Annex 3

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Appendices, Appendix III ICESCR: Objections to Reservations or Declarations: (Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

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Appendix III ICESCR: Objections to Reservations or Declarations

(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

Cyprus

26 November 2003

With regard to the declarations made by Turkey upon ratification:

……the Government of the Republic of Cyprus wishes to express its objection with respect to the declarations entered by the Republic of Turkey upon ratification on 23 September 2003, of the International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966.

The Government of the Republic of Cyprus considers that the declaration relating to the implementation of the provisions of the Covenant only to the States with which the Republic of Turkey has diplomatic relations, and the declaration that the Convention is “ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied” amount to reservations. These reservations create uncertainty as to the States Parties in respect of which Turkey is undertaking the obligations in the Covenant, and raise doubt as to the commitment of Turkey to the object and purpose of the said Covenant.

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The Government of the Republic of Cyprus objects to the said reservations entered by the Republic of Turkey and states that these reservations or the objection to them shall not preclude the entry into force of the Covenant between the Republic of Cyprus and the Republic of Turkey.

Denmark

17 March 2005

With regard to the declaration made by Pakistan upon signature:

The Government of Denmark has examined the declaration made by the Islamic Republic of Pakistan upon [signing] the 1966 International Covenant on Economic, Social and Cultural Rights.

The application of the provisions of the said Covenant has been made subject to the provisions of the constitution of the Islamic Republic of Pakistan. This general formulation makes it unclear to what extent the Islamic Republic of Pakistan considers itself bound by the obligations of the Covenant and therefore raises doubt as to the commitment of the Islamic Republic of Pakistan to the object and purpose of the Covenant.

The Government of Denmark considers that the declaration made by the Islamic Republic of Pakistan to the international Covenant on Economic, Social and Cultural Rights in substance constitutes a reservation and that this reservation is incompatible with the object and purpose of the Covenant.

For the above-mentioned reasons, the Government of Denmark objects to this declaration made by the Islamic Republic of Pakistan. This objection does not preclude the entry into force of the Covenant between the Islamic Republic of Pakistan and Denmark without Pakistan benefiting from her declaration.

Finland

25 July 1997

With regard to the declarations and the reservation made by Kuwait upon accession:

The Government of Finland notes that according to the interpretative declaration regarding article 2, paragraph 2, and article 3 the application of these articles of the Covenant is in a general way subjected to national law. The Government of Finland considers this interpretative declaration as a reservation of a general kind. The Government of Finland is of the view that such a general reservation raises doubts as to the commitment of Kuwait to the object and purpose of the Covenant and would recall that a reservation incompatible with the object and purpose of the Covenant shall not be permitted.

The Government of Finland also considers the interpretative declaration to article 9 as a reservation and regards this reservation as well as the reservation to article 8, paragraph 1(d), as problematic in view of the object and purpose of the Covenant.

It is in the common interests of States that treaties to which they have chosen to become parties are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland is further of the view that general reservations of the kind made by the Government of Kuwait, which do not clearly specify the extent of the derogation from

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the provisions of the Covenant, contribute to undermining the basis of international treaty law.

The Government of Finland therefore objects to the aforesaid reservations made by the Government of Kuwait to the [said Covenant].

This objection does not preclude the entry into force of the Covenant between Kuwait and Finland.

13 December 1999

With regard to the declarations to Articles 2, 3, 7, 8, 10 and 13 made by Bangladesh upon accession:

The Government of Finland has examined the contents of the declarations made by the Government of Bangladesh to Articles 2, 3, 7, 8, 10 and 13 and notes that the declarations constitute reservations as they seem to modify the obligations of Bangladesh under the said articles.

A reservation which consists of a general reference to national law without specifying its contents does not clearly define for the other Parties of the Convention the extent to which the reserving state commits itself to the Convention and therefore may raise doubts as to the commitment of the reserving state to fulfil its obligations under the Convention. Such a reservation is also, in the view of the Government of Finland, subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its domestic law as justification for a failure to perform its treaty obligations.

Therefore the Government of Finland objects to the aforesaid reservations made by the Government of Bangladesh. This objection does not preclude the entry into force of the Convention between Bangladesh and Finland. The Convention will thus become operative between the two States without Bangladesh benefitting from these reservations.

13 October 2004

With regard to the declarations and the reservation made by Turkey upon ratification:

The Government of Finland has examined the declarations and reservation made by the Republic of Turkey to the International Covenant on Economic, Social and Cultural Rights. The Government of Finland notes that the Republic of Turkey reserves the right to interpret and apply the provisions of the paragraphs 3 and 4 of Article 13 of the Covenant in accordance with the provisions under articles 3, 14 and 42 of the Constitution of the Republic of Turkey.

The Government of Finland emphasises the great importance of the rights provided for in paragraphs 3 and 4 of Article 13 of the International Covenant on Economic, Social and Cultural Rights. The reference to certain provisions of the Constitution of the Republic of Turkey is of a general nature and does not clearly specify the content of the reservation. The Government of Finland therefore wishes to declare that it assumes that the Government of the Republic of Turkey will ensure the implementation of the rights recognised in the Covenant and will do its utmost to bring its national legislation into compliance with the obligations under the Covenant with a view to withdrawing the reservation. This declaration does not preclude the entry into force of the Covenant between the Republic of Turkey and Finland.

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15 November 2005

With regard to declaration made by Pakistan upon signature:

The Government of Finland has carefully examined the declaration made by the Government of the Islamic Republic of Pakistan regarding the International Covenant on Economic, Social and Cultural Rights. The Government of Finland takes note that the provisions of the Covenant shall, according to the Government of the Islamic Republic of Pakistan, be subject to the provisions of the constitution of the Islamic Republic of Pakistan.

The Government of Finland notes that a reservation which consists of a general reference to national law without specifying the contents does not clearly define to other Parties to the Convention the extent to which the reserving State commits itself to the Convention and creates serious doubts as to the commitment of the receiving State to fulfil its obligations under the Convention. Such reservations are, furthermore, subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its domestic law as justification for a failure to perform its treaty obligations.

The Government of Finland therefore objects to the above-mentioned declaration made by the Government of the Islamic Republic of Pakistan to the Covenant. This objection does not preclude the entry into force of the Covenant between the Islamic Republic of Pakistan and Finland. The Covenant will thus become operative between the two states without the Islamic Republic of Pakistan benefiting from its declaration.

France

The Government of the Republic takes objection to the reservation entered by the Government of India to article 1 of the International Covenant on Economic, Social and Cultural Rights, as this reservation attaches conditions not provided for by the Charter of the United Nations to the exercise of the right of self-determination. The present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the French Republic and the Republic of India.

30 September 1999

With regard to the declarations made by Bangladesh upon accession:

The Government of France notes that the ‘declarations’ made by Bangladesh in fact constitute reservations since they are aimed at precluding or modifying the legal effect of certain provisions of the treaty. With regard to the declaration concerning article 1, the reservation places on the exercise of the right of peoples to self-determination conditions not provided for in the Charter of the United Nations. The declarations concerning articles 2 and 3 and articles 7 and 8, which render the rights recognized by the Covenant in respect of individuals subordinate to domestic law, are of a general nature and undermine the objective and purpose of the treaty. In particular, the country’s economic conditions and development prospects should not affect the freedom of consent of intended spouses to enter into marriage, non-discrimination for reasons of parentage or other conditions in the implementation of special measures of protection and assistance on behalf of children and young persons, or the freedom of parents or legal guardians to choose schools for their children. Economic difficulties or problems of development cannot free a State party entirely from its obligations under the Covenant. In this regard, in compliance with article 10, paragraph 3, of the Covenant, Bangladesh must adopt special measures to protect children and young persons from economic and social exploitation, and the law must punish their employment in work harmful to their morals or health and should also set age limits below which the paid employment of child labour should be prohibited. Consequently, the Government of France lodges an objection to the reservations of a general scope mentioned

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above. This objection does not prevent the entry into force of the Covenant between Bangladesh and France.

11 November 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the French Republic has examined the declaration made by the Government of the Islamic Republic of Pakistan upon signing the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966, according to which 'The provisions of the Covenant shall be subject to the provisions of the constitution of the Islamic Republic of Pakistan'. Such a declaration is general in scope and unclear and could render the provisions of the Covenant null and void. The Government of the French Republic considers that the said declaration constitutes a reservation which is incompatible with the object and purpose of the Covenant and it therefore objects to that declaration. This objection does not preclude the entry into force of the Covenant between France and Pakistan.

Germany

15 August 1980

The Government of the Federal Republic of Germany strongly objects, … to the declaration made by the Republic of India in respect of article 1 of the International Covenant on Economic, Social and Cultural Rights and of article 1 of the International Covenant on Civil and Political Rights.

The right of self-determination as enshrined in the Charter of the United Nations and as embodied in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue their economic, social and cultural development. The Federal Government cannot consider as valid any interpretation of the right of self-determination which is contrary to the clear language of the provisions in question. It moreover considers that any limitation of their applicability to all nations is incompatible with the object and purpose of the Covenants.

10 July 1997

With regard to the declarations and the reservation made by Kuwait upon accession:

The Government of the Federal Republic of Germany notes that article 2 (2) and article 3 have been made subject to the general reservation of national law. It is of the view that these general reservations may raise doubts as to the commitment of Kuwait to the object and purpose of the Covenant.

The Government of the Federal Republic of Germany regards the reservation concerning article 8 (1) (d), in which the Government of Kuwait reserves the right not to apply the right to strike expressly stated in the Covenant, as well as the interpretative declaration regarding article 9, according to which the right to social security would only apply to Kuwaitis, as being problematic in view of the object and purpose of the Covenant. It particularly feels that the declaration regarding article 9, as a result of which the many foreigners working on Kuwaiti territory would, on principle, be totally excluded from social security protection, cannot be based on article 2 (3) of the Covenant.

It is in the common interest of all parties that a treaty should be respected, as to its object and purpose, by all parties.

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The Government of the Federal Republic of Germany therefore objects to the [said] general reservations and interpretative declarations.

This objection does not preclude the entry into force of the Covenant between Kuwait and the Federal Republic of Germany.

13 October 2004

With regard to the declarations and the reservation made by Turkey upon ratification:

The Government of the Republic of Turkey has declared that it will implement the provisions of the Covenant only to the states with which it has diplomatic relations. Moreover, the Government of the Republic of Turkey has declared that it ratifies the Covenant exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied. Furthermore, the Government of the Republic of Turkey has reserved the right to interpret and apply the provisions of Article 13 paragraphs (3) and (4) of the Covenant in accordance with the provisions of Articles 3, 14 and 42 of the Constitution of the Republic of Turkey.

The Government of the Federal Republic of Germany would like to recall that it is in the common interest of all states that treaties to which they have chosen to become parties are respected and applied as to their object and purpose by all parties, and that states are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties. The Government of the Federal Republic of Germany is therefore concerned about declarations and reservations such as those made and expressed by the Republic of Turkey with respect to the International Covenant on Economic, Social and Cultural Rights.

However, the Government of the Federal Republic of Germany believes these declarations do not aim to limit the Covenant’s scope in relation to those states with which Turkey has established bonds under the Covenant, and that they do not aim to impose any other restrictions that re not provided for by the Covenant. The Government of the Federal Republic of Germany attaches great importance to the liberties recognized in Article 13 paragraphs (3) and (4) of the Covenant. The Government of the Federal Republic of Germany understands the reservation expressed by the Government of the Republic of Turkey to mean that this Article will be interpreted and applied in such a way that protects the essence of the freedoms guaranteed therein.

8 November 2004

With regard to the declaration made by Pakistan upon signature:

The Government of the Federal Republic of Germany has carefully examined the declaration made by the Government of the Islamic Republic of Pakistan upon signature of the International Covenant on Economic, Social and Cultural Rights.

The Government of the Islamic Republic of Pakistan declared that it “will implement the (…) Provisions in a progressive manner, in keeping with the existing economic conditions and the development plans of the country”. Since some fundamental obligations resulting from the International Covenant on Economic, Social and Cultural Rights, including in particular the principle of non-discrimination found in Article 2 (2) thereof, are not susceptible to progressive implementation and are thus to be guaranteed immediately, the declaration represents a significant qualification of Pakistan’s commitment to guarantee the human rights referred to in the Covenant.

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The Government of the Islamic Republic of Pakistan also declared that “the provisions of the Covenant shall, however, be subject to the provisions of the constitution of the Islamic Republic of Pakistan”. The Government of the Federal Republic of Germany is of the opinion that this leaves it unclear to which extent the Islamic Republic of Pakistan considers itself bound by the obligations resulting from the Covenant.

The Government of the Federal Republic of Germany therefore regards the above-mentioned declarations as reservations and as incompatible with the object and purpose of the Covenant.

The Government of the Federal Republic of Germany therefore objects to the above-mentioned reservations made by the Government of the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights. This objection shall not preclude the entry into force of the Covenant between the Federal Republic of Germany and the Islamic Republic of Pakistan.

Greece

11 October 2004

With regard to the declarations made by Turkey upon ratification:

The Government of Greece has examined the declarations made by the Republic of Turkey upon ratifying the International Covenant on Economic, Social and Cultural Rights.

The Republic of Turkey declares that it will implement the provisions of the Covenant only to the States with which it has diplomatic relations.

In the view of the Government of Greece, this declaration in fact amounts to a reservation. This reservation is incompatible with the principle that inter-State reciprocity has no place in the context of human rights treaties, which concern the endowment of individuals with rights. It is therefore contrary to the object and purpose of the Covenant.

The Republic of Turkey furthermore declares that the Covenant is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

In the view of the Government of Greece, this declaration in fact amounts to a reservation. This reservation is incompatible with the obligation of a State Party to respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of such State Party. Accordingly, this reservation is contrary to the object and purpose of the Covenant.

For these reasons, the Government of Greece objects to the aforesaid reservations made by the Republic of Turkey to the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the Covenant between the Hellenic Republic and the Republic of Turkey. The Covenant, therefore, enters into force between the two States without the Republic of Turkey benefiting from these reservations.

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Italy

25 July 1997

With regard to the declarations and the reservation made by Kuwait upon accession:

The Government of Italy considers these reservations to be contrary to the object and the purpose of this International Covenant. The Government of Italy notes that the said reservations include a reservation of a general kind in respect of the provisions on the internal law.

The Government of Italy therefore objects to the aforesaid reservations made by the Government of Kuwait to the [said Covenant]. This objection does not preclude the entry into force in its entirety of the Covenant between the State of Kuwait and the Italian Republic.

Latvia

10 November 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the Republic of Latvia has carefully examined the declaration made by the Islamic Republic of Pakistan to the International Covenant on [Economic, Social and Cultural] Rights upon accession.

The Government of the Republic of Latvia considers that the declaration contains general reference to national law, making the provisions of International Covenant subject to the national law of the Islamic Republic of Pakistan.

Thus, the Government of the Republic of Latvia is of the opinion that the declaration is in fact a unilateral act deemed to limit the scope of application of the International Covenant and therefore, it shall be regarded as a reservation.

