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The Universal Declaration and Workers' Rights – 60 Years Later

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Summary

There are many intersections between the Universal Declaration and the standards set by the International Labour Organization. Some arise from the fact that the Universal Declaration took close account of what the ILO had already done; and some because the ILO took close account of the Declaration. The important thing is that they form part of the same universe of human rights, mutually supportive and fully complementary. And while a great deal of progress has been made in realizing these rights, some new problems have arisen and some older problems are still with us.

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About the ILO and human rights.

Not all readers will be fully familiar with the International Labour Organization, and the fact that it is the most prolific standard-setting institution in the international system. The League of Nations and the ILO were established together in 1919 by the Treaty of Versailles, but they had different premises. The first fundamental difference between them was that while the League was a purely intergovernmental organization, the ILO was established as "tripartite" – that is, representatives of employers and workers form an integral part of national delegations, and have the right to vote. The impact this has on the decisions made cannot be overemphasized. The second difference is that the ILO was established to adopt and supervise international standards, to a far greater degree than the League was designed to do. The ILO began adopting workers' rights standards in 1919, and continues to do so. By now (the 90th anniversary of the ILO falls in 2009) it has adopted nearly 200 Conventions and a similar number of Recommendations, and the Conventions have gathered over 7,500 ratifications. Finally, an advanced system of supervision of these standards was established in the ILO Constitution and developed further as of 1926, requiring reports from governments with participation of employers and workers, review by an independent expert body and the International Labour Conference, and close follow-up. The ILO examines over 2,000 government reports each year, makes detailed comments where necessary, and follows up supervision with a large amount of technical cooperation. The ILO has designated its standards on freedom of association and collective bargaining, freedom from forced labour and child labour, and freedom from discrimination to be fundamental standards for human rights in the workplace, and the UN agrees with this designation. There also a number of other standards that develop aspects of these rights, and that embody other rights that coincide with the Universal Declaration and with later UN standards. For further information on these questions, visit the ILO website at www.ilo.org.

Before 1948.

Neither the ILO nor the League of Nations had a "rights" vocation when they were established – indeed, the victors of World War I had consciously avoided proclaiming human rights. The only reference to rights in the Treaty of Versailles that contained the founding documents of both organizations concerned the right of workers to organize and bargain collectively, in the original version of the ILO Constitution. President Wilson had motivated the social component of the discussions in Paris with his "14 points", which gave hope to many of a future with respect for human rights; but the French and British governments, and Wilson himself, carefully avoided declarations of racial or sexual equality and other rights in the Treaty. The French and British were protecting their colonial empires and could not admit racial equality. Wilson had his own racial problems in the United States, and knew that a proclamation to this effect would remove any chance of Southern Senators consenting to the ratification of the Treaty. And none of them wanted to promote sexual equality, with hundreds of thousands of trained soldiers returning to civilian life and wanting women to release their jobs and go home to resume their pre-War roles.

So, before the League died a well-deserved death it had managed to adopt only one "rights" instrument, the Slavery Convention of 1926. The ILO had done somewhat better, and its Forced

Labour Convention, 1930 (No. 29) was becoming more widely ratified and was being supervised under the advanced ILO procedures. The ILO also began to cut into the logic of colonialism with a series of Conventions known as the "Native Labour Code", adopted between 1930 and 1939, putting limits on forced labour and conditions of work in colonies for the first time. And it adopted a number of other instruments which affected human rights without being drafted as rights instruments, on subjects such as working conditions, social security and many others.

By the outbreak of World War II, the League was in terminal failure, and the ILO withdrew to Canada to try to survive and to prepare for the post-War world. As the concepts and the architecture of the new United Nations began to solidify, the ILO met in a special conference in Philadelphia in 1944 and adopted the "Declaration of Philadelphia" to lay down the basis for the ideas of human rights and social justice in the new international architecture. While the post-War architects of the United Nations did not give the ILO the dominant role in social affairs it had wanted, the Declaration of Philadelphia did contain some of the seminal ideas of the human rights regime that was about to be adopted. And when the Declaration was incorporated into the ILO Constitution in 1946, it boosted the force of its ideas into obligations for all ILO Members. The ILO Declaration contains many memorable phrases, including the first recognition in a document adopted by an international organization of the link between human rights and development: "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". A number of other rights statements in the ILO Constitution would be taken up by the new United Nations.

