to governments. By the end of the year 2000 there were 182 privately run facilities around the world, able to hold a total of 141,613 prisoners. Of these prisons, 154 were in the United States, where together they were able to hold 119,449 prisoners. While the United States has more private prisons than any other country, the

highest proportion of prisoners held in private facilities is found in Australia, where until recently the State of Victoria held 47 per cent of its prisoners in privately run facilities.

There has also been an increase in the involvement of the private sector in employing prison labour, mainly because of the rising cost of holding the ever-increasing prison populations of the world. The products made by prisoners are often available for purchase by the public and the profits used to help fund the costs of running the prison systems. Prison industries in the United States in 1999 sold \$1.6 billion worth of prison-made products. In the Australian State of New South Wales, sales of prison-made products rose from AU\$20.2 million in 1998-1999, to AU\$25.5 million in 1999-2000: an increase of over 25 per cent.

The rise in the number of privately run prisons, and the greater involvement of the private sector in employing prison labour are both related to the broader processes of globalization, including economic restructuring, and also the global reach of multinational corporations. The spread of private operation of prisons is not coincidentally related to the fact that a small number of US-based multinational companies (notably the Corrections Corporation of America and the Wackenhut Corporation) dominate the market globally.

The work that prisoners do in privately run prisons and in other situations for the private sector (whether in workshops inside prison, or outside the prison) often requires little skill and is unlikely to help rehabilitate prisoners for employment after release. In the United Kingdom, prisoners at the Blakenhurst prison in 1998 were employed cleaning out concrete mixers. As this work could not be done on the free labour market, its rehabilitative value must be doubted. At the privately run Borallon prison in the Australian State of Queensland in 1998 many inmates had little to do other than sweeping or weeding in the grounds. When the prison did have contracts with commercial enterprises, the

work was promoted as an avenue for vocational training. However, work in the kitchen, on contract to local catering companies, was often nothing more than peeling potatoes and other vegetables, and slicing onions. Here, the conflict between training for prisoners and profits for the prison operator was resolved in favour of cheap labour and profit generation.

Prison labour is poorly paid. Prisoners in the United States, Australia and the United Kingdom are generally not entitled to be paid the minimum wage, but are forced to accept payment at rates determined unilaterally by government. In the Australian State of Queensland, prisoners work for between AU\$2.04 and \$3.99 a day, subject to a weekly maximum of AU\$55.86. In the United States, prisoners in federal prisons work for wages that in the early 1990s ranged from US\$0.12 to \$0.40 an hour, while the federal minimum wage at that time was over \$4.00 an hour. In the United Kingdom, prisoners earn a minimum of £7.00 per week (£2.50 for unemployed prisoners) and in 1998 they generally earned around £23-30 per month, while the minimum wage is approximately £3.60 an hour. One prisoner in the Australian State of Victoria wrote to a newspaper, describing the working conditions: "The workers . . . are being paid \$1 an hour for their trouble. If one of them is sacked for some reason he will be punished by being locked in a cell for 21 hours a day for the next two weeks, after which he will be ordered back to work in the factory."

The governments of Australia, the United Kingdom and the United States all argue that prisoners should not be entitled to receive the applicable minimum wage for the work that they do. One of the arguments they make is that prisoners are far less productive than workers in the free labour market. Yet in March 2000, 47 out of 49 jurisdictions in the United States reported that their prison industry operations were either self-sufficient or profitable.

The low wages that prisoners earn can make them attractive to employers and there are often special provisions in relevant

laws regulating the ability of the prison industry to sell its products in competition with the local labour market. Traditionally, many prison goods have been used by the State itself. In many parts of the United States this is still the destination for the products of prison labour. A federal government Prison Industry Enhancement (PIE) programme in the United States attempts to balance the interests of all parties. It allows prison-made products to be sold on the open labour market, *provided* that certain conditions are met, including the payment of minimum wages. In cases where the prevailing wage exceeds the legal minimum, however, employers still have an incentive to move their work into prisons. In one widely reported incident in 1993, Lockhart industries closed a manufacturing operation in Austin, Texas, where over 130 workers earned more than \$10 an hour assembling electronic circuit boards. The plant reopened soon afterward inside a privately run prison as a PIE programme, where the workers (prisoners) earned only the minimum wage.

The application of Convention No. 29 to prison labour

In recent years the ILO's supervisory bodies have increasingly focused on the implications of these practices for the observance of Convention No. 29.⁹ The Committee of Experts published remarks in its General Report in 1998, and in 1999 it issued specific questions concerning compliance with Convention No. 29. In 2001, the ILO Committee of Experts on the Application of Conventions and Recommendations reported on the few answers it received from governments, and provided a detailed statement on the application of Convention No. 29 in cases where prisons are privately run, or where prisoners are otherwise employed by the private sector. The ILO's Conference Committee on the Application of Standards has also held discussions on the application of Convention No. 29 to the work of prisoners for the private sector in 1998, 1999 and 2000.

Governments must comply with each of the strict conditions in Article 2(2)(c) of Convention No. 29 if the work of prisoners is to fall within the exemption:

- The prisoners must have been convicted in a court of law, meaning one that operates to offer a fair trial in the internationally accepted sense.
- The work must be performed under the supervision of the public authorities. This is necessary because there is a potential conflict between the reformative aims of the State in imprisoning its citizens, and the profit aims of the companies that might employ prisoners. It is also necessary to ensure that the conditions of work of prisoners do not fall below publicly determined standards.
- Prisoners must not be hired to or placed at the disposal of private individuals, companies or associations. This is a particular problem in the case of privately operated prison facilities. In these cases, the private operator usually includes prison labour in its profit calculations. Moreover, the private operator exercises many of the administrative powers that belong to the prison administration.

Obviously, it can be difficult to comply with the second and third of these conditions if a prison is completely privately run, or if work by prisoners in a private workshop is supervised by the employees of the private company concerned.

It is important to recall that *voluntary* prison labour is not prohibited by Convention No. 29, for private profit or otherwise. However, in view of the power that prison authorities have over prisoners, who truly form a captive labour force, the ILO Committee of Experts has emphasized the need to be able to identify by objective means that a prisoner is in fact working voluntarily. That means written consent and employment conditions that are similar to those that apply to the same type of work where it is performed in the free labour market.

Determining whether or not a prisoner has volunteered to work can be a complex issue. Today, work by prisoners is pursued mainly as a means of helping their rehabilitation, but it remains *compulsory* in many jurisdictions. In many others, while it is not formally required, there are other incentives for prisoners to work, that must be borne in mind when considering whether or not prisoners are truly volunteering to work, particularly where the private sector is involved. It is possible for a prisoner's performance at work to have a significant impact on his or her conditions of imprisonment. Privileges might be withdrawn for failure to work, or to work well. The quality of a prisoner's cell might change, depending on whether the prison guards consider him or her to be a good working prisoner. At the extreme end of this scale are cases in which a prisoner's work record might be considered in deciding whether or not to offer the prisoner parole from their sentence. Clearly, the question of whether or not a prisoner is working voluntarily can be a difficult one to answer, and an issue that requires vigilance on the part of prison authorities.