Moreover, the Government of the Republic of Latvia noted that the reservation does not make it clear to what extent the Islamic Republic of Pakistan considers itself bound by the provisions of the International Covenant and whether the way of implementation of the provisions of the International Covenant is in line with the object and purpose of the International Covenant.

The Government of the Republic of Latvia recalls that customary international law as codified by Vienna Convention on the Law of Treaties, and in particular Article 19 (c), sets out the reservations that are incompatible with the object and purpose of a treaty are not permissible.

The Government of the Republic of Latvia therefore objects to the aforesaid reservations made by the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights.

However, this objection shall not preclude the entry into force of the International Covenant between the Republic of Latvia and the Islamic Republic of Pakistan. Thus, the International Covenant will become operative without the Islamic Republic of Pakistan benefiting from its reservation.

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Netherlands

12 January 1981

The Government of the Kingdom of the Netherlands objects to the declaration made by the Government of the Republic of India in relation to article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights, since the right of self-determination as embodied in the Covenants is conferred upon all peoples. This follows not only from the very language of article 1 common to the two Covenants but as well from the most authoritative statement of the law concerned, i.e., the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Any attempt to limit the scope of this right or to attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself and would thereby seriously weaken its universally acceptable character.

18 March 1991

With regard to the interpretative declaration made by Algeria concerning article 13, paragraphs 3 and 4 upon ratification:

In the opinion of the Government of the Kingdom of the Netherlands, the interpretative declaration concerning article 13, paragraphs 3 and 4 of the International Covenant on Economic, Social and Cultural Rights must be regarded as a reservation to the Covenant. From the text and history of the Covenant it follows that the reservation with respect to article 13, paragraphs 3 and 4 made by the Government of Algeria is incompatible with the object and purpose of the Covenant. The Government of the Kingdom of the Netherlands therefore considers the reservation unacceptable and formally raises an objection to it.

[This objection is] not an obstacle to the entry into force of [the Covenant] between the Kingdom of the Netherlands and Algeria.

22 July 1997

With regard to the declarations and the reservati made by Kuwait upon accession:

[Same objection identical in essence, mutatis mutandis, as the one made for Algeria.]

23 April 2002

With regard to the statement made by China made upon ratification:

… the statement made by the Government of the People’s Republic of China to article 8.1 (a) of the International Covenant on Economic, Social and Cultural Rights.

The Government of the Kingdom of the Netherlands has examined the statement and would like to recall that, under well-established international treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine its status as a reservation to the treaty. The Government of the Kingdom of the Netherlands considers that the statement made by the Government of the People’s Republic of China to article 8.1 (a) of the International Covenant on Economic, Social and Cultural Rights in substance constitutes a reservation.

The Government of the Kingdom of the Netherlands notes that the application of Article 8.1 (a) of the Covenant is being made subject to a statement referring to the contents of national legislation. According to the Vienna Convention on the Law of Treaties, a party to a treaty may not invoke the provisions of its internal law as justification for its failure to abide

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by the treaty. Furthermore, the right to form and join a trade union of one’s choice is one of the fundamental principles of the Covenant.

The Government of the Kingdom of the Netherlands therefore objects to the reservation made by the People’s Republic of China to the International Covenant on Economic, Social and Cultural Rights. This objection shall not preclude the entry into force of the Covenant between the Kingdom of the Netherlands and China.

7 October 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the Kingdom of the Netherlands has examined the declaration made by the Islamic Republic of Pakistan on 3 November 2004 upon signature of the International Covenant on Economic, Social and Cultural Rights, done at New York on 16 December 1966.

The Government of the Kingdom of the Netherlands would like to recall that the status of a statement is not determined by the designation assigned to it. The application of the provisions of the International Covenant on Economic, Social and Cultural Rights has been made subject to the provisions of the constitution of the Islamic Republic of Pakistan.

This makes it unclear to what extent the Islamic Republic of Pakistan considers itself bound by the obligations of the treaty. It is of the common interest of States that all parties respect treaties to which they have chosen to become parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. A reservation as formulated by the Islamic Republic of Pakistan is thus likely to contribute to undermining the basis of international treaty law.

The Government of the Kingdom of the Netherlands considers that the declaration made by the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights in substance constitutes a reservation.

The Government of the Kingdom of the Netherlands therefore objects to the declaration made by the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the Covenant between the Kingdom of the Netherlands and the Islamic Republic of Pakistan, without Pakistan benefiting from its declaration.

Norway

22 July 1997

With regard to the declarations and the reservation made by Kuwait upon accession:

In the view of the Government of Norway, a statement by which a State Party purports to limit its responsibilities by invoking general principles of internal law may create doubts about the commitment of the reserving State to the objective and purpose of the Convention and, moreover, contribute to undermining the basis of international treaty law. Under well-established treaty law, a State is not permitted to invoke internal law as justification for its failure to perform its treaty obligations. Furthermore, the Government of Norway finds the reservations made to article 8, paragraph 1 (d) and article 9 as being problematic in view of the object and purpose of the Covenant. For these reasons, the Government of Norway objects to the said reservations made by the Government of Kuwait.

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The Government of Norway does not consider this objection to preclude the entry into force of the Covenant between the Kingdom of Norway and the State of Kuwait.

23 April 2002

With regard to the statement made by China made upon ratification:

The Government of Norway has examined the statement made by the People's Republic of China upon ratification of the International Covenant on Economic, Social and Cultural Rights.

It is the Government of Norway's position that the statement made by China in substance constitutes a reservation, and consequently can be made subject to objections.

According to the first paragraph of the statement, the application of Article 8.1(a) of the Covenant shall be consistent with relevant provisions of national legislation. This reference to national legislation, without further description of its contents, exempts the other States Parties from the possibility of assessing the intended effects of the statement. Further, the contents of the relevant provision is not only in itself of fundamental importance, as failure to implement it can also contribute to a less effective implementation of other provisions of the Covenant, such as Articles 6 and 7.

For these reasons, the Government of Norway objects to the said part of the statement made by the People's Republic of China, as it is incompatible with the object and purpose of the Covenant.

This objection does not preclude the entry into force in its entirety of the Covenant between the Kingdom of Norway and the People's Republic of China. The Covenant thus becomes operative between Norway and China without China benefiting from the reservation.

17 November 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the Kingdom of Norway have examined the Declaration made by the Government of the Islamic Republic of Pakistan on 3 November 2004 on signature of the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966). According to the first part of the Declaration, the Government of the Islamic Republic of Pakistan "will implement the (…) provisions (embodied in the Covenant) in a progressive manner, in keeping with the existing economic conditions and the development plans of the country". Since some fundamental obligations embodied in the Covenant, including in particular the principle of non-discrimination found in Article 2 (2) thereof, are not susceptible to progressive implementation and are thus to be guaranteed immediately, the Government of the Kingdom of Norway consider that this part of the Declaration represents a significant qualification of Pakistan's commitment to guarantee the provisions embodied in the Covenant.

According to the second part of the Declaration, "(t)he provisions of the Covenant shall, however, be subject to the provisions of the constitution of the Islamic Republic of Pakistan. "The Government of the Kingdom of Norway note that a general reference to national law without specifying its contents does not clearly define for the other States Parties to the Convention the extent to which the reserving State has accepted the obligations of the Convention.

The Government of the Kingdom of Norway consider that both parts of the Government of the Islamic Republic of Pakistan's Declaration seek to limit the scope of the Covenant on a unilateral basis and therefore constitute reservations. The Government of the Kingdom of Norway consider both reservations to be incompatible with the object and purpose of the

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Covenant, and therefore object to the reservations made by the Government of the Islamic Republic of Pakistan.

This objection does not preclude the entry into force in its entirety of the Covenant between the Kingdom of Norway and the Islamic Republic of Pakistan, without the Islamic Republic of Pakistan benefiting from its reservations.

Pakistan

The Government of Islamic Republic of Pakistan objects to the declaration made by the Republic of India in respect of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights.

The right of Self-determination as enshrined in the Charter of the United Nations and as embodied in the Covenants applies to all peoples under foreign occupation and alien domination.

The Government of the Islamic Republic of Pakistan cannot consider as valid any interpretation of the right of self-determination which is contrary to the clear language of the provisions in question. Moreover, the said reservation is incompatible with the object and purpose of the Covenants. This objection shall not preclude the entry into force of the Covenant between the Islamic Republic of Pakistan and India without India benefiting from its reservations.

Portugal

26 October 1990

The Government of Portugal hereby presents its formal objection to the interpretative declarations made by the Government of Algeria upon ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The Government of Portugal having examined the contents of the said declarations reached the conclusion that they can be regarded as reservations and therefore should be considered invalid as well as incompatible with the purposes and object of the Covenants.

This objection shall not preclude the entry into force of the Covenants between Portugal and Algeria.

13 October 2004

With regard to the declarations and the reservation made by Turkey upon ratification:

The Government of Portugal considers that reservations by which a State limits its responsibilities under the International Covenant on Economic, Social and Cultural Rights (ICESCR) by invoking certain provisions of national law in general terms may create doubts as to the commitment of the reserving State to the object and purpose of the convention and, moreover, contribute to undermining the basis of international law. It is in the common interest of all States that treaties to which they have chosen to become parties are respected as to their object and purpose by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Portugal therefore objects to the reservation by Turkey to the ICESCR. This objection shall not constitute an obstacle to the entry into force of the Covenant between Portugal and Turkey.

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Slovakia

9 April 2009

With regard to the reservation made by Pakistan upon Ratification:

The Government of the Slovak Republic has carefully examined the reservation made by the Government of the Islamic Republic of Pakistan upon ratification of the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966, according to which, 'Pakistan, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all ap[p]ropriate means to the maximum of its available resources.'

The Government of the Slovak Republic is of the view that the reservation is too general and unclear and raises doubts as to the commitment of the Islamic Republic of Pakistan to its obligations under the Covenant, essential for the fulfillment of its object and purpose.

The Government of the Slovak Republic objects for these reasons to the above mentioned reservation made by the Government of the Islamic Republic of Pakistan upon ratification of the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the International Covenant on Economic, Social and Cultural Rights between the Slovak Republic and the Islamic Republic of Pakistan. The International Covenant on Economic, Social and Cultural Rights enters into force in its entirety between the Slovak Republic and the Islamic Republic of Pakistan, without the Pakistan benefiting from its reservation.

Spain

15 November 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the Kingdom of Spain has examined the Declaration made by the Government of the Islamic Republic of Pakistan on 3 November 2004 on signature of the International Covenant on Economic, Social and Cultural Rights, of 16 December 1966.

The Government of the Kingdom of Spain points out that regardless of what it may be called, a unilateral declaration made by a State for the purpose of excluding or changing the legal effects of certain provisions of a treaty as it applies to that State constitutes a reservation.

The Government of the Kingdom of Spain considers that the Declaration made by the Government of the Islamic Republic of Pakistan, which seeks to subject the application of the provisions of the Covenant to the provisions of the constitution of the Islamic Republic of Pakistan is a reservation which seeks to limit the legal effects of the Covenant as it applies to the Islamic Republic of Pakistan. A reservation that includes a general reference to national law without specifying its contents does not make it possible to determine clearly the extent to which the Islamic Republic of Pakistan has accepted the obligations of the Covenant and, consequently, creates doubts as to the commitment of the Islamic Republic of Pakistan to the object and purpose of the Covenant.

The Government of the Kingdom of Spain considers that the Declaration made by the Government of the Islamic Republic of Pakistan to the effect that it subjects its obligations under the International Covenant on Economic, Social and Cultural Rights to the provisions of its constitution is a reservation and that that reservation is incompatible with the object and purpose of the Covenant.

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According to customary international law, as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a treaty are not permissible.

Consequently, the Government of the Kingdom of Spain objects to the reservation made by the Government of the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the Covenant between the Kingdom of Spain and the Islamic Republic of Pakistan.

Sweden

23 July 1997

With regard to the declarations and the reservation made by Kuwait upon accession:

[The Government of Sweden] is of the view that these general reservations may raise doubts as to the commitment of Kuwait to the object and purpose of the Covenant.

The Government of Sweden regards the reservation concerning article 8 (1) (d), in which the Government of Kuwait reserves the right not to apply the right to strike expressly stated in the Covenant, as well as the interpretative declaration regarding article 9, according to which the right to social security would only apply to Kuwaitis, as being problematic in view of the object and purpose of the Covenant. It particularly considers the declaration regarding article 9, as a result of which the many foreigners working on Kuwaiti territory would, in principle, be totally excluded from social security protection, cannot be based on article 2 (3) of the Covenant.

It is in the common interest of all parties that a treaty should be respected, as to its object and purpose, by all parties.

The Government of Sweden therefore objects to the above-mentioned general reservations and interpretative declarations.

This objection does not preclude the entry into force of the Covenant between Kuwait and Sweden in its entirety.

14 December 1999

With regard to the declarations made by Bangladesh upon accession:

In this context the Government of Sweden would like to recall, that under well-established international treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine its status as a reservation to the treaty. Thus, the Government of Sweden considers that the declarations made by the Government of Bangladesh, in the absence of further clarification, in substance constitute reservations to the Covenant.

The declaration concerning article 1 places on the exercise of the rig of peoples to self-determination conditions not provided for in international law. To attach such conditions could undermine the concept of self-determination itself and would thereby seriously weaken its universally acceptable character.

Furthermore, the Government of Sweden notes that the declaration relating to articles 2 and 3 as well as 7 and 8 respectively, imply that these articles of the Covenant are being made subject to a general reservation referring to relevant provisions of the domestic laws of Bangladesh.

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Consequently, the Government of Sweden is of the view that, in the absence of further clarification, these declarations raise doubts as to the commitment of Bangladesh to the object and purpose of the Covenant and would recall that, according to well-established international law, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

The Government of Sweden therefore objects to the aforesaid general reservations made by the Government of Bangladesh to the International Covenant on Economic, Social and Cultural Rights.

This objection does not preclude the entry into force of the Covenant between Bangladesh and Sweden. The Covenant will thus become operative between the two States without Bangladesh benefiting from the declarations.

2 April 2002

With regard to the statement made by China upon ratification:

The Government of Sweden has examined the statement and would like to recall that, under well-established international treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine its status as a reservation to the treaty. The Government of Sweden considers that the statement made by the Government of the People's Republic of China to article 8.1 (a) of the International Covenant on Economic, Social and Cultural Rights in substance constitutes a reservation.

The Government of Sweden notes that the application of Article 8.1 (a) of the Covenant is being made subject to a statement referring to the contents of national legislation. According to the Vienna Convention on the Law of Treaties, a party to a treaty may not invoke the provisions of its internal law as justification for its failure to abide by the treaty. Furthermore, the right to form and join a trade union of one's choice is one of the fundamental principles of the Covenant. The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Sweden therefore objects to the reservation made by the People's Republic of China to the International Covenant on Economic, Social and Cultural Rights. This objection shall not preclude the entry into force of the Covenant between China and Sweden. The Covenant enters into force without China benefiting from the reservation.