In 1948, the UN began its own codification of human rights with the adoption of the Universal Declaration. The UDHR contains the basic concepts of human rights that have directed the values of the UN system since then, and it is interesting to note that three articles in particular are based on concepts earlier established by the ILO, translating them into general human rights values. Article 22 of the UDHR proclaims the right of everyone to social security, building on the ILO's dedication to promoting social security through a series of social security Conventions adopted since 1919, which had recently been reaffirmed in the Declaration of Philadelphia. Four years later, in 1952, the ILO adopted the Social Security (Basic Aims and Standards) Convention (No. 102), which developed these concepts further and has provided the legal foundation for most social security regimes over more than a half century since. Article 22 also widened the ILO's recognition of the need for social security to promote social justice and peace, with its call for the recognition for each person of the "economic, social and cultural rights indispensable for his dignity and the free development of his personality". This was part of the intellectual foundation of the UN's 1966 International Covenant on Economic, Social and Cultural Rights, and has provided part of the basis for the ILO's continuing action ever since.

Article 23 of the UDHR is a concentrated vision of workers' rights, based on earlier ILO action and prefiguring much ILO action to come. It contains a number of concepts that either reflected existing ILO standards, or were incorporated in ILO standards in the few years following the UDHR's adoption. Paragraph 1 of Article 23 proclaims "the right to work, to free choice of employment, to just and favourable conditions of work and to protection from unemployment." Building on earlier standards and on the Declaration of Philadelphia, the ILO adopted in 1964 one of its most important Conventions, on Employment Policy (No. 122), that made "full, productive and freely-chosen employment" a fundamental objective of national policy. It was not until the late 1980s that the ILO adopted the phrase "the right to work" in a Recommendation

(No. 169), preferring to see the realization of the right to work as a result of a broad spread of national policies intended to facilitate access to and availability of decent work. General comment 18 of the Committee on Economic, Social and Cultural Rights, on the right to work, largely shares this interpretation of the content of this right.

Paragraph 2 of Article 23 states that "Everyone, without any discrimination, has the right to equal pay for equal work." This takes up an idea from the ILO's 1919 Constitution of the need to recognize "the principle of equal remuneration for work of equal value", and is one of rare instances in which the UDHR falls below an earlier standard. Equal *value* sets a higher target than equal *work*, and remuneration is a wider concept than pay. The ILO adopted the Equal Remuneration Convention (No. 100) in 1950, putting equal remuneration for men and women for work of equal value into a Convention format; and in 1958 generalized the right to non-discrimination at work with the Discrimination (Employment and Occupation) Convention (No. 111). Both these conventions are among the most-ratified ILO standards, with over 160 ratifications each.

In paragraph 3, Article 23 of the Universal Declaration speaks of the right to "just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, supplemented, if necessary by other means of social protection." This was based on early ILO standards, soon to be supplemented, establishing systems of minimum wages and protection of wages, basic social policy, and other instruments based on the concept of social justice. Beginning in the late 1990s, the ILO has reformulated these ideas into the concept of "Decent Work", which has found endorsement in many UN and other international fora.

The fourth paragraph of Article 23 of the UDHR embodies a right that has had profound implications for human rights and political freedom over the last 60 years: "Everyone has the right to form and to join trade unions for the protection of his interests." It was mentioned earlier that the right to organize and bargain collectively was the only right mentioned in the Treaty of Versailles, but for various reasons the ILO had been unable to convert this idea into a Convention before World War II. Then in 1944 the ILO's Declaration of Philadelphia amplified on the commitment in the 1919 Constitution to "recognition of the principle of freedom of association", to the more profound idea of "the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures". By the end of World War II demands of working people had built up from their agreement not to demand higher conditions under the pressure of war. Business as well had become a much greater force in national priority setting, as the importance of industrial capacity had once again proven to be indispensable to victory in modern warfare. It was time to convert the language on freedom of association and collective bargaining into Convention form.