Conclusion

Forced and compulsory labour are prohibited by international law, and yet persist in many forms. Some of these are particularly difficult to eradicate. The rise in the trafficking of persons, for example, comes in an age of globalization, where stark income inequalities offer virtually irresistible incentives to people to move countries, legally or not.

In the case of forced prison labour, however, compliance with ILO standards is entirely within the power of governments. It is governments that decide whether or not to privatize prison operations. It is governments that determine whether or not prisoners will be allowed

to work for private interests, regardless of whether prisons are privately run. It is governments that set pay scales for prisoners. It is governments that can, and should, take the necessary steps to eradicate this illegal modern form of slavery.

Notes

¹ ILO: *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Geneva, 2 July 1998 [para 203].

² Convention No. 29, Article 2(1). Although Convention No. 105 does not contain its own definition of the term "forced or compulsory labour", the ILO's Committee of Experts on the Application of Conventions and Recommendations has determined that the definition in Convention No. 29 can be used: ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4 B), *General Survey of the Reports relating to the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, International Labour Conference, 65th Session, Geneva, 1979 (subsequently referred to as *1979 General Survey*) [para 39].

³ *1979 General Survey* [para 21].

⁴ Convention No. 29, Article 1(1).

⁵ Convention No. 29, Article 25.

⁶ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 89th Session, Geneva, 2001 [para 108].

⁷ The Report *Stopping forced labour* is available at: <http://www.ilo.org/public/english/standards/decl/publ/reports/index.htm>.

⁸ Much of the information contained in this section is drawn from a report recently commissioned by the ICFTU: *Private Benefit from Forced Prison Labour: Case studies on the application of ILO Convention No. 29*. The full report is available at: <http://www.icftu.org/displaydocument.asp?Index=991212919&Language=EN>.

⁹ In 1998 the ILO Committee of Experts published remarks about the application of Convention No. 29 in these situations in its General Report: ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 86th Session, Geneva, 1998, [paras 112 to 125]. In 1999, the Committee of Experts published a general observation, in the form of questions to countries concerning their practices.

A world consensus for a final blow to the worst forms of child labour?

Next year, the International Labour Conference will be examining an initial Global Report on child labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. This should allow for a first evaluation of Convention No. 182, which took effect in 1999. International trade union organizations are already campaigning for its ratification and full application.

Samuel Grumiau
Journalist

When the delegates to the 58th Session of the International Labour Conference of the ILO adopted the Minimum Age Convention (No. 138) on 26 June 1973, little did they imagine that 26 years later, a new Convention would be needed to abolish the “worst” forms of child labour. And yet, although 111 countries have ratified Convention No. 138, there are still over 250 million working children in the world,¹ many in the worst forms of labour, namely slavery, prostitution, armed combat, and so on. It was therefore high time to give fresh impetus to endeavours to combat this scourge, which was why a new Convention was unanimously adopted on 17 June 1999. It is called “Worst Forms of Child Labour Convention (No. 182)”, and is already the fastest-ratified Convention in the history of the ILO. At the beginning of August, no less than 90 countries had already ratified it. No State has dared to express unwillingness to approve it, unlike Convention No. 138. The universal ratification of Convention No. 182 should therefore be only a matter of time.²

Far from replacing Convention No. 138, the new Convention underscores its objective of the complete abolition of child labour, by means of more binding provisions. “Whereas Convention No. 138 sets a minimum age for taking up employment, Convention No. 182 goes further by asking the question: when, despite the law,

children find themselves in the worst forms of labour, what do you intend to do to help rescue them?”, says Tim De Meyer, legal adviser to the ILO International Programme on the Elimination of Child Labour (IPEC). The countries ratifying the Convention are obliged to identify, with the support of the social partners, those sectors where the worst forms of child labour persist, then to launch programmes to get children out of such work, rehabilitate them and prevent other children from entering these categories of labour. Article 1 of Convention No. 182 states: “Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”. This could not have been more clearly formulated, in the knowledge that under this new legal instrument, the term *child* applies to any person under the age of 18 years.

Continuing exploitation

We may well hail the record number of ratifications of Convention 182, yet international trade union organizations are still cautious as to its application in the field. “Some governments consider their task to be over once the ratification is complete”, explains Tim Noonan, Campaign Director for the International Confederation of Free

Trade Unions (ICFTU), “ Instead of taking steps to apply a Convention, they wait to see whether the ILO will come to their assistance.” As such, there is still a wide gap between the hope engendered within the major organizations by the adoption of Convention No. 182 and its application in the field, a gap that everyone has a duty to try to bridge. For little Sok, 11 years old, sold several times a day to paedophiles in the brothel-village of Svay Pak, 11 kilometres from Phnom Penh (Cambodia), it is undoubtedly too late: across Asia, Non-Governmental Organizations (NGOs) that have the courage to shelter minors rescued from brothels explain that the children frequently end up returning to prostitution of their own free will. They have lost all self-esteem and have been dishonoured for life by the exploitation to which they have been subjected and have no further hope of ever finding a job that will pay as well as prostitution. Reintegrating them into society would call for considerable financial and human resources ... Cambodia has indeed adopted a detailed plan to combat the sexual exploitation of children, but when will it have the financial means for implementing it? Its future ratification of Convention No. 182 could prove instrumental in finding some donors for that purpose, but before the money reaches the project that could teach Sok an occupation, she will be no doubt 14 or 15 years old, if she has not already died of AIDS.

Hence the importance of prevention in those regions where procurers recruit their victims. A number of NGOs are working in this field in Cambodia, Thailand, Nepal or even the Philippines, often with IPEC support, but again, this requires substantial funding for media campaigns, posters, meetings in villages and the like. In some regions, the worst forms of child labour are not really perceived as such by the families, partly because they have no other option for ensuring their economic survival. If they are to be credible, initiatives to apply Convention No. 182 must therefore include assistance in job creation in the poorest regions, micro-credit programmes, school-building, and so on.