30 June 2004

With regard to the declarations and reservation made by Turkey upon ratification:

The Government of Sweden has examined the declarations and reservation made by the Republic of Turkey upon ratifying the International Covenant on Economic, Social and Cultural Rights.

The Republic of Turkey declares that it will implement the provisions of the Covenant only to the State Parties with which it has diplomatic relations. This statement in fact amounts, in the view of the Government of Sweden, to a reservation. The reservation of the Republic of Turkey makes it unclear to what extent the Republic of Turkey considers itself bound by the obligations of the Covenant. In absence of further clarification, therefore, the

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reservation raises doubt as to the commitment of the Republic of Turkey to the object and purpose of the Covenant.

The Government of Sweden notes that the interpretation and application of paragraphs 3 and 4 of article 13 of the Covenant is being made subject to a reservation referring to certain provisions of the Constitution of the Republic of Turkey without specifying their contents. The Government of Sweden is of the view that in the absence of further clarification, this reservation, which does not clearly specify the extent of the Republic of Turkey's derogation from the provisions in question, raises serious doubts as to the commitment of the Republic of Turkey to the object and purpose of the Covenant.

According to established customary law as codified by the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of all States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the aforesaid reservations made by the Republic of Turkey to the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the Covenant between the Republic of Turkey and Sweden. The Covenant enters into force in its entirety between the two States, without the Republic of Turkey benefiting from its reservations.

1 March 2005

With regard to the declaration made by Pakistan upon signature:

The Government of Sweden would like to recall that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty.

The Government of Sweden is of the view that although Article 2 (1) of the Covenant allows for a progressive realization of the provisions, this may not be invoked as a basis for discrimination.

The application of the provisions of the Covenant has been made subject to provisions of the constitution of the Islamic Republic of Pakistan. This makes it unclear to what extent the Islamic Republic of Pakistan considers itself bound by the obligations of the treaty and therefore raises doubts as to the commitment of the Islamic Republic of Pakistan to the object and purpose of the Covenant. The Government of Sweden considers that the declaration made by the Government of the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights in substance constitutes a reservation.

It is of common interest of States that all Parties respect treaties to which they have chosen to become parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. According to customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Sweden therefore objects to the reservation made by the Islamic Republic of Pakistan to the International Covenant on Economic, Social and Cultural Rights.

This objection shall not preclude the entry into force of the Covenant between Pakistan and Sweden, without Pakistan benefiting from its reservation.

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United Kingdom of Great Britain and Northern Ireland

17 August 2005

With regard to the declaration made by Pakistan upon signature:

The Government of the United Kingdom have examined the Declaration made by the Government of Pakistan on 3 November 2004 on signature of the International Covenant on Economic, Social and Cultural Rights (done at New York on 16 December 1966).

The Government of the United Kingdom consider that the Government of Pakistan's Declaration which seeks to subject its obligations under the Covenant to the provisions of its own Constitution is a reservation which seeks to limit the scope of the Covenant on a unilateral basis. The Government of the United Kingdom note that a reservation to a Convention which consists of a general reference to national law without specifying its contents does not clearly define for the other States Parties to the Convention the extent to which the reserving State has accepted the obligations of the Convention. The Government of the United Kingdom therefore object to this reservation made by the Government of Pakistan.

This objection shall not preclude the entry into force of the Covenant between the United Kingdom of Great Britain and Northern Ireland and Pakistan.

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Annex

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10

Though Unwarranted, Article 32 of the Vienna Convention on the Law of Treaties (VCLT) also Supports the Existence of the Right to Strike

I. Resort to the Preparatory Work of Convention 87 is Unwarranted

Article 32 of the VCLT allows recourse to the preparatory works of a treaty only if at least one of the conditions of Article 32(a) or (b) are fulfilled. To do so, the meaning derived by recourse to Article 31 of the VCLT (a) must leave the meaning ambiguous or obscure or (b) lead to a result which is manifestly absurd or unreasonable. If the primary meaning is neither, then the justification for the use of the supplementary means of interpretation under Article 32 of the VCLT is unjustifiable. As explained in the previous chapter on the application of Article 31, it is clear that the meaning of Article 3 of ILO Convention 87 is that trade unions have the right to draft rules and make constitutional provision for the organisation of or support for industrial action, the right to organise activities including the organisation of or support for industrial action and the right to formulate programmes which include plans to organise or support the taking of industrial action. The question is whether that meaning is ambiguous or obscure or leads to results which are manifestly unreasonable or absurd. They are not.

As to ambiguity or obscurity, the existence of a right to strike protected by Convention 87 is neither. Only permissible restrictions on it require any further elaboration but that task cannot render the existence of the right itself ambiguous or unclear. As to manifest absurdity or unreasonableness, the practice of the ILO and its supervisory system to trade unions of the right to strike is the antithesis of absurdity. That this is so is demonstrated by multiple other international instruments protecting the right to strike. Indeed, the idea that unions would have the right to associate and to bargain collectively but have no right to carry out activities in furtherance of those rights, including exercising leverage at the bargaining table through the strike, is manifestly absurd. This is plain to anyone familiar with the practice of industrial relations the world over.

As the Committee of Experts has noted:

> Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted.[1]

So, while there may be arguments as to the extent and scope of the freedom which trade unions have to engage in industrial action, it cannot be argued (save by the most repressive dictatorships) that granting trade unions the rights to do such things is unreasonable or absurd. The fact that so many countries in the world have a legal right to strike is all but conclusive on the point.[2] Therefore, the conditions necessary before resort may be made under Article 32 of the VCLT to supplementary means of interpretation such as the *travaux préparatoires* of Convention 87 to determine the meaning of Article 3(1) of that Convention, are non-existent.

II. Application of Article 32 VCLT would Not Affect the Outcome were it Applied

The practice of the ILO supervisory bodies recognising the right to strike as being included in Article 3(1) of ILO Convention 87 is not only in conformity with the interpretation rules contained in Article 31 VCLT but is required by application of those principles. Even assuming that Article 32 VCLT would apply, however, the outcome would remain unchanged. First, the preparatory work for the ILO Constitution makes clear that from the beginning the right to strike was protected by the right to freedom of association. Secondly, it would have been peculiar for the drafters of Convention 87 to posit that the right to freedom of association was something other, or lesser, than the right as set forth in the Organization's Constitution. And, indeed, there is nothing in the *travaux préparatoires* of Convention 87 which would support such a claim.

A. The Preparatory Work of the Treaty of Versailles and the Circumstances of its Conclusion Confirm the Existence of a Right to Strike

i. Freedom of Association and the Paris Conference

The term 'freedom of association' appears twice in Part XIII of the Treaty of Versailles which established the ILO. However, most contemporary academic

[1] ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, *General Survey on the Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation 2008*, Report III (Part 1B); ILC, 101st Session, 2012 (*General Survey* 2012), available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/ meetingdocument/wcms_174846.pdf, 50, para 123.

[2] See ch 11 and Annex III.

writing does not examine why it was included in the Treaty and what it meant to those who drafted the relevant sections.[3] The term 'freedom of association' was not a common term in the first part of the twentieth century. Yet, when this term made its appearance during the discussions of the Labour Commission at the Paris Peace Conference, the Committee which was dealing with the labour and social policy items to be included in the Treaty of Versailles raised no controversy among the Commission members. Further, both the context and statements by those who participated in the Conference make clear that the right to strike was considered a bedrock activity of trade unions and a normal part of the collective bargaining process. It would be difficult to imagine that those drafting Part XIII would have considered the right to strike as excluded from the right to freedom of association.

a. The British Legal Situation

In nearly all European countries, legal concepts from the seventeenth and eighteenth centuries recognised property rights, and these were 'allied in some countries to relics of paternalism or feudal status for certain workers'.[4] At the beginning of the nineteenth century, the law in Britain and most European countries recognised almost no worker rights. Thus, when combinations of workers acted to increase their bargaining power, those actions had the effect of harming the employer economically, that is, harming his property interests, and for much of the nineteenth century courts in nearly all countries viewed the workers' actions as unlawful. Looking back at almost two centuries of labour cases, Lord Wedderburn saw two stages of labour law development. In the first, 'the most repressive, penal restrictions upon organisations of workers were removed' as a country industrialised with the new working class 'troublesome to those in control of social and economic power but necessary for their new economy' but while these created narrow areas where associations could exist, 'other types of illegality remained and were sometimes extended … especially in respect of strikes and industrial struggle'.[5] The second stage of development gave rise to positive rights, such as the right of association, to organise, to bargain and to strike.

Britain, having experienced the world's first industrial revolution, was also the first country to confront labour conflict. Moreover, Britain (unlike countries on the Continent) was a common law country, and as Phelps Brown has stated succinctly: '[a]ny combination conflicts by its very nature with the endeavour of

[3] Most authors pinpoint the 1919 Treaty of Versailles as the first international recognition of freedom of association and move forward in time to examine the meaning of the right. See, eg, T Novitz, *International and European Protection of the Right to Strike* (Oxford, Oxford University Press, 2003) 88–99.

[4] KW Wedderburn, 'Industrial Relations and the Courts' (1980) 9 *Industrial Law Journal* 65.

[5] ibid, 65–66.

the common law to preserve the freedom of the individual'.[6] The initial reaction was to ban unions. In 1799 and 1800, the British Parliament passed the wide-ranging Combination Acts. Prior to this, it had prohibited workers from combining and seeking higher wages as this would disturb the arrangement of prices and wages that Parliament was enforcing in that industry. But in 1799, Parliament banned all wage earners in all industries from combining. The word 'combination' had been used in prior laws, and it was used to denote the problem the legislature saw: namely, that workers would join together, or combine, seeking to secure an increase in wages or a decrease in hours. The actions the workers took in furtherance of their goal was the key to the law's hostility. The illegality arose not from the mere fact that workers joined together, but from the reason they joined together.[7]

Although the Combination Acts were repealed in 1824, the lack of an affirmative right to combine meant that throughout the nineteenth century British employers continued to battle unions in the courts by using common law theories, based on contract and tort law. Any strike or work stoppage meant that workers had breached their contract of employment (which of course required that they work if the employer so wished), and anyone organising a work stoppage was inducing a breach of contract which itself was a tort. The usual remedy for a breach of contract or a tort is damages, which in the case of poor nineteenth-century workers was often not a realistic remedy. In any case, what employers wanted was for the work stoppage to cease immediately if not to be prevented altogether. This led employers to bring cases charging workers acting together with conspiracy.

Following the 1872 conviction of gas workers who went on strike in support of a co-worker who had been dismissed for union activity,[8] Parliament passed the 1875 Conspiracy and Protection of Property Act which stated that a court could not convict the defendants, who were acting in furtherance or contemplation of a trade dispute, unless the act they aimed to do was in itself was a crime.[9] Thus, the mere act of combination was not unlawful. But it soon became clear that the 1875 statute only partially responded to the problem of legal liability for engaging in industrial action. Although they were no longer subject to criminal prosecution, workers were still exposed to civil liability as trade union industrial action was nearly always intended to inflict some amount of economic pain on the employer in order to persuade the employer to accede to the union's demands, and withdrawing labour was the main way of applying economic pressure. This was (and is) an integral aspect of the bargaining process. As one scholar, appealing to everyday

[6] H Phelps Brown, *The Origins of Trade Union Power* (Oxford, Oxford University Press, 1983) 28.

[7] For an explanation in common language, see Phelps Brown, ibid, ch II, 'The Trade Union as a Combination and the Principles of the Common Law'.

[8] *R v Bunn* [1872] 12 Cox CC. 316. The Court held that the men had broken their contracts of employment by going on strike, and that they had agreed to do a lawful act by use of unlawful means and that this was sufficient to prove criminal conspiracy.

[9] Section 3 states: 'An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute … shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime'.

experience, has observed: 'The very point of joining a trade union is to have more impact in bargaining, with its clearly detrimental effect on the interests of the employer'.[10]

Following landmark decisions in *Quinn v Leathem*[11] and *Taff Vale*,[12] which allowed individuals (Quinn) and the union (Taff Vale) to be sued for damages in tort for having engaged in industrial action, the legislature overturned them via the Trade Disputes Act 1906 which stated:

> An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Termed 'the golden rule' of British labour law,[13] this linked workers, combination and industrial action and gave workers legal protection. This 1906 legislation meant that for the British at the 1919 Peace Conference, the term 'freedom of association' for workers was understood as more than simply the ability to join together lawfully; rather it was seen as being inextricably linked to the right of workers through their union to formulate collective bargaining demands and to take industrial action, and for the union not be put out of existence by having to pay damages resulting from industrial action.

The British government and employers had also by 1919 adopted the conclusions of the 'Whitley' Committee on Relations between Employers and Employed of 1917[14] recommending that 'the government should propose, without delay, to the various associations of employers and employed, the formation of Joint Standing Industrial Councils in each industry'[15] consisting of representatives of employers' associations on the one side and trade unions on the other for the purpose of industry-wide collective bargaining in order to avoid the widespread

[10] Novitz (n 3 above) 126.

[11] *Quinn v Leathem* [1901] AC 495, 510.

[12] *Taff Vale Railway Co v Amalgamated Society of Railway Servants* [1901] AC 426. The union went on strike to protest against the company's treatment of a worker who had demanded higher pay. When the Taff Vale Railway Company hired strike replacements, the strikers engaged in various acts designed to stop the trains from running. At this point, the company decided to bargain collectively with the union and the strikers were returned to their jobs. The company, however, decided to sue the union in tort for damages and won. The House of Lords upheld the decision. Previously it had been thought that under the law of trusts a trade union (versus an individual) could not be sued, because it was an unincorporated entity.

[13] KW Wedderburn, *Cases and Materials on Labour Law* (Cambridge, Cambridge University Press, 1967). Professor Wedderburn referred to the statutory language used which delineated who, acting in what circumstances, would receive immunity as the 'golden formula': 388–421.

[14] Originally set up by the Ministry of Reconstruction as part of the planning for reconstruction after the First World War, its task was to 'make and consider suggestions for securing a permanent improvement in the relations between employers and workmen', Whitley Committee, *Final Report* (Cd 9153, 1 July 1918) para 1.