In January 1947, the World Federation of Trade Unions, which had increasingly become allied to the so-called "socialist" countries, addressed a letter to the Secretary-General of the United Nations, requesting that the new Economic and Social Council (ECOSOC) examine trade union rights, which would have sidelined the ILO. Shortly afterwards, the American Federation of Labor countered with a recommendation to the UN that the problem of trade union rights be referred to the ILO. Representatives of the socialist countries, led by the USSR, wanted ECOSOC to be the responsible body since, in their view, the ILO could not be trusted to give the workers a fair deal because of the participation in its work of representatives of employers. They

may even have been suspicious of the role of free trade unions. 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 the relevant articles of the United Nations Charter and the United Nations/ILO agreement. The question was referred to the ILO, and shortly before the Universal Declaration was concluded, the ILO adopted the Freedom of Association and Protection of the Right to Organize Convention, 1948 (N0. 87). A year later, this was supplemented by the Right to Organise and Collective Bargaining Convention (No. 98). Based on this history, the large difference between the UDHR's recognition of this right for workers only, compared to the ILO's recognition of rights for both workers and employers, becomes easier to understand. Almost immediately afterwards, in 1951, the ILO established the Governing Body Committee of Freedom of Association, a unique complaints body in the field of human rights.

It is appropriate to pause here to reflect on the fundamental importance that recognition of this right has had in the development of human freedom both in the workplace and beyond. When the International Covenants on human rights were adopted by the United Nations in 1966, this importance was recognized in both of them by a savings clause unique in international human rights law, providing that nothing in the Covenants should undermine the rights contained in ILO Convention No. 87. In practice, trade unions in particular have been the only voice of civil society in many difficult situations over the years. This has been the case particularly in newly-independent countries, and countries emerging from conflict or changing their political systems, in which very often there are only two organized power centres in the country: the army and the trade unions. In most, but not all, such cases trade unions have been the only conceivable opposition to absolute government power. Examples include Poland in the early 1980s, South Africa as it emerged from apartheid, Chile and Argentina in times of dictatorship, and others. In other cases, governments have gone to great lengths to co-opt the unions in order to prevent any opposition – China, Cuba and the Soviet Union, Belarus after the demise of the Soviet Union, and a large number of African States are examples. And there are several cases where ILO intervention to protect and promote the right of freedom of association has been the harbinger of a return to democracy: Poland, South Africa, Spain and Chile come easily to mind. Democracy would have had far more trouble coming to the fore in the latter half of the 20th century if not for free and independent trade unions – or at least, without the vision of these freedoms to aim for.

There is another right, now considered fundamental by the ILO, that somehow escaped the attention of both organizations for many years. Interestingly enough, neither the ILO nor the UN recognized freedom from child labour as a fundamental right until much later. The ILO adopted a long series of Conventions providing for minimum ages for entering the workforce, beginning in 1919; and the Constitution called for the elimination of child labour, but did not designate it as a matter of right. The Universal Declaration did not refer directly to child labour. The UN included child protection in the Covenants in 1966, but paid no great attention to child labour. The United Nations Children's Fund (UNICEF) has always concentrated on child welfare and protection, but has not always advocated the elimination of child labour. Even the UN Convention on the Rights of the Child calls for elimination of the economic exploitation of children, but does so in quite general terms without requiring the elimination of child labour as such. In 1992, however, the Government of Germany made a substantial financial contribution to the ILO to create an assistance and promotion programme, which came to be known as the International Programme for the Elimination of Child Labour (IPEC); it has since become by far the largest ILO technical cooperation programme. Three years later, the Social Summit in

Copenhagen listed the elimination of child labour among the fundamental human rights issues for the ILO and the international community. The ILO went on to adopt the Worst Forms of Child Labour Convention (No. 182) in 1999, calling for the immediate elimination of certain forms of child labour in the context of the total elimination of the practice, and situated it firmly in the human rights firmament.