Worst forms of child labour

According to the provisions of Convention No. 182, the worst forms of child labour are:

- Slavery, forced labour and similar practices (such as the sale and trafficking of children, debt bondage, the forced recruitment of children for use in armed conflict, etc.);
- sexual exploitation, prostitution and pornography;
- the use of a child for illicit activities (in particular for the production and trafficking of drugs);
- all hazardous work that is likely to harm the health, safety or morals of children. The precise content of this category must be determined in each country by national laws or by the competent authority, after consultation with trade unions and employers' associations. Their freedom of interpretation is tempered by the obligation to refer to the “Recommendation on the worst forms of child labour”, adopted simultaneously with the Convention and which cites inter alia, exposure to hazardous substances, the handling of explosives, mining, quarrying and underwater work, the manual handling of heavy loads, work for long hours or during the night, etc.

A link with other fundamental Conventions

It is true that the mere ratification of Convention No. 182 is not enough to solve the problem, but a firm commitment on the part of all the social partners with a view to its immediate application will certainly go some way towards reducing the scale of poverty. By extension, it should pave the way for the implementation of other ILO Conventions, including Convention No. 138, which many countries are reluctant to ratify because its demands would be “impossible to apply in their entirety”. International trade union organizations are incensed by government statements that Convention No. 138 is overly ambitious. “We reject their arguments”, says Tim Noonan, “and we sound a warning against the intentions of some governments which, whilst indicating their agreement to combat the worst forms of child labour,

have stated in meetings preparatory to the UNGASS³ that at any rate the aim is not to abolish all child labour but to improve the lot of those who work (through higher wages, better working conditions, etc.). These governments are using United Nations meetings to water down the very principles of the ILO! Others would also like to divorce the application of Convention 182 from that of other ILO core Conventions, refusing to acknowledge the linkages between them. Yet child labour will continue for as long as parents are not earning adequate wages, an objective actively pursued by trade unions when they are allowed to do so.”

Potential for trade unions

Until fairly recently, many trade unions did not consider the fight against child labour as one of their priorities, but instead left it to the NGOs to take action in that connection. According to their line of reasoning, it was first necessary to safeguard freedom of association, for if that were fully assured, there would be far fewer chances of seeing large numbers of children at work. It is a principle that makes good sense, but it must be noted that there are still numerous stumbling blocks in the way of freedom of association in many countries. Is this a valid excuse for overlooking the issue of child labour for the time being? Unflinching commitment by trade unions to campaigns for the ratification and implementation of Convention No. 182 could at any rate strengthen their position vis-à-vis hostile governments. Indeed, under the provisions of Convention No.182, governments are obliged to consult trade unions at various stages: in drawing up the list of categories of work considered as hazardous, when conducting the periodic review of the content of that list, and then in devising action programmes for abolishing the worst forms of child labour.

Therefore, governments must at least consult trade unions and regard them in good faith as important interlocutors, even

in countries where the trade union movement is divided, politicized and represents only a small percentage of the workforce. In the event of refusal to consult the trade unions or in other instances of non-observance of the Convention, the unions must report this to the ILO Committee of Experts. In the second place, the Committee of Experts on the Application of Conventions and Recommendations may request explanations from the government (see article by Monique Cloutier, page 8), with disastrous consequences for the image of a country that would thus refuse to apply such a widely approved Convention.

Within the ILO, it is the IPEC programme that is responsible for combating child labour. “Our new policy is to promote programmes based on a timetable”, explains Asha D’Souza, IPEC campaign chief, “so that governments will commit themselves to eliminating the worst forms of child labour within a period of five or ten years. Tanzania, El Salvador and Nepal have already drawn up programmes along these lines and we hope to conclude agreements with several other countries in the future. The aim is to link the fight against child labour with poverty reduction programmes and national development policy. Insofar as its finances allow, the IPEC is therefore able to provide technical assistance to countries that choose this path ahead. Such assistance includes improving school systems, awareness-building amongst the population as to the scourge represented by the worst forms of child labour, job creation for parents, micro-credit ...”.

International trade union campaigns

“International trade union organizations are hoping to take advantage of the new momentum stemming from Convention No. 182 to step up IPEC-trade union cooperation in the field”, says Claude Akpokavie, Director for International Labour Standards at the World Confederation of Labour (WCL). After campaigning for the adoption of Convention No. 182 as

a complement to Convention No. 138, international trade union organizations are setting the example by multiplying their endeavours to combat child labour. Accordingly, the ICFTU has launched a far-reaching campaign. It is calling on all its members and sympathizers to sign a petition for the ratification of Convention No. 182, and to exert pressure on their governments to ratify the two key Conventions in this sphere.⁴ On 10 December 2000, the WCL in turn launched a worldwide campaign for this purpose.⁵ The ICFTU and WCL also underscore the crucial role that can be played by international funding agencies and transnational corporations in combating child labour. "The WTO, IMF, World Bank and others must incorporate it into their strategy", Claude Akpokavie stresses, "the message is now beginning to get across, especially to the World Bank, but they have not yet warmed up to the idea that the fight against child labour is bound up with the observance of freedom of association! The transnational corporations too must themselves comply with the Conventions prohibiting child labour. And let them not try to tell us that they are not in a position to do so: if they are able to control the quality of what they buy, then they are in a position to control the way in which it has been manufactured ..."

A broad consensus has formed across the world comprising trade unions, employers, NGOs, UNICEF, ILO-IPEC and its donor governments, and has decided that the worst forms of child labour must disappear in the near future. It is still too early to assess the practical effects of Convention No. 182, for under its provisions, it en-

ters into force one year after the second ratification. The Seychelles was the first country to ratify, followed by Malawi on 19 November 1999. The Convention has therefore been effective since 19 November 2000, but it only becomes binding on a country one year after its ratification. All countries must then submit regular reports to the ILO on the manner in which they apply it. The Global Report that will be tabled at next year's International Labour Conference under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work will be addressing precisely child labour. It is our hope that it will be able to report on progress in the battle being waged by the ILO.

Notes

¹ For general information on child labour in the world, see also the web site of the Global March against Child Labour (<http://www.globalmarch.org/>), or the pages dealing with the IPEC on the ILO web site (www.ilo.org).

² The full texts of Conventions Nos. 138 and 182 are also available on the ILO web site.

³ One of this year's special sessions of the United Nations General Assembly was due to be devoted to the rights of the child. It was to meet, in the presence of Heads of State and of Government, NGOs, children's advocates, from 19 to 21 September 2001 at the United Nations headquarters in New York as a follow-up to the 1990 World Summit for Children. This session was, however, cancelled because of the tragic events in the United States on 11 September 2001.

⁴ See the ICFTU Internet site: www.icftu.org.

⁵ Further information on this campaign is available on the WCL Internet site at www.cmt-wcl.org. Note should be taken, inter alia, of an excellent pedagogical dossier available at the address <http://www.cmt-wcl.org/fr/pubs/normchildpedag.html>.