[15] Whitley Committee, *Interim Report on Joint Standing Industrial Councils* (Cd 8606, 8 March 1917) para 6. These were subsequently known as 'Joint Industrial Councils' (JICs).

and damaging strikes that had marked the previous 50 years.[16] The objective, adopted by government, was to 'constitute a scheme designed to cover all the chief industries of the country and to equip each of them with a representative joint body capable of dealing with matters affecting the welfare of the industry in which employers and employed are concerned'.[17] In this way, it was hoped that reliance on industrial action would be diminished.

b. The US Legal Situation

The US representatives at the 1919 Peace Conference faced a more complex legal situation as labour cases at the time were typically litigated on a torts or contracts theory, which is a matter for state, not federal (national) law. As such, 48 state courts could apply common law concepts to a labour situation and their views as to the legality of specific manifestations of industrial action varied. Similar to Britain,[18] the view of most state courts had evolved during the course of the nineteenth century, with combinations of workers taking some concerted action no longer seen as a criminal conspiracy but with various forms of civil liability still applicable. US unions faced an even more hostile climate than the British. By 1919, there had been no statute recognising a right of association or granting immunity from civil suits in tort or contract. Moreover, the 1890 Sherman Antitrust Act, a federal statute enacted to curb anti-competitive business practices, had an unintended effect due to the broad wording of section 1 which stated: 'Every contract, combination … or conspiracy, in restraint of trade or commerce among the several States is declared to be illegal'. Latching onto this section, courts found that workers combining together could be deemed in restraint of trade, and if so, they were subject to the treble damages provisions of the statute.[19]

An 1892 general strike in New Orleans gave rise to the first US case which considered the applicability of the Sherman Act to workers' industrial action. The trial court expressed a viewpoint that essentially made most strikes unlawful. The court said: 'The evil, as well as the unlawfulness, of the act of the defendants, consists in this: that, until certain demands of theirs were complied with, they endeavored to prevent, and did prevent, everybody from moving the commerce of the country'.[20] In the famous *Danbury Hatters*' case which involved a nationwide

[16] Where such Joint Committees did not already exist, the second report recommended 'an adaptation and expansion of the system of trade boards' working under an amended Trade Boards Act 1909 to conduct bi-partite collective bargaining with the presence of government appointees to facilitate negotiations, Whitley Committee, *Final Report* (n 14 above).

[17] Whitley Committee, *Final Report* (n 14 above).

[18] Prior to 1935 when the first federal (national) labour relations statute was enacted, American labour law case books typically referred not only to leading state cases but also to British decisions to explain how the common law regulated conduct. See, eg, JM Landis, *Cases on Labor Law* (Chicago, IL, The Foundation Press Inc, 1934).

[19] For a discussion of early Sherman Act cases, see A Cox, 'Labor and the Antitrust Laws – A Preliminary Analysis' (1955–56) 104 *University of Pennsylvania Law Review* 252, 256–62.

[20] *US v Workingmen's Amalgamated Council of New Orleans* 54 Fed 994, 1000 (ED Louisiana, 1893).

boycott of a hat manufacturer, the US Supreme Court expressed the same view: '[The statute] prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business'.[21]

Compared with Britain in the first years of the twentieth century, American courts appeared not only hostile to nearly all industrial action, but even more restrictive than they had been before the 1890 Sherman Act. There had been no legislative action to grant immunity in certain situations, let alone to grant positive rights, with the exception of a carve-out in the Clayton Act of 1914, but one which would prove not to insulate industrial action from legal action. Boycotts appear to have been utilised more in the United States than in Britain, perhaps because of the illegality of typical industrial action, such as strikes. But this too was fraught with peril. Even the president of America's central labour federation, Samuel Gompers, had faced being jailed for contempt when he refused to cease publishing a list of unfair employers for consumers to boycott.[22]

ii. Freedom of Association and the Treaty of Versailles

There were several occasions at the end of the nineteenth and beginning of the twentieth century when government representatives from several countries met and proposed action on a labour matter, often lobbied to do so by the International Association for Labour Legislation.[23] The Swiss government took the lead in proposing an international labour organisation that would deal with these matters, with the Berne Conference of 1906 particularly notable in reaching a multilateral agreement on a convention dealing with the use of white phosphorus in the manufacture of matches.[24] By 1914, there were 20 bilateral treaties on labour issues.[25] However, by 1914 only two multilateral treaties relating to labour

[21] *Loewe v Lawlor* 208 US 274, 275 (1908).

[22] In 1906 workers at a company in St Louis, Missouri went on strike in support of their demand for a 9-hour day. The American Federation of Labor (AFL) put the company on its 'unfair list' which was circulated to union members asking them to boycott companies on the list. The company went to court and was granted an injunction forbidding the publication of this list. Gompers and several other AFL leaders refused to comply and were sentenced to prison for contempt. The sentence was overturned by the US Supreme Court on technical grounds: *Gompers v Buck's Stove and Range Company* 221 US 418 (1911). The defendants were tried again a year later, and once again were found guilty of contempt and sentenced to prison. The Supreme Court overturned these convictions on grounds relating to the statute of limitations: *Gompers v US* 233 US 604 (1914).

[23] Sir Malcolm Delevingne, 'The Pre-War History of International Labor Legislation' in J Shotwell (ed), *The Origins of the International Labor Organization* (New York, Columbia University Press, 1934). Delevingne chronicles various meetings beginning in 1881 where several European nations came together, often at the invitation of Kaiser Wilhelm of Germany or the government of Switzerland.

[24] This later became Recommendation 006 of the new ILO. Recommendation concerning the Application of the Berne Convention of 1906, on the Prohibition of the Use of White Phosphorus in the Manufacture of Matches (1919), available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R006.

[25] J Solano and GN Barnes (eds), *Labour as an International Problem* (London, Macmillan, 1920) 161–94. Here, Arthur Fontaine reviews the efforts before 1919 to achieve the agreement of countries on specific labour standards.

conditions had been concluded.[26] In the same period, several union and socialist groups came together to propose international labour legislation. Union leaders were also active in the most famous pre-war association, the Second International, which was formed at a meeting in Paris in 1889 organised by socialist, social democratic and labour parties and attended by delegates from 20 countries.[27] Among them was Emile Vandervelde of the Belgian Labour Party. The Second International was active in proposing labour legislation and was the first to campaign for the eight-hour day.

The onset of war did not bring a halt to union meetings. The most important meeting was the July 1916 Leeds Conference spearheaded by William Appleton, head of the British General Federation of Trade Unions,[28] and by Léon Jouhaux, the General Secretary of the French Confédération Générale du Travail (CGT). Although this took place alongside the regular annual meeting of the British federation, it attracted 'such widespread publicity' that 'the resolutions adopted by the small group of fraternal delegates … [we]re commonly believed to reflect the considered opinion of the whole labor world'.[29] The delegates to this conference made recommendations for the express purpose of being prepared for an international union congress that would be held in the same place and at the same time as the peace conference[30] attended by diplomats that would take place after the end of the war.[31] Among the improvements demanded by the Leeds conference delegates was 'freedom of association'.[32]

[26] J Shotwell (ed), *The Origins of the International Labor Organization* (New York, Columbia University Press, 1934) 46. These related to restrictions on night work for women in industry and one prohibiting the use of white phosphorus in matches.

[27] BE Lowe, *The International Protection of Labor* (New York, Macmillan, 1921) xvi–xxi. This publication resulted from Lowe's doctoral thesis and it is exhaustive in noting late-19th-century meetings. In this section he details meetings of socialist and social democratic unions from several countries.

[28] The Trades Union Congress (TUC), dating to the 1860s, was (and is) the main federation of trade unions in Britain. In 1899, the TUC set up the General Federation of Trade Unions (GFTU), as an organisation that would exert more centralised coordination among its members and would take a more militant approach in the pursuit of economics and social demands. To do so, the GFTU was designed to serve as source of financial support, principally during strikes when affiliated unions could draw upon the GFTU's strike fund. Some unions belonged to both the TUC and the GFTU.

[29] Shotwell (n 26 above) 64. Delevigne comments that Samuel Gompers and the AFL had not been invited to the Leeds Conference to what the British organisers deemed a private and informal meeting, but upon learning that this conference had taken place, Gompers protested to Appleton and Jouhaux. See 59–64.

[30] G Van Goethem, *The Amsterdam International: The World of the International Federation of Trade Unions (IFTU), 1913–1945* (Aldershot, Ashgate Publishing, 2006) 18. Samuel Gompers (who was not present at the Leeds Conference) strongly supported the idea of a labour conference being held at the same time and in the same place as the peace conference. Léon Jouhaux was likewise supportive, and it was he who prepared the report for the Leeds Conference and who urged that there be 'industrial clauses in the peace treaty'.

[31] Standards of Labor Legislation Suggested in Resolutions of the International Labor Conference, Leeds, July 1916. Bureau of Labor Statistics, *Monthly Labor Review*, Vol 4 (January–June 1917) 912–15.

[32] The meeting mentioned in the *Monthly Labor Review* used the term 'right of coalition'. Alcock cites a memo of 9 October 1918 from EJ Phelan re Meeting of Labour in UK where 'freedom of association' was used. Since the resolutions regarding standards that should be guaranteed were prepared in French, this may be an issue of translating a French phrase into English. See, A Alcock, *History of the International Labour Organisation* (Basingstoke, Macmillan, 1971).

The 1917 revolution in Russia was the greatest expression of discontent during the war, ousting the tsarist government and captured the attention of governments in European capitals. In 1918, with the end of the First World War imminent, it seemed to many that labour unrest and the events in Russia might inspire some to seek political change even by violent means. In several of the combatant nations there was a widespread feeling that the lower classes had been drawn into a war of mass slaughter by the upper classes with governments cognisant of the fact that the returning soldiers expected something in return for their great sacrifices. This may explain why in writings from the period there is mention of the 'labour problem' with a general recognition that once the war ended some action would need to be taken. Lloyd George, the Prime Minister of Great Britain, famously expressed this sentiment when he wrote:

> The whole of Europe is filled with the spirit of revolution. There is a deep sense not only of discontent, but of anger and revolt among the workmen against pre-war conditions. In some countries, like Germany and Russia, the unrest takes the form of open rebellion, in others, like France, Great Britain and Italy, it takes the shape of strikes and of general disinclination to settle down to work, symptoms which are just as much concerned with the desire for political and social change as with wage demands.[33]

iii. The Labour Commission Proposal

The Paris Peace Conference was scheduled to begin on 19 January 1919. To prepare, EJ Phelan arrived in Paris on 2 January and was joined by other members of the British delegation over the next three weeks.[34] The American delegation arrived in mid-January and Phelan ascertained that they had not prepared any proposal that they intended to present. This permitted the two groups to discuss the British proposal for an international labour organisation before the Peace Conference began. It also gave the British the opportunity to obtain US and French support for the way labour matters would be introduced at the Peace Conference. The British wanted to ensure that the labour issue would be on the agenda of the Peace Conference, and also wanted it handled in a way that would enmesh the labour discussion with the general work of the Conference. They suggested that on the first day of the Peace Conference, they would propose that the labour problem be handled by a separate committee which would report back to the Conference. The Americans agreed with this approach as did the French.

[33] At a critical point in the discussions on the Treaty of Versailles, Lloyd George sent a private memorandum to the other leaders of the Allied Powers, which he titled 'Some considerations for the Peace Conference before they finally draft their terms'. It was dated 25 March 1919. This subsequently was revealed by several of those who received it. See, eg, FS Nitti, *The Wreck of Europe* (Indianapolis, IN, Bobbs-Merrill, 1922) 94; RS Baker, *Woodrow Wilson and World Settlement*, vol III, Original Documents of the Peace Conference (Garden City, NY, Doubleday, Page & Co, 1922) 449–57. These words of Lloyd George often appear in commentaries of this period.

[34] See Shotwell (n 26 above) 105–26, 'British Preparations' wherein Phelan discusses the meetings and issues that arose during this period.

It was not until the third week of January 1919 that attention turned to the need for a preamble as a means of setting forth the purpose of the proposed international labour organisation. The initial draft Preamble, prepared by Harold Butler[35] of the British delegation, was short. It proclaimed that conditions of labour existed which involved such 'injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled'. It then declared that 'an improvement of those conditions is urgently required'. Following this was a short list of items that urgently needed attention. Freedom of association was not included in this 'first complete draft of the British Plan' that was prepared prior to the start of the Peace Conference.[36] But by 2 February 1919, the day on which the British delegation submitted the text of their proposal to the Labour Commission, the Preamble had got longer, with a longer list of items urgently needing attention, and among them now appeared 'recognition of the principle of freedom of association'.[37]

After its plenary opening on 19 January 1919, the Peace Conference began work on 29 January. As already agreed by the British, Americans and French, the Peace Conference by resolution established a Commission on International Labour Legislation to work on a proposal regarding the labour problem. It was agreed that France, the United Kingdom, the United States, Italy and Japan be included on the basis of their being the chief Allied Powers, and that they would appoint five other members. Nine countries[38] were represented on this Labour Commission with each country having two representatives.[39] The Labour Commission began work immediately, convening on 31 January.

When the chair of the Labour Commission asked for proposals, the British submitted theirs. No other delegation submitted a proposal at that point.[40] As a result, the delegates on the Labour Commission at the Paris Peace Conference

[35] Harold Butler in 1920 became the Deputy Director of the ILO under its first Director, Albert Thomas, and then succeeded Thomas. He was Director of the ILO from 1932 to 1938.

[36] Shotwell (n 26 above) 372. This draft is dated 26 January 1919, three days before the Peace Conference convened. The drafts and revisions are reproduced in the appendix of Shotwell, on unnumbered pages but in chronological order.

[37] Phelan stated that the French translation of the initial British proposal was prepared in late January 1919 by a translator from the British Foreign Office before the Labour Commission convened for the first time. He then commented: 'This detail, which emphasizes the lack of any international secretariat at the Peace Conference, is of some importance, as in several instances the French and English texts as finally incorporated in the Peace Treaties do not exactly correspond'. Shotwell (n 26 above) 126.

[38] Added were Belgium, Cuba, Czechoslovakia and Poland. Belgium had two members, one representing the Flemish and one representing the Walloons.

[39] It appears that while there were two official representatives, that named substitutes or alternatives were also present during the Commission's sessions and that many of these persons were quite influential. For a listing, see *A League of Nations: Labor in the Treaty of Peace* (October 1919) II(5), available at: www.library.albany.edu/preservation/brittle_bks/LeagueNations_Treaty_of_Peace/.

[40] The French government had established a committee in 1917 to consider social policy issues, and this committee did confer with its British counterparts. But under the press of work, it had not formulated a complete proposal by the time the Commission started working. Shotwell (n 26 above) 83–97; R Tosstorff, 'The International Trade-Union Movement and the Founding of the International Labour Organization' (2005) 50 *International Review of Social History* 399, 416.

considered only one full proposal.[41] That formed the basis for all further deliberations. The version of the Labour Charter that was presented to the Peace Conference delegates contained nine principles.