Challenges in realizing these rights

Some examples of a convergence of interests, and of mutually-supportive concepts between the Universal Declaration of Human Rights (and later UN action) and the progressive realization of rights at the workplace have been outlined above. But as always, implementation lags behind. And early in the 21st century some real challenges have materialized for which answers are not always obvious. A selection of these rights, and some challenges in implementing them, are illustrated below. More information on all these subjects is available from the ILO.

The right to work.

Strangely enough, the international development system was very slow to connect work and employment with poverty alleviation and development. While ILO Convention No. 122 of 1964 committed the ILO and its member States to putting the promotion of employment at the centre of national development policy, the rest of the development community remained unconvinced of this priority. Part of the reason is the relative weakness of labour ministries compared to other parts of government – they are almost invariably the least-powerful ministries and have little weight in setting national priorities. And they are virtually never part of international delegations from member States to international meetings on development issues. The development community has therefore historically failed to take account of the need for productive economic activity – for instance, the Millennium Development Goals failed to make any mention of employment as a path to eliminating poverty, except for a reference to stimulating youth employment. And the author of this chapter, who served for many years as the ILO's representative to the UN and other international organizations on human rights, found it very frustrating that the working group of the Commission on Human Rights dealing with the "Right to Development" failed repeatedly to include stimulation of employment and support for small and medium enterprises in its recommended measures for the elimination of poverty.

Nevertheless, if people do not have jobs they will have no chance of generating the income necessary to feed themselves and their families, and to climb out of crippling poverty. It is for this reason that the ILO has advocated putting generation of employment at the centre of development policy. What is more, it has developed the concept of "Decent Work", meaning that the work that people have must include decent working conditions, reasonable remuneration, and other characteristics worthy of human dignity.

On occasion, there has been a conflict of priorities among international development institutions concerning the right to, and the value of, work. The World Bank and the IMF, for instance, have regularly recommended large-scale dismissals of workers from public service in developing countries in order to improve economic performance and efficiency. The ILO, on the other hand, has always recognized that "labour is not a commodity", to quote its Constitution, and that the

social and financial costs to families and to society of widespread unemployment cannot be passed off as merely an economic detail.

Conditions of work.

Another aspect of the right to work in article 23 of the UDHR that needs to be reconsidered is the guarantee of "just and favourable working conditions". The international community had assumed – to the extent that this was considered at all – that time would bring with it economic and social development, including the spread of the rule of law. In fact, we have seen the growth of the "informal economy" in many countries – in some parts of Africa over 90% of workers are in the informal economy. What does this mean? This is the part of the economy that escapes regulation, including businesses that are not registered and workers who are not covered in practice by labour and social security law. While it is mistaken to assume that no rules apply in the informal economy, it is nevertheless true that people who work in it are unable to appeal against discrimination, to organize and bargain collectively, or to insist on the prohibition of child labour below a certain age. It means also that law enforcement, especially labour inspection, cannot reach these enterprises to apply national labour legislation, or to spread information and education about safer working practices.

In most cases the informal economy comes about because employers find that they can save money by not registering and going through the red tape required to open a small business legally. This is an area where a desire to establish regulations and protection for workers, and to collect taxes, may work against the interests intended to be protected. Regulations may, and often are, unnecessarily complex and expensive. Protection against unfair dismissal may result in businesses avoiding hiring people because they can never fire them even when business slows and they cannot afford to keep employees. Or if they do hire, they do so "off the books". Many small businesses operate with one foot in the formal economy, and another in the informal economy. Governments therefore need to be careful to adjust their regulatory framework to what the economy can bear, while taking care to protect fundamental rights.