The social clause: An inconclusive debate

Demanding that a core of minimum social rules should be observed in all countries so as to avert the excesses of globalization makes good sense. But attempts to realize this wish do run into a number of often legitimate concerns, a priori assumptions and differences of conception that the players would do well to clear up.

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Journalist

Specialist in international labour issues

The crux of the problem of the social clause is that it represents a convergence of political, economic and humanitarian issues. Hence the difficulty, in the arguments wielded, of circumscribing and attempting to take account of what pertains to the ideological struggle and what relates to real determination to find a pragmatic solution. Already in 1995, the Director-General of the World Trade Organization (WTO) underscored this contradiction in the following manner: "Are we talking about the comparative advantage that developing countries enjoy because of their lower wage levels (as the matter is often presented), about human rights or about labour standards?" For him, the issues embodied in a social clause were already plagued by ambiguity: "The key trade-related issues must be identified, for example, should child labour and trade union rights be considered from the viewpoint of labour standards or from that of human rights?"

As it is being posed today, however, the question is whether it is possible or desirable to build social standards into free trade agreements, and more specifically those signed in the WTO framework.

Minimum standards

The advocates of a world social order, led by trade union organizations, defend the idea of a provision whereby world market access is linked to minimum standards that would be built into international trade agreements, including those emanating from the WTO. Governments that fail to observe this clause would be subject to inquiry and urged to rectify the situation, failing which they could face retaliatory measures as a last resort.

Since its inception, the International Labour Organization (ILO) has been engaged in this discussion. Accordingly, the Preamble to its Constitution adopted in 1919 states that: "... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

This concern was also to be echoed later in the Havana Charter adopted in 1948 envisaging the creation of an international trade organization, an idea then opposed by the United States with the result that the international community had to be content with a modest set of provisional trade rules, the General Agreement on Tariffs and Trade, or GATT, itself replaced almost

50 years later by the WTO. It should be recalled that Article 7 of the Havana Charter states that: "...unfair labour conditions, particularly in production for export, create difficulties in international trade".

In spite of its objection in principle to an overly direct formulation of the problem, the United States itself would finally agree on the need not to allow "the invisible hand", so dear to Adam Smith, to regulate the problems of competition.

In 1977, the ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.¹ Whereas this document is not "binding", it provides in paragraph 36, for example, that "Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour". Furthermore, paragraph 46 of the Declaration states: "Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively".

In a more restricted framework, though more significant given the economic weight of the component countries, the Organisation for Economic Cooperation and Development (OECD) in 1979 adopted "guidelines" for multinational enterprises, setting out a number of recommendations, albeit non-binding, on the manner in which social problems should be tackled.

The United States Government itself for the first time imposed a "social clause" in the Caribbean Basin Economy Recovery Act, stipulating that "The President shall not designate any country a beneficiary country under this chapter ... if such country has not or is not taking steps to afford internationally recognized worker rights...". These were classified into five standards: freedom of association, collective bargaining, prohibition of forced labour, the setting of a minimum age for child labour, and some conditions governing the minimum wage, working hours and health and safety at work.

The United States then went on to introduce similar provisions into other treaties, in particular, that pertaining to the Generalized System of Preferences and the Trade Act of 1974, allowing enterprises and trade union organizations to file complaints of non-compliance with the conditions set out above. The procedure provides for an inquiry that could ultimately lead to retaliatory measures or the withdrawal of benefits accorded under the treaty.

In Latin America, Brazil, Chile, Colombia, the Dominican Republic, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Paraguay and Suriname have at one time or another been threatened with the invocation of this clause. As it had already timidly attempted to do during the Tokyo Round in 1953, and now obviously satisfied with this weapon, the United States then proposed in 1986, with Canada's agreement, that a working group be created within the GATT. Nevertheless, as the recent example of negotiations with China has shown, the United States seems to emphasize human rights concerns only when its direct economic interests are not at stake.

The idea in turn taken up by the International Confederation of Free Trade Unions (ICFTU) would entail incorporating in international trade agreements the recognition of the minimum standards emanating from 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 Minimum Age Convention, 1973 (No. 138), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No.105), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

This list has a major political advantage in that these are Conventions that have been ratified by the vast majority (over 100 countries) of ILO member States, which are the same ones present in all the international forums, the WTO included.

While the United States' motives have always been regarded as suspect by many countries (which point out specifically that Washington attempts to compel countries to observe standards that the Federal Government refuses to ratify within the ILO), it is nonetheless objectively difficult to affirm that this commitment on the part of the United States is dictated solely by mercantile considerations. The United States has no need of a social clause in order to capture international markets. Its approach would seem to emanate more from an ethical and political attitude that harks back to its culture and to the place it believes it ought to occupy in the international arena, above all since the Second World War.

Concerns of the countries in the South

It is no less true, however, that the United States support for the idea of a social clause has elicited opposition from a large number of countries in the South, which perceive it as the further underpinning of protectionism in another guise.

Beyond the numerous events clouding the discussion, the crux of the matter is determining the adequate manner in which to approach what former Director-General of the International Labour Office, Michel Hansenne, called "social justice". To his mind, that goal could be attained by linking multilateral trade liberalization with the observance of certain rules. These would emanate from the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998. As some would wish, the foremost purpose of incorporating such principles into international trade agreements would be to protect workers against the erosion of their rights in the climate of deregulation induced by globalization. It would then aim to improve the lot of wage-earners in developing countries whilst protecting the industrialized countries against forms of "social dumping".

The obvious problem of such a structure is the ability to enforce a clause of this

nature even though the international community may agree as to its usefulness. Besides, as Michel Hansenne readily acknowledged, the ILO "has no teeth". Operating on the principle of tripartite representation of national players (employers, workers and government), it has never been provided with "blue helmets" or instruments for imposing sanctions so as to enforce the Conventions submitted for ratification by member States. Its only strength lies in the publicity that it can give to non-observance and in the technical assistance that it furnishes for improving on existing social standards. Despite this, as demonstrated by the first two reports published under the follow-up to the Declaration and dealing respectively with freedom of association and forced labour, many member States that have ratified the Conventions seem in no hurry whatsoever to implement them.

Moreover, endeavours to introduce "social clauses" or measures inspired by them do not presently allow for objective conclusions to be drawn vindicating one camp or another. On the American continent, the very modest provisions of the North American Free Trade Agreement (NAFTA) and the work of the Mercosur "ad hoc" group offer only little indication of the "feasibility" and above all the developmental impact of such an instrument. No more, for that matter, than the measures adopted in Europe under the System of Generalized Preferences (SGP), itself strongly influenced by the United States example.