The very first principle, that labour is not a commodity, directly addressed the issue of combination. The phrase itself was well known to Samuel Gompers as it was taken from an American statute, the Clayton Act, enacted only five years earlier after intense lobbying by unions persuaded President Woodrow Wilson to support a statutory exemption for unions from the Sherman Antitrust Act.[42] The Clayton Act declared that 'the labor of a human being is not a commodity' and expressly stated that union members engaged in legitimate objects of a union are not to be deemed illegal combinations or conspiracies in restraint of trade.[43]

The second principle in the Labour Charter was freedom of association. As noted, the British proposal from the first day of the Labour Commission's deliberations included 'recognition of the principle of freedom of association' in the Preamble.[44] In the Labour Charter, the phrasing changed to the 'principle that employers and workers should be allowed the right of association and combination for all purposes, subject only to such restrictions as are essential for safeguarding the national interests'.[45] Phelan stated that with regard to the principle of freedom of association,

> [t]he Commission was faced with a difficulty which has not yet been solved: namely, the difficulty of finding a formula which could guarantee the right of free association within the State without interfering with or diminishing the State's right to protect what it may conceive to be its essential interests. The discussion did not go very deep.[46]

[41] Wilfred Jenks commented: 'There were, however, some almost accidental circumstances which contributed to the success achieved in Paris, notably the combination of the general desire to do something about the labour question with the absence of any rival plan elaborated in anything like the same detail'. W Jenks, 'The Origins of the International Labour Organization' (1934) 30 *International Labour Review* 575, 577.

[42] Starting in 1908, when the Supreme Court held that the Sherman Act extended to unions, any union taking industrial action was placed in an impossible legal situation. Woodrow Wilson, a Democrat, became President in 1913.

[43] 'The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, … or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws' (15 October 1914, ch 323, § 6, 38 Stat 731).

[44] The draft of the British proposal introduced the first day is printed in the Appendix to Shotwell (n 26 above).

[45] Shotwell (n 26 above) 187.

[46] ibid, 195. The Shotwell book was published in 1934. Commenting on this 15 years after the Labour Commission deliberations and after the inconclusive attempt at the ILO in the 1920s to draft an instrument on freedom of association, Phelan observed that this was 'the first clash of views on a question which in one form or another has arisen at almost every meeting of the International Labour Conference since'.

The Labour Commission met 18 times between 1 February and 28 February, during which time it completed the first reading of the British draft. The Commission then adjourned until 11 March, in part to give the delegations the opportunity to consult with their governments. The second reading occurred in 17 sessions between 11 March and 24 March. During this period changes were proposed, but as Phelan noted 'few changes were made in the Preamble' with only one being of importance: namely the inclusion of 'social justice' as an object of the new international labour organisation with the explicit recognition that 'such peace can be established only if it is based upon social justice'.[47] Recognition of the principle of freedom of association was apparently never discussed in any detail and it did not provoke any disagreement.[48]

The final version that became Part XIII of the Treaty contains a preamble. It is almost exactly the same as the Labour Commission's final draft. It contains the phrase 'recognition of the principle of freedom of association' which is exactly the same as the phrase that appeared in the British proposal on the first day the Labour Commission met. The final version contains the Labour Charter in Article 427, which states General Principles regarding the regulation of labour. In the relevant part, it states:

> Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:
>
> First. – The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.
>
> Second. – The right of association for all lawful purposes by the employed as well as by the employers.

Whether there is any difference in the scope of the right of freedom of association between this phrasing and the phrasing of the Labour Commission cannot be definitely determined. It is known that the key members of the British, American and French delegations on the Labour Commission saw no major difference. All agreed that violent or revolutionary insurrectionist industrial action (which was occurring at the very time the Peace Conference was meeting) was not included within the notion of a protected right of association and thus permissible for a State to outlaw.

[47] Shotwell (n 26 above)132.

[48] Phelan later observed that '[i]t is no means easy to give a clear account of the work of the Commission' noting that there was no international secretariat at the time, and that no official published minutes of the Commission's deliberations were kept. Several of those present kept their own notes. Those present relied on their own delegation's translators who mainly were drawn from the military and even at the time there was some question as to the accuracy of these translations in light of the differences between French and English regarding labour relations concepts. Shotwell (n 26 above) 127–28 and 130. In 1934, Jenks noted that although 'the British were the sponsors of the plan and the Americans the chief critics of its key article, with the natural result that many of the most important speeches were originally made in English', no English stenographic record survived. He deemed this 'a grave misfortune' especially because the surviving record of these speeches was made by the French stenographers based on simultaneous oral interpreters which is often more of a summary than a strict translation. Jenks (n 41 above) 576.

As such, there would have been no objection to including this in the statement on freedom of association to allay the fears of some delegates to the Peace Conference.

iv. The Meaning of Freedom of Association

Coming from different countries with different histories, the delegates often saw different issues as pressing and displayed different attitudes regarding the role of trade unions, the meaning of the collective bargaining process, and the utility of industrial action compared with political action. To determine what the Labour Commission meant by 'recognition of the principle of freedom of association' requires some consideration of these differences.

a. The US Perspective

President Woodrow Wilson personally participated in the Paris Peace Conference and was committed to the idea of international organisations, and in particular to the League of Nations. Shortly after being elected President of the United States in 1912, he supported the work of the new Commission on Industrial Relations to study the labour problem.[49] Professor John R Commons, who was active in the work of the Commission on Industrial Relations, deemed the possibility of a strike as 'integral to the process of collective bargaining' such that a 'strike may in a sense be a step in that process'.[50] Wilson also supported the passage of the Clayton Act in 1914 which stated that unions should not be deemed to be illegal combinations of workers engaging in anti-competitive practices or conspiracies in restraint of trade. Moreover, Wilson was aware that unions typically went on strike and/or engaged in picketing and boycotts in support of their demands. As a result, it is reasonable to assume that Woodrow Wilson supported the principle of freedom of association and was aware that this term encompassed a wide range of actions, including the possibility of such collective action such as strikes.

Wilson seemingly was content for the two delegates he sent to the Paris Peace Conference, Samuel Gompers (labour) and Edward Hurley (management), to express the viewpoint of the United States at the Labour Commission. Wilson certainly was well acquainted with Gompers, with his views, and with the fact that he was most outspoken, but nonetheless strongly supported Gompers.[51] Wilson

[49] Responding to instances of severe industrial violence, the US President, William Howard Taft, appointed a Commission on Industrial Relations in 1912. It held hearings between during the presidency of Woodrow Wilson. These hearings documented the dire and oppressive conditions under which many persons and children worked. John R Commons, the noted labour economist at the University of Wisconsin, was a key member of the Commission's staff.

[50] J Commons and J Andrews, *Principles of Labor Legislation*, 4th rev edn (New York, Harpers & Brothers, 1936) 373.

[51] See E McKillen, 'Beyond Gompers: The American Federation of Labor, the Creation of the ILO, and US Labor Dissent' in J Van Daele, G Rodriguez, G Van Goethem and M van der Linden (eds), *Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century* (Bern, Peter Berg, 2010) 43.

appointed a person from the employers' side who was not known to be anti-union or even to have strong views about unions. Hurley left Paris in February soon after the first sitting of the Labour Commission.[52] Neither he, nor his successor (Henry Robinson, also of the US Shipping Board) are mentioned in the writings of other participants at the Labour Conference. It appears that the other delegates perceived that Samuel Gompers was presenting the position of the United States.

Gompers' position as chairman of the Labour Commission gave him the opportunity to ensure that his views were heard. Samuel Gompers' views on freedom of association, strikes and other forms of industrial action are crucial in any consideration of what the term 'recognition of the principle of freedom of association' in the Preamble of Part XIII of the Treaty of Versailles means. Gompers, President of the American Federation of Labor since 1886, believed in workers organising themselves, on occupational lines, to pursue improvement in their working conditions through the process of collective bargaining. Compared with many European trade unions, which viewed political action (leading to legislation or other form of regulation) as important as collective bargaining, the American trade union movement by 1919 had focused almost exclusively on collective bargaining.[53] Samuel Gompers took an unyielding position regarding how workers should seek to improve their terms and conditions of employment. He believed that they should use the collective bargaining process and not pursue legislative action.[54] Gompers adhered to a theory of worker organisation based on what he termed 'pure and simple' trade unionism which meant 'economic power organized in an effective association of persons with similar needs and goals, directed for an objective, immediate and practical'.[55] Rather than the class consciousness of European unions, American unions focused on 'job consciousness' as the basis of a cohesive labour movement.[56]

Gompers viewed a strike as an economic weapon used to increase the workers' bargaining power when the collective bargaining process had not produced the desired result. In 1910 he said:

> Let a man have the right to decide when he is to work or is not to work, and let that decision be backed by his power to keep himself from being obliged by immediate

[52] In memoirs written by Hurley, his account of the Peace Conference focuses almost entirely on shipping matters, with no mention of the Labour Commission. See: www.gwpda.org/wwi-www/Hurley/bridge7.htm#ch36.

[53] H Millis and R Montgomery, *Organized Labor* (New York, McGraw-Hill, 1945) 123–25.

[54] This caused some tension between Gompers and the British delegation who supported the use of both collective bargaining and legislative action.

[55] FC Thorne, *Samuel Gompers – American Statesman* (New York, Philosophical Library, 1957) 36.

[56] S Perlman, *A Theory of the Labor Movement* (New York, Macmillan, 1949). In ch 2, 'Labor and Capitalism in America', he discusses why the American experience differed from that of Britain, Germany and Russia, highlighting the stronger emphasis on private property rights in the United States, the relative lack of class consciousness, and the particularly harsh reaction to revolutionary syndicalism and the 'ferocious self-defence' of the capitalist class to 'any real or fancied industrial rebellion': see 159–60. In his classic study, Perlman takes the view that the 'pure and simple' trade unions advocated by Samuel Gompers and the AFL which focused on gains workers could achieve was the more effective way of engaging American workers in trade union activity.

> necessity to offer his labor to an employer, and the consequence must be that he will not sell his labor-power until the terms offered him are the best that the industry can warrant.[57]

Besides this pragmatic view of the utility of a strike, Gompers also took the philosophical position that the right to strike was an aspect of freedom. In testimony before a US Senate Committee in 1916, he asked rhetorically whether 'it is the course of right for any period of time to compel the workman to give involuntary servitude so that the companies may operate their railroad and perform their obligation to society?'[58] Gompers was totally opposed to government restrictions on striking, although he did take the view that during national emergencies workers should voluntarily forego the use of the right to strike.[59] He adhered to this view even in wartime. In May 1918 he said:

> Workers, decide every industrial question fully mindful of those men … who are on the battle line … needing munitions of war to fight the battle … No strike ought to be inaugurated that cannot be justified to the men facing momentary death. A strike during the war is not justified unless principles are involved equally fundamental as those of which fellow citizens have offered their lives.[60]

In light of his firm views regarding workers' right to strike, Gompers' views on other forms of industrial action were predictable. He fervently believed in freedom of speech, and to him, peaceful picketing on the public highway was a form of communication and persuasion. He viewed boycotts in the same way, as a form of speech whereby those who supported the union cause communicated with others. His position was adamant, as he explained to a government committee:

> Workmen have a right to say that they will not patronize those who are unfriendly to them and those who support their adversaries. This is all that boycotting implies. There is no aggression here, no criminal purpose, and no criminal way of accomplishing a proper purpose.[61]

b. The British Perspective

On the British delegation, the members worked as a team. The government's spokesman was George Barnes, a minister in the War Cabinet. Barnes, a member of the Labour Party from its founding, had been a union leader. By 1919, trade

[57] Thorne (n 55 above) 69, quoting from the President's report published in the Proceedings of the 1910 AFL Annual Convention.

[58] ibid, 67, quoting Gompers' testimony before the Senate's Interstate Commerce Commission, on 31 August 1916.

[59] ibid, 68.

[60] ibid, 69, quoting Gompers' statement in an article in the AFL's monthly publication, the *American Federationist*, in May 1918.

[61] ibid, 71, quoting Gompers' testimony to the Industrial Commission, Washington, DC, 18 April 1899.

unions in Britain had been able to secure legislation permitting trade union action. Thus, the British delegation's views of unions and their sphere of action was based on their own experience. Their views were also influenced by the generally accepted writings of prominent intellectuals. In London, the Bloomsbury Set, a loose collection of intellectuals hailing mainly from upper-middle-class professional backgrounds, was known for its left-liberal political views which were favourable to trade unions. Some in the Bloomsbury circle were active in political groups that promoted trade union rights, such as the Socialist society, among whom were Sidney and Beatrice Webb.

The Webbs were the most influential scholars of the trade union movement in Britain. For them, 'The strike was regarded, not as a distinct method of Trade Union action, but merely as the culminating incident of a breakdown of the Method of Collective Bargaining'.[62] Further emphasising this point that a strike is part of the collective bargaining process, the Webbs recalled the statement they made in their 1897 book, *Industrial Democracy*:

> It is impossible to deny that the perpetual liability to end in a strike or a lock-out is a grave drawback to the Method of Collective Bargaining. So long as the parties to a bargain are free to agree or not to agree, it is inevitable that, human nature being what it is, there should now and again come a deadlock, leading to that trial of strength and endurance which lies behind all bargaining. We know of no device for avoiding this trial of strength except a deliberate decision of the community expressed in legislative enactment.[63]

The Webbs' stance was common at the time. Within the Fabian socialist group, there were those who were even more stridently supportive of allowing workers to resort to strikes. Writing at the time of the First World War, GDH Cole observed that 'collective bargaining … may and usually does amount merely to a trial of strength, or of estimated strength, between the parties involved' but cautioned that although 'the avoidance of conflict … may be highly desirable, … the abandonment of the method of collective bargaining involved in arbitration and in a good deal of conciliation is certainly not so'.[64] Cole pointed out that conciliation had a 'very useful function' but only when *'backed up by the threat of a strike*'.[65]

The British team who wrote the draft proposal that became Part XIII of the Treaty of Versailles would have been familiar with this line of reasoning. In addition, they would have been aware that their Prime Minister, Lloyd George, personally had been involved in settling strikes in the decade before the war and had been in favour of social reform. Most notable was that Lloyd George was a member of the Cabinet that supported the Trade Disputes Act 1906 that gave immunity to

[62] S Webb and B Webb, *The History of Trade Unionism 1666–1920* (London self-published, 1920) 664.
[63] ibid, fn 1 quotation from 'Industrial Democracy' 221.
[64] GDH Cole, *The World of Labour*, rev edn (London, G Bell and Sons, 1917) 287.
[65] ibid, emphasis supplied.

those acting in combination for actions taken pursuant to a trade dispute.[66] As such, the drafters would have had no doubt that Lloyd George deemed freedom of association to mean the right to join together (combine) to seek better terms and conditions of employment through the collective bargaining method which might lead workers to engage in industrial action, including strikes.

c. The Labour Perspective

Commentaries on the Paris Peace Conference written in the decade after were nearly always written by those who had represented governments. These accounts by politicians and social-reformist intellectuals typically overlooked the importance of other actors, notably unions. But with regard to the Commission on International Labour Legislation it is evident that certain persons from different countries had communicated before 1919 and had had discussions regarding desired outcomes of the Peace Conference. For the most part, this occurred on the part of those supportive of labour. The importance of this network of reform-minded individuals is difficult to gauge but its impact on the work of the Labour Commission should not be underestimated.[67]

Recent scholarship has revealed that the network of trade unionists, especially socialist and social democratic trade unionists, was of critical importance in proposing an international labour organisation, in having trade union leaders on the Labour Commission, and in putting forward specific elements of the labour charter.[68] Although there were significant divisions among trade unions at the time, due to views on effective organisational structures and political orientation,[69] there were certain issues on which there was widespread agreement, such as a mandated shorter working day. Some scholars have credited the trade union movement as primarily responsible for the substantive principles that were included in Part XIII, and in particular in Article 427 because of the demands that the trade union movement had made at the 1916 Leeds Conference and the

[66] The relevant section states: 'An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable'.

