

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

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

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

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

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

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to do this without interference by the public authorities. The Convention is therefore an important element in the protection of civil and political rights, namely the right to democracy. Freedom to form and join employers' or workers' organizations would be of only limited value if such organizations were subject to governmental or other external control over their internal administration. Respect for the law of the land is another matter — that is covered by Article 8¹ and, except in certain cases where the law is seen to be oppressive, has given rise to no objection on the part of employers' and workers' organizations.

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

Human rights. The ILO's mandate in respect of fundamental and inalienable human rights must remain a sustained priority. Its particular responsibilities are in respect of the right to organize and to bargain collectively, the struggle against discrimination in employment, and the abolition of forced and of child labour. Many conflicts and tensions in the world have their origins in denials of these very rights ...

Trade unions have been to the fore in the democratic advances of recent years in which the ILO itself has also played an important, and often historic role. They have opened the way to the exercise of basic freedoms. Nevertheless, gross violations continue, and in too many cases are increasing.

In some countries, killings and disappearance of trade unionists are commonplace. Often those responsible act with impunity (Workers' Group of the ILO Governing Body, 1993, pp. 10-11).

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

Emergence of workers' organizations

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

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

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

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

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

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

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

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

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

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

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

International links

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

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

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

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

International associations

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

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

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

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

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

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

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

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

Creation of the ILO

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

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

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

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

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

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

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

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

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

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

Early ILO instruments concerning freedom of association

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The United Nations and the ILO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The adoption of Convention No. 87

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

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

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

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

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

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

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

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

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

Trade union rights and human rights

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

pointed out, in 1946 the American Federation of Labor produced its own draft of an international Bill of Rights and submitted it to the United Nations. 1948 therefore saw the convergence of several simultaneous activities, involving the ILO, the General Assembly, ECOSOC, and the Commission on Human Rights. Throughout, there was almost a permanent interchange of observers, so that the texts of the two main documents under consideration, where they refer to the rights of workers, differ only in the precise drafting. A comparative analysis of the texts can be found in a recent ILO publication (Swepston, 1998). Concerning trade union rights, Article 23(4) of the Declaration⁴ states: "Everyone has the right to form and to join trade unions for the protection of his interests." Convention No. 87 is more explicit, and includes the parallel rights of employers, but the idea underlying both texts is exactly the same. It may be noted in passing that Eleanor Roosevelt, who then chaired the United Nations Commission on Human Rights, demonstrated her interest in trade union rights at one sitting of the Commission by saying that, as a member of an American trade union, she was entitled to express an opinion.

The value of Convention No. 87 for workers

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

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

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

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

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

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

The Committee has been able to note with satisfaction ... that in some countries, following sweeping political changes, fundamental freedoms and trade union rights have been fully recognised or re-established, and that, in other countries, certain improvements in laws and regulations have brought national legislation more into conformity with the principles and standards of the Conventions. The Committee notes, however, with concern that in a number of other countries the situation has hardly changed or has even deteriorated and that the law and/or practice do not correspond to the requirements of the Conventions.

This is confirmed by the fact that in recent years the number of cases brought to the attention of the Governing Body Committee on Freedom of Association has increased alarmingly (ILO, 1983, paras. 413-414).

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

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

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

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

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

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

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

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

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

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

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

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