A stormy debate

The confrontation continues between two implacable camps that it is furthermore impossible to circumscribe in terms of the traditional North-South divide. On the one hand, the advocates of unbridled economic liberalism take the view that the North should not forbid the South from using the working methods that enabled the industrialized countries to accumulate their capital. They willingly recall that

child labour was a fact of life in the western societies at the end of the nineteenth century. Furthermore, some developing countries argue that their poor working conditions are dictated by external factors such as low world commodity prices and the problems they face in selling their output. They therefore believe that it is the countries most dependent on international trade which would be hardest hit by any trade measures, as the small countries are helpless against the larger ones and certainly incapable themselves of filing complaints for fear of reprisals.

The discussion on the social clause in fact harks back to a much broader debate as is now being illustrated by the clashes over the globalization of trade. It should clearly not be possible to use exploitation or repression as comparative advantages, including for those countries specialized in manufacturing. Equally clear is that it would be undesirable to set up a "social clause" system that would sanction only the weakest while overlooking breaches committed by the strongest.

In the absence of a multilateral and universal "social clause" instrument that is yet to be devised, none of the current systems put in place either by any single

country or group of countries can really furnish proof of its efficacy. The oft-cited example of Chile, which allegedly liberalized its trade by yielding to the demand of the United States, bent on seeing that country's labour laws aligned with the standards of its GSP, does not obscure the fact that other countries, including important ones, do seem to escape any form of pressure other than moral suasion.

Apart from the need to convince developing countries that such an instrument would not be used as a protectionist weapon, it would have to be ensured that it constitutes an incentive, and is impartial. Undoubtedly, it is the progress of the debate on these matters that will become the yardstick for gauging the acceptability and feasibility of a measure which, after all, should reconcile globalization and labour rights.

Notes

¹ ILO: *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, adopted by the Governing Body of the International Labour Office at its 204th Session, Geneva, November 1977, as amended at its 279th Session, Geneva, November 2000.

Making globalization work for people

On 9 November 2001, trade unions worldwide will take part in a "Global Unions Day of Action" to demand the reform of the World Trade Organization and its policies through action based in the workplace. The Day of Action will be built around the principle "Making globalization work for people". This article summarizes the problems that globalization is creating, particularly for basic workers' rights, and some of the solutions offered to international trade and financial institutions.

James Howard

Director

Employment and Labour Standards

International Confederation of Free Trade Unions (ICFTU)

While globalization has created unprecedented wealth and resources, the political will is lacking to eradicate poverty from the earth. Instead, we see an ever-widening gap in incomes inside and among countries. Core labour standards are under attack in many countries. As the earlier articles in this publication have shown, globalization is tending to undermine national protections of basic workers' rights or to render them irrelevant.

It is therefore unsurprising that as a consequence, there is growing insecurity, fear and popular concern in all countries worldwide that people are losing control of a monster known as globalization. The Fourth Ministerial Conference of the World Trade Organization (WTO) in Qatar in November will be a focus for confrontation (in all countries around the world) between the forces of corporate-driven globalization and those of social justice.

Globalization is the problem and so global solutions must be sought. For the international union movement, the answer lies in a range of measures to humanize the globalization process and to make it bring rewards for ordinary citizens, rather than continue the worsening trends noted above. For this reason, the International Confederation of Free Trade Unions (ICFTU) is calling on trade unions

around the world to join the "Global Unions Day of Action" on 9 November 2001, to highlight our call for reform of the WTO and its policies through action based in the workplace. The Day of Action will be built around the principle "Making globalization work for people".

The down-side to globalization

The ratio of average incomes in the world's twenty richest countries to those of the world's poorest has risen from twenty to one in 1960 to about forty to one nowadays. As the United Nations Development Programme (UNDP) noted recently, some 66 countries ranging across every corner of the globe are poorer now than a decade ago.

Such inequity leads to appalling contrasts. For example, in Europe US\$50 billion are spent on cigarettes annually. According to United Nations figures, providing all developing countries, for one year, with basic health and education as well as water, sanitation and nutrition, would cost much less than that.

More than 10 million children in developing countries still die every year from preventable diseases that their industrialized country counterparts rarely face. And

a World Bank study has shown that inequality between people within countries has also risen for most of the second half of the twentieth century, particularly in the years after 1987.

The period of increasing globalization has also been associated with seriously adverse effects of trade liberalization on women. In many developing countries, traditional agricultural products mainly produced by women have been unable to compete with imported goods when trade barriers have been reduced. This has also resulted in decreased food security.

And the expansion of export processing zones (EPZs) and clothing, textiles and light manufacturing industries in developing countries over recent decades has generally been based on low-wage female labour working in unacceptably bad conditions and without any protection of their right to organize into trade unions (see page 35).

That exploitation of women is but one example of the links we have so often seen between globalization and the violation of basic workers' rights over the past twenty years or more. At least 15 million children are working in production for export, in sectors like mining, garments and textiles, shoe production, agriculture, carpet-making, football-making; and even production of surgical instruments.

Tens of millions of workers are also engaged today in forced labour – otherwise known as a contemporary form of slavery. This includes countries like Burma (Myanmar), where hundreds of thousands of indigenous people, supervised by armed guards, work on railways and pipelines for foreign companies such as TOTAL-Fina-Elf, UNOCAL and Premier Oil.

A minority of countries is prepared to tolerate exploitation in the belief that it will give them a competitive edge. But the countries most affected are those developing countries genuinely seeking to protect workers' human rights and raise basic living standards, for these are the countries most vulnerable at the margin to being forced out of the world market.

It is in order to prevent such extremes of exploitation which derive from global

trade and investment that action is needed at the WTO. In particular, the ILO Declaration on Fundamental Principles and Rights at Work is an important building block in the construction of a more humane and less volatile global economy. It requires system-wide follow-up throughout the international institutions, including UN agencies, the IMF, the World Bank and the WTO.

The role of the IMF and the World Bank in poverty exacerbation

The IMF and the World Bank have been the subject of criticism from civil society, including the trade union movement, for many years. The evidence is now clear-cut that the uniform model of structural adjustment imposed on developing countries during the 1980s and 1990s destroyed far more economies than it assisted. Swinging reductions in spending on health and education were socially destabilizing and economically detrimental by reducing countries' long-term human resource potential. All that was achieved was the preservation of a veneer of debt repayment that benefited a handful of the world's most profitable commercial banks.

In a recent speech to a conference co-organized by the American trade union centre, AFL-CIO, the former World Bank Chief Economist, Joseph Stiglitz, emphasized that the most successful developing country economies had been those that had not followed the recommendations of the Bretton Woods institutions. Those that had followed them had not done especially well. The policies recommended by the international financial institutions had contributed to instability, particularly in financial markets. They had featured privatization and had a negative social impact. There had been no discussion of crucial issues such as land reform.