[67] R Holton, *Global Networks* (Basingstoke, Palgrave Macmillan, 2008) 186.

[68] Tosstorff (n 40 above) 400. Tosstorf takes the position that while Shotwell 'presented government as the main protagonists' in the formation of the ILO, the 'trade-union federations were the real driving force that pressured government to include social-policy programmes in the peace treaty'.

[69] Scholarly works on labour history focus on craft, industrial and general workers' unions as different approaches to organisation of a trade union. Political goals or views distinctions are less precisely labelled. Scholars mention centrist, social democratic, socialist, Bolshevik and anarcho-syndicalist unions. Even among socialist unions, there were those who saw political matters as purely in the realm of the party versus those who saw the union as having a political role. Writing just before and during the First World War, Professor GDH Cole in discussing how to categorise or label unions expressly notes the differing views of what the term 'socialist' meant and that it took 'more than half a century to get its definite connotation' but highlights the fact that 'there is something new in the air needing a name' which has led to a 'vagueness in terminology' but which some call 'syndicalism' although he admits that what that means is 'ill understood'. See Cole (n 64 above) 55–57.

1919 Berne Conference, demands which were well known to those in government ministries responsible for labour matters.[70]

When the war ended and Paris was announced as the site of the Peace Conference, Gompers and others, following up on the Leeds Conference resolution, attempted to arrange an international trade union conference in Paris but the French authorities would not grant the necessary visas to delegates from Germany and Austria.[71] The unions held their conference in Berne during the first week of February 1919. The delegates at the Berne Conference passed resolutions, including several dealing with 'International Labour Legislation' in which they called for an 'international labour charter'.[72] In so doing, they were reiterating what rights they wanted established. Most of the Berne Conference resolutions related to specific working conditions. One however stated a matter of principle. Resolution 8 stated:

> Workers shall have the right of combination and association in all countries. Laws and decrees (domestic service laws, prohibition of combination, etc) which place certain classes of workers in an exceptional position … which deprive them of their right of combination and association, and of the representation of their economic interests, shall be repealed.

As these were trade unionists, it is likely that many, like Jouhaux, would personally have taken part in organising unions and in industrial action, and would be well aware that a positive statement of the right of association was needed, and how any law granting freedom of association could be undercut by carving out exceptions. It may be that the Berne delegates were prescient or simply that they anticipated an issue that would be controversial at the Peace Conference: namely, the equal treatment of foreign workers. At a time when empires were collapsing and country boundaries were being redrawn, the Berne Conference delegates must have been sensitive to the fact that workers from one country might be going into another country to work. Moreover, persons like Jouhaux, who had been fired for going on strike, realised the difficulty of organising a union and demanding recognition by the employer, and of maintaining solidarity while threatening a strike if demands were not met. They knew a strike would collapse if a part of the workforce was excluded from this effort because of some exception in the law guaranteeing freedom of association. Significantly, the delegates identified the most controversial aspect of freedom of association and emphasised that it applied to all workers by stating in the next paragraph of Resolution 8 that 'Immigrant workers shall enjoy the same rights as native workers as regards joining and taking part in the work of trade unions, including the right to strike'.

[70] FG Wilson, *Labor in the League System: A Study of the International Labor Organization in Relation to International Administration* (Palo Alto, CA, Stanford University Press, 1934) 30–31.

[71] D Ligou, *Histoire du Socialisme en France 1871–1961* (Paris, Presses Universitaires de France, 1962) 305.

[72] *International Socialism and World Peace*. Resolutions of the Berne Conference, February 1919, 9 (edition printed by the Independent Labour Party, London, 1919), available at: www.archive.org/stream/InternationalSocialismAndWorldPeaceResolutionsOfTheBerneConference/BerneConference#page/n3/mode/2up.

The delegates at the Berne Conference were alert to the need to act quickly if they were going to have any impact on the work of the Commission on International Labour Legislation meeting at the same time in Paris. In Berne, they appointed four persons to 'watch over the work' of the Peace Conference.[73] They also decided to send a delegation to Paris to present the Berne resolution to Georges Clemenceau, the President of the Peace Conference.[74] The timing of the events is critical to understanding the impact of the Berne Conference. It concluded on 10 February 1919. The Labour Commission had begun meeting on 1 February and continued until Friday, 28 February. It then recessed for a week until Tuesday 11 March. As noted above, the original British proposal had contained a preamble listing items urgently needing attention, but nothing more. Sometime after 10 February and before 28 February, several delegations insisted that guiding principles in the form of a labour charter be inserted into the proposal that would be recommended to the Peace Conference. Léon Jouhaux of France and Angiolo Cabrini of Italy took the position that the labour clauses in the Treaty should be 'a start toward the realization of the Berne trade union and social conference'.[75] A sub-committee, appointed to examine the question of what guiding principles should be included, made its report on 15 March. By 24 March, the Commission had drafted its report to the Peace Conference, a report which included the guiding principles. This inclusion of a section on 'guiding principles', referred to as the Labour Charter, was viewed by some as 'revolutionary' because it represented a 'statement of the demands of Labour *for itself*' and since the Charter was adopted by the Commission and later by the Conference, it represented an acceptance of general principles regarding social justice.[76]

B. Freedom of Association in the Aftermath of Versailles

With the Treaty of Versailles having established an international organisation to deal with labour matters and in light of substantial industrial and political unrest in several European countries, many of the delegates who took part in the Labour Commission's work were determined to have the new International Labour Organization begin its work without delay. With the United States willing to provide support,[77] the first International Labour Conference (ILC) convened

[73] *Resolutions*, ibid, 15, fn 101. One of the delegates sent to present the resolution was Albert Thomas of France, who would become the first Director of the new ILO.

[74] It appears that they did achieve this aim. See Ligou (n 71 above) 305.

[75] Wilson (n 70 above) 47.

[76] Solano and Barnes (n 25 above) 45–46. Article 427 at the beginning of Section II is the Labour Charter.

[77] In discussing this first Conference, Harold Butler stated that US President Wilson was 'particularly anxious' that it should meet in Washington and took a 'keen personal interest' in the Conference but since the United States had not ratified the Peace Treaty, this made its role awkward as it had no official voting delegates at the Conference. Thus, Gompers could not play a role. However, George Barnes and Léon Jouhaux, both of whom had been very influential in the discussions of the Labour Commission, were elected Vice Presidents of the Conference: ibid, 198–99 and 203.

only six months later, in Washington, DC on 29 October 1919 even before the League of Nations came into being.[78]

At its 1919 International Labour Conference, delegates to the Conference considered items listed in the Preamble to Part XIII as 'urgently' needing attention and adopted six conventions on topics such as the eight-hour day, night work for women, minimum age in industry and maternity protection. Four conventions were adopted at the 1920 Conference, mostly dealing with maritime and seamen's matters. In 1921, however, the proposed Convention 11, Right of Association (Agriculture), covered a matter that had been highlighted in one of the resolutions of the Berne Conference of 1919: namely, that certain categories of workers were denied the right of association that other workers were accorded. The Berne Conference resolution had mentioned, as an example, workers in domestic service, who at the time were often not free to leave their employ and who often worked long hours and received non-wage compensation. Agricultural workers in some countries were in an analogous position in that they might be tied to the land, and their compensation might be based on a share-cropping arrangement. Convention 11 and two other conventions[79] expressly extending rights to workers in agriculture were adopted in the face of French government objections.[80]

The language of Article 1 of Convention 11 tracks the language of the Berne resolution, in particular its requirement that legislation limiting the right of association be repealed. Article 1 states:

> 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.

This is the sole substantive article in Convention 11. It presupposes that industrial workers do have rights of association and combination, otherwise it would make no sense.

[78] The League of Nations came into being on 10 January 1920. Its first session took place on 26 January 1920.

[79] Convention 10 covered the issue of minimum age for agricultural workers, and Convention 12 addressed workers' compensation for personal injuries.

[80] It appears that some governments that were in favour of the labour rights expressed in Part XIII of the Treaty assumed that these rights only applied to those working in industry, such as in a factory or a mine, and in a conventional employment relationship. There is, however, nothing in Part XIII that mentions any exclusion or limiting criterion. Similarly, during the 1920s some Member States, such as Great Britain, which had ratified Convention 4, Night Work (Women) 1919, asserted that it did not include within its scope female managers whereas others, such as France, believed it did. The continuing controversy caused the Governing Body to refer the matter to the Permanent International Court of Justice for an interpretation of the Convention. The Court held that the Convention covered all female workers as there was no exclusion or limiting criterion in the Convention. 26th Session, 15 November 1932), available at: www.ilo.org/public/libdoc/igo/P/01327/01327(1932)Avis_du_15_novembre_1932.pdf.

Even if the delegates did believe that workers had a right of association and combination, that did not mean they agreed on the exact scope of this right. This led the Governing Body to direct the International Labour Office to collect information with regard to the position in all Member States on the application of the principle of freedom of association.[81] In response to such a request, the Office usually would have drafted a questionnaire or survey and sent it to the Member States. But many worker representatives were opposed to this as they feared that the mere formulation of questions might be the basis for a restriction on the right of freedom of association, and in particular, that a question might imply that an individual worker had a right not to join a union.[82] Some employers and governments also were hostile to the idea of a questionnaire as they feared it might lead to the expanded notion of freedom of association, one more encompassing than recognized by the courts in their countries. Others, such as Ernest Mahaim and Léon Jouhaux, feared that the phrasing of certain questions about freedom of association implied possible limitations.[83] Jouhaux was adamant that freedom of association must be viewed in light of what it meant in the Treaty. He flatly stated that 'the question of individual liberty has nothing to do with this' and asserted that it was 'now intended indirectly to deny rights which have been admitted and to deny the principles on which the whole Organisation is founded' and declared that the Workers group would 'resume the struggle' outside the ILO if the ILO failed 'to perform its essential task' to protect the 'rights and the needs of the workers to associate themselves freely for the defence of their common interests'.[84] In the face of this opposition from the tripartite constituents, no questionnaire was approved, and the idea of drafting an instrument on freedom of association was dropped,[85] not to resurface for 20 years.

[81] ILO, 1927, vi.

[82] The report being debated was the proposed questionnaire on freedom of association. One of the proposed amendments would have included 'provided that the right not to combine is safeguarded'. Tenth International Labour Conference, Final Record, 349. The record of the sittings on 11 and 14 June 1927 reveals the heated and polarised debate: 264–84 and 339–63. The debate was so controversial that one of the British delegates complained that he could not hear the translation (from French into English) because of the number of persons near him discussing the matter, and the chair noted that he had called for silence 'on many occasions': 283 See: www.ilo.org/public/libdoc/ilo/P/09616/09616(1927-10).pdf.

[83] One question asked about the right to engage in industrial action 'by all such means as are not contrary to the community'. Mahaim proposed deleting those words and asked 'But what is the right of combined action for trade union purposes which would not affect the interests of the community?': ibid, 274.

[84] ibid, 281.

[85] The tripartite Committee on Freedom of Association at the ILC (not the same committee as the CFA, a committee of the GB, of later years) produced its report on the draft questionnaire, which indicates the differences between the Workers' and Employers' representatives (638–55). Tenth Session, ILC, 1927, Vol I, available at: www.ilo.org/public/libdoc/ilo/P/09616/09616%281927-10%29.pdf.

C. The Preparatory Work of Convention 87 and the Circumstances of its Conclusion Confirm the Existence of a Right to Strike

It is without doubt from the early history that among the founders of the ILO, the concept of freedom of association contemplated the right to strike, as derivative of the right and/or necessary to give it effect. Early efforts to codify the right in a convention were rebuffed, not because there was any doubt on this point, but out of concern that some parties involved in negotiating such a convention might attempt to impose unwanted restrictions. Following the Second World War, and the devastation that it wrought on workers and industry, the constituents eventually negotiated such a convention. This effort was given a push from the fact that the UN, formed in 1945, was busily drafting the Universal Declaration on Human Rights, which was to cover matters including freedom of association. Both the World Federation of Trade Unions and the AFL–CIO had requested that the newly established Economic and Social Council (ECOSOC) of the United Nations take up the matter of the exercise of trade union rights.[86] ECOSOC referred the matter to the ILO in March 1947 and requested a report back by July of that year. In order that ECOSOC would not regulate in matters so core to the ILO, the ILO Governing Body decided in June 1947 to commence drafting a standard on freedom of association as quickly as possible before ECOSOC moved forward on its own.[87]

By May, the Office had drafted the preparatory paper and by June, an item on freedom of association was on the agenda of the ILC. By early July, general principles on freedom of association had been agreed, with the proposed convention to be placed on the agenda for the ILC in 1948.[88] The preparatory paper surveyed labour legislation at the time. While there was no explicit mention of the right to strike, it observed that at times trade unions 'are obliged to resort to economic pressure' followed by a discussion of the process used in various countries to deal with labour conflict.[89] The preparatory paper suggested two possible ways to guarantee freedom of association. The first envisaged a list of detailed regulations and the second the essential principles.[90] The Office preferred the latter, which was the approach adopted by the Conference committee charged with the issue – the Committee on Freedom of Association and Industrial Relations.[91]

There were only two major points of contention. One proposal, raised by the employers, was to include text providing for the right to not join a union. The other proposal was to limit the right to associate to workers only, not employers.

[86] J Bellace, 'The ILO and the Right to Strike' (2014) 153 *International Labour Review* 29, 40.
[87] ibid, 41.
[88] ibid.
[89] ibid, citing, Freedom of Association and Industrial Relations, Report VII, ILC, 30th Session, 1947, Geneva, 55.
[90] ibid, citing, Freedom of Association and Industrial Relations, Report VII, 17.
[91] ibid, 42.

Both proposals were rejected. The 1947 draft produced by the Committee essentially became the text of Convention 87, which was adopted by the ILC the following year.[92]

The right to strike is not explicitly mentioned in Convention 87. However, during the Conference discussions in 1947 and 1948, no one proposed limitations on its exercise and indeed the issue was not discussed.[93] This was not because the parties thought it not to be germane. The preparatory paper contained excerpts of the submissions from both the World Federation of Trade Unions and the American Federation of Labor (AFL) submissions to ECOSOC, both of which mentioned the right to strike. More compelling, some government representatives proposed a qualifier in the Convention that employers' and workers' associations could act but only in a lawful manner. This proposal was rejected, as it was known that the laws in some countries banned forms of industrial action that the Convention was designed to permit.[94] Indeed, the desire on the part of some governments to maintain the right to regulate such matters at the national level is largely responsible for the failure to arrive at a convention from 1927 to 1948. The Conference delegates in 1948 must have appreciated the implications of the right of trade unions to organise their activities.[95]

In light of the time pressure under which the Committee on Freedom of Association and Industrial Relations operated, its tripartite members indicated that they were united in a strong desire to agree on a text to meet the deadline of the ILC, and acknowledged that what was produced did not, in all respects, meet their notion of a perfect statement on freedom of association.[96] It appears that the tripartite members of the Committee took the pragmatic view that a right to strike was implied in the right of freedom of association but wished to avoid the quagmire of delineating the exact contours of the right to strike.

