INTRODUCTION: LABOUR RIGHTS, HUMAN RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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