Stiglitz continued that the institutions had focused on monetary and fiscal policy, not on vital issues such as social protection and social capital, which had been ignored or even destroyed. The speed of

liberalization and privatization had become an end in itself, and as a result the proceeds very often went to the wrong hands. As one indication of this, in Russia poverty had risen from 2 per cent ten years ago to nearly 50 per cent today.

The Inter-American Development Bank (IDB) produced a study in mid-2001 which corroborated Stiglitz' arguments, finding that liberalization of financial markets had tended to increase poverty and inequality in Latin America. Countries experiencing positive economic growth like Mexico, Peru and Venezuela still saw increases in poverty rates.

The experience of trade unions around the world has been that all too often, the international financial institutions' (IFIs) country-level policy recommendations constitute de facto recommendations to deny the respect of core labour standards. Despite the fact that IMF economists are rarely specialists on labour matters, the Fund's policy prescriptions almost always include recommendations to reduce wages, reduce protection of workers and otherwise make labour markets more "flexible". Similar complaints can be made regarding the World Bank's interventions in labour matters in various countries that result in denial of rights to collective bargaining. In Central and Eastern Europe, for example, the World Bank has been advising several countries to carry out revisions to national labour codes which would restrict collective bargaining rights.

The WTO Fourth Ministerial Conference: the first steps

All these criticisms of the World Bank, the IMF and the WTO add up to a warning for global governance that should not be ignored.

The Seattle Conference in 1999 saw an outstanding degree of attacks on the WTO's internal and external transparency and democracy, which must be addressed urgently at Qatar. Increased transparency and financial assistance is needed to ensure that all members (particularly the least de-

veloped) are able to take part fully in all WTO activities and procedures, including its disputes settlement mechanisms. The accession process for new WTO members must provide the opportunity for technical assistance and capacity building, as well as progress towards integration into a rules-based international system (which stands to be particularly significant in the case of China's accession).

External transparency is further required in the conduct of all WTO negotiations. Specific consultative structures are needed for trade unions, parliaments, chambers of commerce and other representative elements of civil society, including in the WTO's Trade Policy Review Mechanism (TPRM). The scope of the TPRM should be expanded to include trade-related environmental, social and gender concerns, including core labour standards. Procedures are needed for the effective involvement of the relevant civil society groups concerned by any dispute settlement process, which need to be opened up for public information and involvement.

WTO rules must come secondary to the protection of the environment and health and safety, including the working environment and occupational health and safety. At the same time, progress is essential on supporting development priorities at the WTO, such as making more operational the WTO provisions for special and differential treatment; improved market access for developing countries; review of the trade-related intellectual property (TRIPS) agreement to incorporate developing country concerns, particularly in the area of access to life-saving drugs as with HIV/AIDS medication; and multilateral agreement to extend the Uruguay Round implementation deadlines for developing countries.

In the current General Agreement on Trade in Services (GATS) negotiations, it must be clarified that countries can maintain the right to exempt public services (for example, education, health, water and postal services), and socially beneficial services sector activities from any WTO

agreement covering the services-sector, including at sub-national levels of government. Countries must have the right to take a future decision to increase the public sector role in their services sectors (for example following a change of government) without facing a WTO dispute, as would be expected under current WTO rules.

The WTO further needs to start a process of discussions about how to make the world trading system start to support, and not undermine, respect for basic workers' rights. A closer link and co-ordination between the WTO and other international institutions, including the ILO, is essential, including reciprocal observer status. The WTO needs to agree on some form of working or study group or similar body, with the participation of the ILO, that would be asked to undertake analysis and to make recommendations about WTO statutes and procedures in order to achieve consistency with respect for core labour standards.

The working group should look at how to implement a scheme of positive incentives to associate trade with respect for core labour standards. It would have to consider the measures that should be taken where trade liberalization is associated with violations of core labour standards. It should review all mechanisms of the WTO (including trade policy reviews and the dispute settlement understanding) with a view to enabling social concerns to be integrated fully within the work of the WTO in its different areas. And the working group should also examine the social impact of trade more generally, including the impact of trade policies on women.

Any proposals made should provide for a careful step-by-step procedure so that any problems of non-implementation of basic workers' rights would be exhaustively examined and solutions sought through dialogue and cooperation.

This is a major challenge which cannot be underestimated, but neither can it be avoided. Too many governments are trying to avoid the question of what to do about countries that attempt to take a free ride in the globalization process through abusing basic workers' rights. But democ-

atic governments, especially those in the developing world, must stand up and state explicitly that they will not tolerate abuse of workers' rights in other countries.

They should do that because it is their citizens and their economies whose rights will be undermined. That is gradually being understood nowadays in countries like India and Mexico, whose governments had long opposed any discussion of labour standards at the WTO but that are now starting to feel the pain of trying to compete with a country like China where all the core labour standards are so systematically violated.

In an ever more globalized world, it is essential for everyone that basic workers' rights are universally respected. The ICFTU wants this issue to be addressed openly and multilaterally by the WTO in conjunction with the ILO. We believe it is possible through dialogue and debate to find a way forward that is compatible with the twin objectives of an open trading system and respect for basic human rights at the workplace.

Reforming the IMF and the World Bank

Since the Asian financial crisis of the late 1990s, the international financial institutions have been forced to recognize the importance of transparency and accountability as a means to counteract corruption and prevent destabilizing financial crises. They also appear to have recognized that transparency on their own part is a necessary component of effective participation of civil society in the development process.

But far more profound changes are needed if the IMF and World Bank are to demonstrate the case for their continued existence. For a start, the IFIs must abandon the pretence that the existing initiatives for debt reduction are sufficient, and accept that vastly increased debt relief is needed if developing countries are to be able to get on the path of sustainable development.

Both the Bank and the Fund must abandon their ideologically driven agenda in

favour of unconditional privatization and market liberalization, and adopt a more pragmatic approach. Given the numerous failures of many of their policy prescriptions, the Bank and Fund resources should be made available for the development and modernization of publicly owned enterprises, if the government chooses to maintain public ownership, rather than requiring privatization as a condition of financial support. Countries' desires to achieve food security and support job creating activities should be respected and supported. Any privatization and liberalization measures that are still taken must be accompanied by the institutional and regulatory support that has so often been lacking in the past.

With the current reality of a worldwide economic slowdown and, hence, increased prospects for financial instability, the IMF and the World Bank must take rapid steps in order to put in place a newly regulated international financial system. Furthermore, social safety nets must be enhanced throughout the world in response to the forces of globalization breaking down traditional support structures and making national economies more vulnerable to instability and uncertainty. The international financial institutions must encourage and support governments to develop comprehensive schemes of social protection, including retirement pensions, unemployment benefits, child support, and maternity, sickness and injury benefits. A sound industrial relations system, whereby governments support and promote good labour practices and collective bargaining in line with ILO Conventions and Recommendations, is a key element of a comprehensive social protection framework.