[92] ibid.
[93] ibid.
[94] ibid, 42–43.
[95] ibid.
[96] ibid, 43.

Annex 10

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Sustainable Alliances: The Origins of International Labor Environmentalism

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Sustainable Alliances: The Origins of International Labor Environmentalism[1]

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Abstract

This article examines evaluates the strength of the Labor-Environmentalist alliance of the late twentieth century. It traces the evolution of trade unionists' thinking about nature and the human relationship to the environment by examining intellectual and political sources of labor involvement in United Nations' environmental policy making from the 1950s through the 1980s. The article explores the reasons trade union organizations, notably the International Confederation of Free Trade Unions, the International Trade Secretariats (Global Union Federations) and the European Trade Union Confederation, participated in a variety of international conferences and institutions such as the 1972 Stockholm Conference on the Environment, the 1992 Rio Earth Summit and the 2002 Johannesburg World Summit on Sustainable Development. It finds that environmentally conscious trade unionists developed their own version of environmentalism and sustainable development based on a reworking of basic trade union principles, a reworking that emphasized solidarity with nature and made central the protection of the health and safety of workers, communities, and environments.

Few recent political movements have been as striking or as important as the coalitions that have brought environmentalists, solidarity activists, and trade unionists to protest corporate-oriented globalization. Seattle's turmoil in 1999, most notably, brought this coalition to international awareness, but the alliance itself remains little understood. While the main organizations involved in this movement have had a continuing impact on politics around the world, few have sought to explain how trade unions on the global level came to cooperate with these other groups and, moreover, to understand on just what basis they are able to work in alliance.[2]

This article examines the evolution of international trade unionists' thinking about nature and the environment in order to understand this new movement. It seeks ultimately to shed light on a series of interrelated questions. How strong is this coalition? Is it based on something more than opposition to a common enemy of free trade regimes, structural adjustment, and privatization? Are the constituents, ideas, and thinking of the movements too disparate to maintain the coalition for long? Or, on the other hand, do the members of the alliance have ideologies and political needs that have allowed them to overcome their conflicting interests, history of distrust, and their contrasting class, ethnic, and national make-up?

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Rather than originating simply in a popular front against a common enemy, the labor-environmentalist alliance came about, in part, from a dual process of intellectual change and political experience. Labor thinking about the environment today grows from a profound, if halting, reorientation in trade union ideology about human beings' place in the natural world. At the same time, environmentalists within labor movements have been engaged in an essentially political process, one that involves compromise and modification of their ideas and programs, especially as they became increasingly involved in international institutions like the UN. The end result of these two intertwined evolutions has been the development of a labor version of sustainable development around which trade unionists in many countries are organizing their environmental activities.

The growth of labor environmentalism can be seen though the history of trade union activists in the International Confederation of Free Trade Unions (ICFTU). Green actions by unions in particular nations are now the subject of a growing and important field of study (and practice), but almost no historical attention has been devoted to considering them in an international context. This absence may be due to the fact that the ICFTU seems an unlikely site for ecological innovation. The main purposes of the ICFTU and its allied organizations of specific industries, the International Trade Secretariats (ITS—now called Global Union Federations), have been to coordinate international acts of solidarity (e.g., boycotts and aid to struggling unions), to create a labor presence in international institutions, and to demand consistent international standards for workers. The Confederation originated in the early years of the Cold War as an anticommunist organization that joined liberal and Social Democratic national trade union centers from around the world. It sought to counter the appeal of Communist unions at the same time as it pushed labor interests against unbridled capitalism in the West. With the end of the Cold War and the collapse of its main competitor, the more red World Federation of Trade Unions, the ICFTU moved farther to left. Although grand in conception and ideology, the ICFTU has little power in practice. Riven by internal ideological disputes for much of its history, the organization has had few accomplishments other than through lobbying and the distribution of information. Its most notable success came though the Confederation's coordination of the boycott against South African apartheid.[3] While it came only slowly to adopt a green position, the Confederation has lobbied for labor's position on environmental issues in international conferences and meetings, in the tripartite International Labor Organization, and in the UN for more than thirty years.

Within the world of international environmental policy making, "Sustainable Development" has become the key organizing idea, a principle the labor movement has taken to heart. Popularized by the 1987 report of a UN Committee headed by former Norwegian Prime Minister, Gro Harlem Brundtland, sustainable development was defined as meeting "the needs of the present without compromising the ability of future generations to meet their own needs."[4] A series of international meetings from the 1972 Stockholm UN Conference on the Environment, culminating in the 1992 Earth Summit in Rio de Janeiro, com-

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mitted governments and international institutions to sustainability as a whole set of interrelated concepts and program. The Earth Summit established the United Nations Commission on Sustainable Development (CSD) to coordinate and further articulate efforts to achieve this goal. But the governments and environmentalists behind this diplomacy did not readily consider labor interests in creating their international instruments.

In response, the trade unions have pushed the international "community" since the early 1970s to integrate the "social pillar," a consideration of basic social democratic principles, into its definition of sustainable development. While the early years were frustrating—the 1972 Stockholm environmental meeting, for instance, was long on rhetoric but short on substantive commitments—the evolution of sustainable development as a policy goal allowed an opening for labor. The ICFTU has been remarkably successful in its push to include labor concerns at the CSD and subsequent summit meetings such as the 2002 Johannesburg World Summit on Sustainable Development. *Agenda 21,* the declaration of the Rio Earth Summit of 1992, included section twenty-nine, "Strengthening The Role Of Workers And Their Trade Unions," which recognized labor as a "major group," giving the unions the ability to participate in formal discussion sessions. "Workers should be full participants in the implementation and evaluation of activities related to Agenda 21," the meeting declared.[5] According to the ICFTU's General Secretary at the time, this wording was "drafted by a small group of trade union health, safety, and environment specialists" and reflected "the general principles long campaigned for by free trade unions in the field of health, safety, and environment."[6] Despite this general agreement sustainable development is hardly a simple, obvious concept and the debates over what it means and how to create it have forced the unions to become clearer about their own position. It has not been an easy process to define just what labor wants from environmentally sustainable development. As Canadian trade unionist Winston Gereluk, one of that "small group" of labor environmental policy developers told me: "We are pushing the envelope with the UN and the CSD; the trade unions are behind us—but not strongly."[7]

The evolution of ICFTU environmental policy from the 1960s to the present reveals a fundamental change in how trade unionists in many different countries view the natural world. In keeping with labor's basic purpose and ideology, trade unionists had long thought of the natural world as a place they could not enjoy because of their exclusion from forms of bourgeois leisure or as a site for resources that could enrich their members. These conceptions remained largely consistent until the later 1960s. Production, organization, and planning found strong support, but ecological harmony or even a hint of the later logic of sustainability were distinctly lacking. For instance, in 1965 the ICFTU/International Federation of Building and Woodworkers International Housing Committee, which just a few years later pioneered labor's environmentalist thinking, resolved "that the supreme purpose of all economic development and progress is to meet the basic human social needs of man and that therefore all genuine social needs . . . must find primary consideration in all plans for economic de-

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velopment, both in industrial and in developing countries."[8] The Housing Committee advanced a reasonable goal, to be sure, but hardly one recognizing the importance of ecological balance.

Given the unions' instrumental conceptions of nature, fears about loss of employment due to environmental regulation, and political divisions within the movement, how did international labor come to accept—if not embrace—environmentalism and to begin to reorient its stance on nature? In other words, what are the origins of labor ideas of sustainable development?

Most labor environmental activists today come from the Occupational Health and Safety (OHS) side of the movement (of which, more below). Yet early ICFTU efforts to grapple with environmental issues did not originate from OHS concerns. Indeed, there was no discussion of the environment in the ICFTU's health and safety committees until the 1980s. Nuclear issues provide a key example. The ICFTU and its European Regional Organization (ERO), for instance, were deeply concerned with atomic energy in the 1950s and 1960s. They devoted extensive resources and time to promoting nuclear power as the solution to Europe's energy needs and to developing standards for protecting workers in the nuclear industry in cooperation with the International Labor Organization and the International Atomic Energy Agency. Yet the only discussions in their meetings about dangers centered on the problem of radiation exposure for workers.[9] While in the days before the Chernobyl and Three Mile Island disasters such acceptance was more common than today, it is striking that environmental problems from uranium mining, or waste disposal—let alone disasters—were not a matter for discussion. This was in part a result of divisions within the ICFTU and the International Metalworkers Federation between pro- and anti-nuclear unions, but it also reflected a more general trend about environmental problems.

The ICFTU/European Trade Union Confederation (ETUC) Committee on Atomic Energy continued to avoid discussing the environmental hazards of nuclear energy production for decades. (Of course, in this failing the unions were a typical international institution: the United Nations did not discuss pollution until 1968.[10]) In its first major statement on environmental issues in 1971, "Free Trade Unions and the Challenge of the Human Environment," the ICFTU made no mention of nuclear power.[11] Finally in 1986, that is after militant anti-nuclear activists had protested for more than a decade and a Soviet reactor at Chernobyl melted down in one of the worst disasters in human history, Occupational Health and Safety Working Party members began to talk openly about the larger problems of nuclear power. Even then, they disparaged opponents of nuclear power as people on "a moral crusade" who see "nuclear power or almost anything tampering with radioactivity as evil." In contrast, were those (presumably at the ICFTU) who "see it as simply a potentially dangerous technology that is insufficiently understood."[12] Clearly, the ICFTU and its constituents remained "sharply divided about the future role which nuclear energy should play." As a result, the organization and could only recommend "stronger international regulation" in order to increase "control of risks to health, safety, and the environ-

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ment"—hardly a powerful environmentalist response.[13] The European Trade Union Confederation, which started as the ICFTU European Regional Organization, took a similar, but disingenuous stance. Although they had never protested nuclear power previously they complained "energy research has been focused deliberately on nuclear energy but neither workers nor the public have been consulted on this choice."[14] Initial ICFTU efforts to deal with environmental issues were intermittent and not fully thought through, perhaps because the political pressures of greens, militant environmentalists, and development problems were not yet clear themselves.

Instead of beginning with a concern for occupational health, ICFTU environmentalism actually arose from a labor commitment to community and society as a whole. A joint International Housing Committee of the ICFTU and the International Federation of Building and Woodworkers (IFBWW) provided the Confederation with its first focused documents on environmental problems.[15] The Committee's secretary, Heinz Umrath of the Dutch trade union federation, wrote important position papers on the environment, though their arguments were not as clearly articulated as later ideas. Indeed, the reason that the Housing Committee rather than the Atomic Energy Committee or a specially convened environmental working group dealt with the issue had much to do with internal institutional limitations—how many staff were available, for instance—as with distrust on the part of member federations about environmental policies. But more important for this discussion, the choice of the Housing Committee reflected a central conception about the environment, one that played a significant part in the development of later ideas.

The Housing Committee dealt with the environment because its charge was to protect workers' community interests. Umrath emphasized the social aspect of trade union concern over the environment—a theme that in later years became very important. Still the Housing Committee itself did not come to environmentalism early in its development. The Committee had originally been part of the European Regional Organization of the ICFTU in the 1950s where it concentrated on problems involved in rebuilding the war torn continent.[16] It emphasized a social democratic idea of "social housing" which could mean different things in different countries, but in all meant that markets alone could not be relied on to provide housing at reasonable prices. By 1968, the Committee and Umrath had left the ERO and were working with the larger ICFTU, conducting surveys, and writing well received analysis of housing issues. It was in 1968, the year of the barricades, that the Committee records first mention the words "environment" and "pollution," though these are mentioned almost in passing as problems caused by unplanned development of cities.[17] The Committee had just the previous year, however, referred to "financing housing and its environment" in a paper, clearly referring to the immediate surroundings of housing developments.[18] The Housing Committee may have seemed the proper place to discuss the environment—beyond the grounds of apartment complexes—because the UN itself discussed such issues in its Division of Environment and Housing at least since 1969. By 1970 when the UN began full time

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planning for the 1972 Stockholm Conference on the Environment, Umrath was well aware of the need to provide a trade union perspective on environmental issues. He wrote to Heribert Maier, who then headed the ICFTU Economic and Social Department: "This will become a hot issue! I suggest we discuss it soon."[19] They must have, for the trade unions participated actively in the Stockholm conference and began to articulate their particular form of environmentalism—one that stressed the social as equal to the natural.[20]

One of the key ideas in early literature produced by Umrath and the Housing Committee expressed the dangers of pollution and unplanned growth for the "human environment," (a term borrowed in late 1960s and early 1970s from environmentalists and later adopted by the UN). For the unions, the human environment was the whole of the workplace and the job. By doing their environmental work through the Housing Committee the unions were making—intentional or not—a connection between the home and the environment. The term links exposure to toxics on the job, pollutants' effects on families and communities with the destruction of the environment for production. "Human environment" provided the linkage between more traditional union concerns and the needs of ecological crises. Yet by emphasizing "human" in their definition, they signaled their concern with people's lives as the central issue of green politics—not preservation of animal, plant, or other 'natural features.' In a 1967 report the Housing Committee warned that "air and water pollution add a new dimension to this question" of improving substandard housing. They wrote of an "urgent need of improving the residential environment" as people become more prosperous. Greater industrial and housing development in the current system means sacrifice of the environment; "ALL countries will suffer from the paradox."[21]

By placing the human as part of the ecological system, the ICFTU staff and then the Confederation's Congress began to equate human beings with nature. It was not simply a paradox or unfortunate byproduct that the workers of the world would suffer along with nature. For the problems of the "total human environment," i.e., the workplace, the home, communities, and larger systems, flow from two interrelated sources according to Umrath and his comrades:

> (a) The 'ecological' problem which arises from the interdependent, dynamic nature of the total environment, which renders planning of resource allocation and the distribution of population essential; and (b) the distributional problem; the maldistribution of real income and wealth resulting basically from over-concentration on the production of material goods and service.[22]

In one 1971 article in *Free Labour World*, ICFTU official (later General Secretary) Enzo Friso critiqued "consumer society" as equally destructive of people and the environment. Incorporating what sounds like Herbert Marcuse's then popular analysis of one-dimensionality, Friso descried the alienating quality of industrial labor. Making a parallel between the use of human beings and the technological transformation of nature, he wrote: "The worker is more and more

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subordinate to the machine and to technological requirements."[23] This idea reappears in later discussions equating workers with the environment. For instance, in its "Statement on the Human Environment," the 1972 ICFTU Congress held that the Stockholm Conference, although a practical failure, had "focused world public opinion on the dangerous consequences of the unrestricted exploitation of modern technology." What were these consequences? Among others the Congress complained of: "physical mental and social effects of stresses created by living and working conditions, notably of various kinds of pollution, which are primarily hazards of manpower in industry, but which later emerge as pollution in the external environment."[24]