It is even worse when certain parts of an economy are kept out of the regulated sector by government decision. In much of the world agricultural workers are not covered by labour legislation, so that governments do not even attempt to cover their conditions of work. Another sector often excluded from the law is domestic work, a very important sector for women, and in particular for migrant women in some parts of the world. Some countries also establish "special economic zones", or "export processing zones" where some or all of the normal labour laws are suspended. In the worst cases, workers are not allowed to organize or bargain collectively, and women are subject to terrible discrimination and exploitation because anti-discrimination laws are suspended.

Equal pay.

The right to equal pay for equal work, and to the ILO standard of making equal value the benchmark, is subject to significant problems of application, and much of the attention on this is directed at male/female discrimination. The ILO produced a Global Report on Equality in 2007 that examined this subject among others. It noted that " 'equal pay for work of equal value' is one of the least understood concepts in the field of action against discrimination: it is often given a narrow interpretation in laws and regulations, and the lack of reliable sex-disaggregated data on

wages makes it difficult to monitor trends." (ILO, Global Report 2007, p. xiv.) And as Public Service International says: "There is no country in the world that has yet achieved wage equality between men and women. The pay gap in some Nordic countries is now 12% but in many countries, it can be as high as 50%." (See PSI website http://www.world-psi.org.) While awareness of the concept is growing, there remains a persistent difference between the wages of men and women, even where efforts have been most intense to reduce it.

The right to organize.

The importance of freedom of association has been referred to above, but there are groups of workers who face particular difficulties in organizing, including the public sector, agricultural workers, workers in export processing zones, migrant workers and domestic workers. Some of these work in the informal economy, and many of them are women. In the public sector, both economic trends and privatization pose serious challenges to existing organizations and their modalities of operation. Trade unions continue to face the challenge of ensuring that workers are provided with effective protection when activities are privatized and employers and their approaches change. In the public sector, tight budgets often limit the possibilities for reaching settlements comparable with the private sector. The potential for confrontation in the foreseeable future appears to be particularly strong in this sector, where organization rates are often high, where there is a perceived threat to the maintenance of rights, and where employer representatives and governments have limited room to manoeuvre. In agriculture, persisting difficulties range from exclusions under the law and harassment of those who try to organize, including acts of violence, to obstacles inherent in the nature of employment – remoteness and spread of workplaces, the seasonal nature of work, lack of communication, and language barriers.

The implementation of this right has also been threatened by decreases in union membership in a number of countries. As business globalizes and crosses borders, workers and their unions have not found comparable mechanisms, and unions are perceived as weaker when they cannot organize effective action against an employer who is not even based in the same country. Nevertheless, there are some reports of increases in membership of workers' organizations, and unions continue to search for ways to cooperate across national frontiers.

Concluding comments

There are a number of other aspects of rights in the workplace that could be explored, to examine the relationship between the Universal Declaration of Human Rights and the implementation of its provisions concerning the workplace. For instance, the spread of HIV/AIDS, especially in some regions of the world, carries threats of widespread violation of rights, including the right to non-discrimination. Migrant workers continue to be discriminated against in many countries, often on the basis of race or ethnicity, and although international instruments are in place governments have failed to adopt a regime for managing migration effectively. Forced labour and slavery continue to exist, and take new and deadly forms with increases in trafficking for labour and sexual exploitation. Children are forced into armed forces and made into small killers, in violations of basic precepts of the protection owed them by society.

Does this mean that these aspects of the UDHR and of the parallel action taken by the ILO and others have been fruitless? Not at all. There have been enormous improvements in the protection offered working people around the world since the adoption of the Declaration in 1948; and the ILO and others have based much of their action on the premise that improvement of conditions of work is not simply convenient – it is a matter of right. In one striking success, the ILO has found a net decrease in child labour around the world (except in sub-Saharan Africa, where HIV/AIDS deaths of parents have forced children into the streets). The road ahead is long, but it is built on a solid foundation.