An obvious prerequisite for poverty reduction is the right for the poor and underprivileged to organize themselves. That is why freedom of association and the right to collective bargaining, which both institutions have endorsed in principle, are key elements for successful poverty reduction strategies.

The IMF and the World Bank must therefore promote core labour standards regularly and consistently in all their op-

erations. Reviews of respect for core labour standards should be part of all World Bank country assistance strategies and IMF Article IV reports. Likewise, respect for core labour standards must become part of all Bank and Fund operations, as mandatory elements of the Bank's Standard Bidding Document and as part of other contractual documentation.

And finally, the IMF and the World Bank must become more consistent in their practices regarding consultation of trade unions and other components of civil society. Formalized consultative procedures are required at both the international financial institutions.

The role of a World Commission on the Social Dimensions of Globalization

The ILO Governing Body, in November 2001, is due to consider proposals for the structure and composition of a World Commission on the social dimensions of globalization, as agreed in June 2001 during the International Labour Conference.

In the context of the preceding analysis of the many negative results of globalization, it is clear that the ILO could play a crucial role in facilitating the work of such a Commission. Over the course of its mandate, the World Commission should inform and assist international institutions, including the WTO, IMF and World Bank. The World Commission could and should make a vital contribution to the objective of developing effective mechanisms to ensure that trade liberalization and globalization do not continue to undermine core labour standards and exacerbate the plight of the world's poor.

At the same time, it is clear that the existence of the World Commission will not obviate the need for all international institutions, including the WTO, IMF and World Bank, to initiate consideration of the relationship between globalization, economic development and core labour standards through their own respective mechanisms and procedures.

Conclusions

The many down-sides of globalization indicated above and, indeed, throughout this publication, are leading to a collapse of public confidence in the multilateral trading and financial system, as was first seen in Seattle both inside the negotiating rooms and on the streets.

Criticism of the WTO and of IMF and World Bank policies and interventions has been growing. It has led to increasing demands that these international institutions' activities and mandates be severely curtailed. Some groups and individuals have even called for them to be dismantled.

However, eliminating the existence of these institutions would leave the so-called free market and private financial institutions to provide the solutions to growing world inequality and renewed threats of in-

ternational financial instability. This could hardly be considered progress towards a more socially equitable world order.

Instead, the international trade union movement considers that root-and-branch reforms must be made at the WTO, the IMF and the World Bank in the areas of poverty reduction, debt relief, respect for core labour standards, social protection and international financial regulation, as well as improved dialogue with trade unions at national and international levels.

This article has indicated some of the first steps that need to be taken to bring that about. These reforms to introduce transparency, democracy and accountability into these institutions are essential pre-conditions to stop their rules being detrimental to workers' interests and to result, instead, in improvements in working and living conditions around the world.

Promoting core labour standards: An ILO priority issue

From an already quite advanced model in 1919, the promotion of fundamental principles and rights at work, a core task of the ILO, has evolved taking account of or even anticipating developments in the world. Fundamental Conventions have been identified and, besides the standards supervisory system which remains central to ILO activities, the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up gives the ILO additional means to secure respect for workers' rights. It also gives governments new incentives to improve their record.

Kari Tapiola

Executive Director

Standards and Fundamental Principles and Rights
ILO

In order to understand the current debate on core labour standards (or *fundamental principles and rights at work* in the established ILO terminology), we have to know its parameters and what preceded it. We cannot know where we are going to if we do not have a clear view of where we are coming from. Thus, a historical overview is necessary.

The founding of the ILO in 1919 was the first attempt at international governance of social and labour questions based on the principle of tripartite cooperation. As such, the model was quite advanced in the circumstances of the day. In most countries, employers' and workers' organizations had not really recognized one another as full bargaining partners. This approach was an element of peace building, as it was based on the conviction that social injustice and exploitation had been decisive factors in unleashing the First World War. This belief was strengthened by communist revolutions, or attempts at them, in Europe.

We have to remember, what the model of tripartite cooperation was for – and what it was supposed to guard against.

It was for harmonious relations in society and particularly at the workplace,

where national wealth is created and redistributed. It was for decent labour standards, which means that competition should not be forced at the cost of health, security and basic rights of working women and men. It was for cooperation with a voice for those directly concerned, and in this it was an essential part of democracy.

It was against, or an alternative to, social injustice which had led to the First World War. It was against imposed solutions, whether by one of the partners concerned or, indeed, of the communist revolutionary type. It was also against what in the 1920s and 1930s developed into a Stalinist or fascist “workers’ paradise” model.

In the current context, all of the above is fully relevant. For the first time since 1914, when the First World War broke out, we have a near universal market economy again. The few remnants of state-run communist economies are basically exceptions that strengthen this rule, and China is decisively part of the increasingly open world market. The question no longer is whether there is a market economy or not. The real question is, how to govern it.

This is a result of the end of the confrontation of different economic, political

and social systems after the fall of the Berlin Wall. However, it is crucially important to realize that one myth of the Cold War period crumbled with it. As things have turned out, it was too simple to think that the combination of a universal market economy and democratization would guarantee well-being for all. In retrospect, this was a naive, at least partly Harvard-induced illusion.

Economic and social transition and simultaneous structural change have over the last decade proven to be more complex than what anyone thought. The global nature of economic activities has signified less direct control by any actor, be it government or, indeed, large business units, over the supply and production chain. We still think about multinational enterprise activities, and either “controlling” or “promoting” them, in the paradigms of the 1970s. Multinationals of today are not agents of home countries, capable of overthrowing undesirable regimes of host countries. Neither are the multinationals ready to rush where wages are low and labour regulations weak or repressive. If this would be the case, the distribution of production in this world would look quite different from what it is today.

The new global transparency – due to borders which have been eliminated or lowered and increased communications – has shown that the old problems of injustice and exploitation have not disappeared. If anything, they have become more visible to all – the general public, trade unions, businesses, consumers, citizens’ action movements and all other parts of the civil society.

In the early 1990s, the question of child labour became an “entry point” into a new worldwide debate on core labour standards. The first Constitution of the ILO, in 1919, had already singled out elimination of child labour as a priority issue. The first sectoral Minimum Age Convention was adopted that same year, to be followed over the years by ten others, culminating in 1973 in the comprehensive Minimum Age Convention (No. 138). But child labour did not have the same priority as

Fundamental Conventions of the ILO

Freedom of association

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Forced labour

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

Discrimination

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Child labour

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

other principles enshrined in the Constitution, such as freedom of association, discrimination or forced labour, until the 1990s got under way.

In 1992, originally with German voluntary funds, the ILO launched the International Programme on the Elimination of Child Labour (IPEC). From its beginnings with one donor and six participating countries, it has expanded into the ILO’s biggest single technical cooperation programme encompassing some 25 donors and over 70 participating countries. It has been singularly successful in demonstrating how a core labour standard programme can be dealt with through technical cooperation.

In its wake, this new push for action for eliminating child labour produced in 1999 a Convention on immediate action for the elimination of the worst forms of child labour. This Convention, No. 182, has already now been ratified by over half of the member States of the ILO. It has also encouraged further ratifications of the Mini-

mum Age Convention, No. 138. In some six years, the number of ratifications of this Convention has doubled, to 111.

Less than ten years ago there was no consensus even to agree that Convention No. 138 was to be given priority attention. Some would rather see it put aside or scrapped. Now it is one of the fundamental Conventions, underlying the core labour standards.

The core labour standards debate in the 1990s resulted from the realization that markets and democratization alone could not solve the woes of the world and particularly its working people. These concerns were expressed in different ways and different places. In the industrialized countries, they were discussed at the family kitchen tables and in workplace cafeterias. They were concerns over jobs and income, with uncertainties arising out of rapid global change.

An underlying factor was that one era seemed to come to an end in the well-off part of the world. The nearly automatic improvement of the position of the working people – by now, rather, the middle class – was no longer guaranteed. Prosperity would no longer continue to grow from generation to generation.

At the same time, in the developing countries, and in countries in transition, concerns also focused on jobs and incomes. There seemed to be new promises for all, but real results were obtained only by a precious few. Oligarchies, elites, and middlemen seemed to be taking more than their fair share of the benefits. People were being uprooted, they moved after promises of profits, but when economic shocks hit recently urbanized and industrializing societies, the fall was hard and safety nets were not there.

The sum total of the two sides of the coin is that a decent minimum level for all, in all countries, seems to be needed. This would form the basis for opportunities in the new markets and adjustment needs. There has been no consensus in the debate on how this would be achieved. Linkages through trade-related measures have been strongly advocated by some and

equally strongly rejected by others. For both political and technical reasons, no early solution to this “social clause” debate is in sight.

However, one important consensus has emerged. This is on the contents of the core labour standards: They are the four categories singled out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. They were, in the most authoritative way, established in March 1995 by the World Summit for Social Development, in Copenhagen. The categories (freedom of association and the right to collective bargaining; the elimination of forced and compulsory labour, the abolition of child labour and non-discrimination in employment and occupation) were directly linked to the ILO standards on these topics.

The relevant Conventions were made the object of a special ratification campaign, which has now resulted in a situation where 174 of ILO’s 175 member States have ratified at least one of the fundamental Conventions and 47 member States have ratified all of the fundamental Conventions. This in itself has been a notable success, although a challenging one. From a campaign of ratification the ILO must now turn its attention increasingly to the implementation of the Conventions. For this, new opportunities have been provided by the follow-up of the 1998 Declaration as well as the IPEC programme. They are not replacements but complements to the traditional and efficient standards supervisory system of the ILO.

The Copenhagen Summit in 1995 showed both the direction and the method. Countries which have ratified the fundamental Conventions have naturally the obligation to strictly abide with them. As they are priority Conventions, reports on them have to be made every second year, naturally with inputs from trade unions and employers’ organizations. Countries which have not ratified the Conventions are, due to their acceptance of the ILO Constitution, bound by their principles. The 1998 Declaration Follow-up has introduced a system of reporting

that also covers the effort of non-ratifiers to respect the principles concerned.

The reporting system consists of annual reports by non-ratifying countries, examined by the Governing Body of the ILO, and every year a Global Report on one of the four categories. Two such Global Reports have now been completed and discussed by the International Labour Conference. In 2000, the report (entitled *Your Voice at Work*) was on freedom of association and the right to collective bargaining.

In June 2001, the Conference discussed a Global Report entitled *Stopping Forced Labour*. This was a ground-breaking event, as no such comprehensive report on the situation of both traditional and new forms of forced and compulsory labour as well as suggestions on how to deal with them had earlier been made. It is encouraging that the participants in the Conference debate unanimously called for vigorous action by the ILO, together with others in the world community.

A third Global Report on child labour is under preparation and will be debated by the Conference in June 2002. One year later, the cycle will be completed by the first Global Report on discrimination. These reports are not for information and debate alone. On the contrary, the first one led into an action programme on freedom of association and the right to collective bargaining. It was approved by the Governing Body in November 2000, and under it some 35 countries are already in the process of benefiting from assistance and technical cooperation.

Voluntary donor funds have been directed to this programme, in the same way as to the IPEC programme already for some ten years. In November 2001, the Governing Body is to adopt an action programme on forced labour. Once the cycle is completed, in 2003, the ILO will have at its disposal a technical cooperation based facility for each of the four categories of core labour standards.

This opens up a new serious possibility. Up to now, through the standards supervisory system, the ILO has been good at finding out violations and problems.

The challenge now is to build more bridges to the solution of the problems through technical cooperation. The Declaration Follow-up is based on mutual assessments of problems and needs, including a serious look at the problems of poverty and the ways to promote rights-based development. Capacity building in the recipient countries – including the strengthening of trade unions and employers' organizations – is an essential part of such programmes.

It may be useful to remember that when the ILO started with the IPEC programme, there was a degree of reluctance in recipient countries. Not that they would not have recognized the scope of the problem – but, in many cases understandably, they were concerned that admitting the existence of the problem could have led to negative trade or other international consequences. Over time, it has become evident that the methodology of IPEC is comprehensive, development oriented, and increasingly realistic as to the ways to achieve the aim of eliminating child labour, starting with its worst forms. Even a stronger normative approach through the fundamental Conventions on minimum age and worst forms of child labour has not changed this approach. Boycotts and trade measures – with some industry or product specific exceptions – have not played an important role in the discussion on child labour.

Thus, it might be appropriate now to ask: Could the IPEC approach be successfully applied to all four categories of core labour standards? Ratification of the fundamental Conventions are up, and transparency is completed through the reporting system under the Declaration. By the middle of this decade, we could have in place an efficient, technical cooperation based system which could start producing results. As I have pointed out earlier, this would not replace the standards supervision system. But it could offer a way for countries which have the political will but lack resources to engage in improving their core labour standards system without having to fear negative repercussions.

It would also serve the need for social governance of the world economy, something that is still – or maybe rather, again – missing in the global debate and which causes much of the concerns in all coun-

tries of the world. In this way, under the new circumstances, the ILO could continue to fulfill its original mandate of promoting development and growth through strengthened social justice.

ILO Declaration on Fundamental Principles and Rights at Work

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.
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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.