If workers are placed in the same danger as nature, then industrial societies become increasingly problematic. In reporting on the ICFTU's activities in 1972, the new General Secretary, Otto Kersten, argued that "Right from the early days of the industrial revolution the trade unions have been fighting against the desecration of our living space for the purposes of private profit: against the kind of horror which the English poet William Blake, more than 150 years ago, symbolized as 'these dark satanic mills.'"[25] That is, the workers' struggle is the same as that of the rest of society and of nature. Indeed, Georges Debunne, of the Belgian Fédération Générale des Travailleurs (FGTB), introduced the environment agenda item at the 1972 ICFTU Congress by agreeing with Kersten that labor's environmental concern was "not a new problem for trade unions. Since their beginnings they have fought for a better quality of life for workers in mines, factories, and workers' communities." But he made an even more radical point: "it is a problem of the relationship between man and nature, of the future industry and therefore of the general organization of society. In fact, this could lead to a reconsideration of forms of industrial development and the distribution of resources from which a new humanism could emerge."[26]

The early international labor environmentalists further emphasized the connection between problems in the workplace and what would later be called unsustainable development. In a statement to the Stockholm UN Conference authored by Umrath's committee, the ICFTU explained, "it is within the working environment that conditions arise which later have repercussion on the external environment." Bad workplace conditions first hurt workers then move outward to the community and to nature: "this applies to various kinds of pollution, which are primarily hazards for manpower working in industry, but which later emerge as pollution in the external environment." But equally important, the ICFTU wanted the UN to consider the nature of alienated labor because the "psychological conditions created in industry as a result of the rigid organisation of work and production" have the "consequence that work no longer has a meaningful content and which also have secondary repercussions on the health and well being of citizens."[27] In other words, exploitative alienated labor, the basic form of Fordist industrial production is equally dangerous to health, psychology, and ecology. That these thinkers believed the problem facing workers and the environment was the same does not necessarily mean that they also believed workers and nature *were* the same. Nonetheless, their ideas were moving

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toward a synthesis that was revealed in the solutions they proposed to the problems of exploitation, alienation, and pollution.

While worker-oriented sustainable development and the problems of unsustainable production and consumption were not yet used as organizing concepts, the ICFTU was already grappling with how to accomplish such a balanced policy. Some unionists pushed for a fairly radical understanding of environmental problems. Dennis Edwards of the Miners' International Federation, for instance, argued: "the present crisis is indeed a forceful reminder of the antisocial and environmentally catastrophic effects inherent to policies of limitless economic growth and indiscriminate technological development."[28] On the whole though, the trade unionists did not oppose growth *per se,* but rather its "undesirable and undesired consequences," as Umrath put it. Following the social-democratic model of the era, the ICFTU asked the Stockholm conference to develop ways to encourage "methods and techniques of national and regional policies of industrial decentralisation and to encourage the establishment of machinery to implement regional development policies." They advocated "the most careful planning of human settlements and production facilities and efficient management of natural resources" while calling for "a permanent and regular flow of capital for social and collective investments." The purpose of this investment, the Housing Committee argued, is "the satisfaction of basic needs, including a decent environment, of all human beings." Social development was an equal to economic growth and ecological balance: "the long-term task must be to find a balance between growth and the establishment of an optimum environment taking into account a just distribution of costs and benefits between and within nations." To accomplish this noble goal, "certain NGOs [i.e., the trade unions] should participate on an equal footing with governments' representatives similar to the long-established practice at the ILO."[29] Kersten similarly explained the basic understanding of the unions: "We, free trade unionists, have a very big part to play in this campaign, not only to see that due attention is given to the protection of the living and working environment, but also to ensure that conservation is not used as a pretext to hold up economic growth and social progress, especially in developing countries."[30]

While the principle of balancing environmental health, economic growth, and social progress was simple to articulate for the trade unionists, the details of achieving this balance were not. Maier warned Umrath that his ideas were "far too general and too vague." He wanted the Housing Committee chair to make "more precise claims and guidelines" to bring "more attention" to the unions' key issue, "improvement of the working environment as a major element for a better general environment."[31] The difficulty the unions faced was underlined by the resistance of most governments to including "favorable working environment" in the conference report, a phrase suggested by as a moderate a force as the tripartite International Labor Organization.[32]

The unions spelled out more specific needs in "Free Trade Unions and the Human Environment," the paper presented to the Stockholm Conference. They wanted "adequate planning of the increase and distribution of the increase of

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populations; of the exploitation of technological innovation."[33] The ICFTU further called for "revising the concepts currently used to measure growth" which involved new studies incorporating "social goals and indicators," an evaluation of "the allocation of resources," and ways to interpret "options" about the "choice between productive investments and social investments." Multinationals needed to be compelled to help the "the guest country towards this country's development." It also wanted such practical changes as an international register of chemical compounds and 'right to know' principles for people exposed to hazardous materials. The ICFTU recognized the need for greener ways of working, but did not want to sacrifice people's standard of living to someone else's determination of what was good for the environment. They further worried that the cost of the environmental protection in greener countries would be the loss of jobs or economic competitiveness. Thus costs had to be properly distributed—around the society and between countries.

Apparently the union position did not receive the support the veteran unionist had hoped: "Bro. Umrath expressed his disappointment over the rather negative attitude of several delegates from industrialized countries."[34] This sort of opposition, verbal support but practical foot dragging by conservative governments continued to plague union efforts to bring labor issues into environmental discussions. Similarly, Umrath found relations with many other NGOs difficult. He remarked that "there seems to be a keen competition, as all the pollutionists, humanists, churches, etc., want to take part" in the Stockholm meeting. He worried that due to a limited number of places the unions might be shut out of discussions: "I am not sure how things will develop. So, I think we should be well prepared."[35] Umrath had at first been inclined to participate in an ad hoc group sponsored by "a large number of NGOs." But Maier warned him off: "You are, of course, aware that we have always been extremely reluctant to participate in any such ad hoc machineries established for NGOs since we do not feel that our position should be coordinated with the views of other NGOs before it reaches the UN." In case this wasn't clear enough, Maier reminded him, "I remember, however, that I have already spoken to you about this," though he did concede that they could cooperate with NGOs "where we think a common joint approach could yield better results."[36] Umrath and Maier apparently worked out their differences, for by the time of the Stockholm Conference, Umrath was consistently avoiding cooperation with many NGOs. He told Maier: "Barbara Ward [a British Labour-connected environmentalist and journalist] drafted a joint statement of NGOs, which was submitted to the plenary by [anthropologist] Margaret Mead; full of common places and oddities; I did, of course, not sign it."[37] The labor-environmentalist coalition was in 1972, indeed, a thing of future.

The differences and suspicions between the ICFTU and the other NGOs continued until the 1980s and 1990s when the unions and the other groups began to seek common ground. By the late 1980s, the Occupational Health and Safety Working Party, which then oversaw ICFTU environmental policy, worried "workers will be denied a voice in 'environmental issues' if the trade unions

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do not develop a strategy to link workplace activities with broader environmental concerns." They warned: "there is already developing a mistrust between trade unions and 'green groups.'" The result so far, they explained, was "that the debate on environmental issues has been conducted without trade union involvement."[38] It was also not until the late eighties that the concept of "sustainable development" offered a way for the world's diplomats to agree on a plan—however vague and as yet undeveloped—for dealing with the intertwined problems of environmental destruction and economic growth. It was this concept that gave the unions a way to participate in the environmental debate and to begin to cooperate with the distrustful greens. In contrast to Maier and Umrath's early suspicions, the OHS Working Party believed it important to "participate in the 'parallel events' being organized for and by NGOs at the conference."[39]

From the mid-1970s until the late eighties, ICFTU environmental policymaking slowed dramatically. The Housing Committee no longer dealt directly with environmental issues during this period; responsibility shifted to the Occupational Health and Safety Working Group. Further research is needed to discover why ICFTU policy failed to develop during this time. It may be that a reaction among industrial and building trades unionists to what they saw—often correctly—as a threat to their jobs from environmentalists was what caused the Confederation to avoid tackling the controversial issue. For instance, even in the mid-1970s after the Stockholm Conference, the European trade unions only considered environmental problems in detail, according to Theo Rasschaert, General Secretary of the ETUC until 1976, "as the result of pressure from public opinion."[40] Other European trade unionists were more supportive and by the late 1970s realized, according to François Staedelin, also of the ETUC, that "environmental problems are becoming more and more crucial."[41] Despite this support, the larger Confederation's environmental policy remained fixed in its early 1970s form.

The ETUC, in advance of the ICFTU as a whole, had established a working party on the environment and in 1978 issued a fairly radical report on labor environmental thinking. The ETUC Working Party held that the logic of production and consumption in "the pursuit of price and profit" was intrinsically damaging to human beings and nature. The development of industrial capitalism "is characterized by a concentration of efforts and a fantastic growth in production and employment" which made for a great "increase in goods production and consumption." But, "this extremely rapid process upset the life style of numerous classes" and indeed "the workers who founded the trade union movement have been the principal victims of the deterioration in environment and general living conditions since the beginning of massive industrialization." This was no call for redistribution ala Samuel Gompers of the "fullness of the earth,"[42] but rather an indictment of an instrumental use of nature and people, "It is up to us to look for a different logic," they proclaimed. And indeed they did, proposing an ecological balance that would allow social democratic control over labor and production, maintain living standards, and cause "minimal damage to the environment."[43]

Nevertheless, as pointed out above, the ETUC remained equivocal about

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nuclear power—even in the wake of Chernobyl. Still the way the ETUC argued for labor environmentalism informed later green unionists. In explaining the basis for their environmental stance in 1986, the ETUC explained "the cornerstone" of the labor movement "is without doubt the struggle for better working conditions . . . The fight for better working conditions is directly related to environmental protection." In others words, the ETUC maintained, "The trade unions regard the protection of the natural elements essential to life as an objective per se." Given that the unions worried about the continent's high unemployment, the jobs versus environment debate remained an important one. Yet, the European trade unionists explained, "active environment policies would have helped to create the new jobs which are so urgently needed." Despite the thorough discussion of environmental problems facing Europe's workers and the whole panoply of suggestions to address them, the ETUC in 1986 lacked a unifying idea to guide its program. Nonetheless, they echoed their 1978 critique of the political/economic cause of ecological crisis: "The ETUC and its member organisations are convinced that only a radical change of course to a policy of a qualitative growth can stop the destruction of the environment."[44]

But the ETUC program was in advance of the rest of the ICFTU. "Qualitative growth," however admirable an idea, did not survive and, moreover, did not change the way the ICFTU thought about the environment. It was not until two years after the Brundtland report of 1987 that the Occupational Health And Safety Working Party had its first agenda item discussion about environmental issues.[45] The following year, the Working Party added Environment to its name.[46] This nominal change did not bring consensus. Lucien Royer, a staffer of the ICFTU Occupational Health Safety and Environment Working Party, acknowledges that even years after the expansion there are "persistent tendencies within the group to weaken the sustainable development focus or to change track completely." One faction in the Working Party feared diluting scarce union resources in an ambitious expansion of occupational safety and health responsibilities.[47]

The ICFTU did not thoroughly reorient its ideas of nature for many years. At meetings in the early 1990s the organization continued to use the term "outer environment," apparently to distinguish from the earlier language of "work environment."[48] While the ICFTU prepared to participate in the 1992 Rio "Earth Summit" of the UN that established the Commission on Sustainable Development, the Confederation's position remained ambiguous—were environmental problems simply issues of management and planning or were they something more fundamental?

A rapid evolution in environmental ideas within international trade union organizations had come during the mid-to-late 1980s. First, the 1984 Bhopal chemical plant explosion brought the "labor movement into a new era of understanding about the links between production and community wellbeing."[49] After the Chernobyl disaster in 1987 the ETUC and the ICFTU needed to grapple once again with the problem of nuclear power—but even so the organizations did not oppose its use. The collapse of communism in Eastern Europe fur-

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ther pushed the unions to demand environmental accountability. After all, one of the criticisms the social-democratic ICFTU and ETUC had long made of communism was that its repressiveness made it possible for dangerous, dirty industries to operate without challenge. This politically-pointed environmentalism had fit with the ICFTU's fundamentally anticommunist origins and purpose and had given them another opportunity for criticism of the eastern regimes. Now the ICFTU's magazine warned capitalists hungering to operate in the former eastern bloc that "there is no such thing as a free market when it comes to occupational health and safety and environmental protection."[50] In response to efforts to mobilize new eastern European unions to fight pollution, Mike Wright, chair of the OHSE Working Party and director of Occupational Health and Safety for the United Steelworkers of America, pointed out in 1990: "there is no fundamental difference between the working environment and the environment outside plant."[51] Wright's statement provided the fundamental connection between earlier and later conceptions of environment. Similarly, around the same time, ICFTU General Secretary John Vanderveken explained, "poverty is the greatest polluter of all." He did, nonetheless, continue to talk about "a balance between the needs of people and the need to protect the environment," seemingly implying that the two were in opposition.[52]

Environmental issues were regular topics in the labor press from the late 1980s onward. Part of this new labor environmentalism was clearly opportunistic—there were allies out there, young militants ready to join in the fight against a common enemy. But more than that, for some in the labor movement an environmentalist synthesis had arrived. A front-page editorial in the ICFTU journal *Free Labour World* in 1992 demanded that the unions be included in any international body that oversaw world environmental policy or sustainable development. This was in keeping with the long term ICFTU purpose of influencing the UN. Revealing that environmentalism was intrinsic to the nature of labor, *Free Labour World* argued, was "the long hard slog of union campaigning for safer cleaner workplaces."[53] But more importantly, the editorial continued, "trade unionists occupy a unique position in the environmental debate since we represent both producers and consumers." This means, according to *Free Labour World,* that "Slash and burn economics will hurt us as much as the environment, and we want an end to it."[54] This equation metaphorically ties workers with the environment and logically claims them victims of the same economic policies of exploitation. Exploitation of human beings is, in this rendering, then the same as exploitation of a natural world and comes from the same source: rampant, uncontrolled capitalism. The union magazine had erased a key boundary of the nature vs. humanity dichotomy thus making possible the ideas underlying union-based sustainable development.

By the early 1990s the international trade union environmentalists had a fully developed ideology that redefined nature and paved the way for environmentalist-labor cooperation on a global scale. The ICFTU devoted its March 1992 World Congress to environmental issues, demanded the use of Environmental Impact Assessments (which would include environmental costs in the

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price of production), expanded the Occupational, Health, Safety, and Environment Working Party, and coordinated regional meetings on green issues. The ICFTU chose "Environment and Development: The Trade Union Agenda" as one of the main themes for the its 1992 Congress meeting in Caracas. They even invited Gro Harlem Brundtland to be guest of honor.[55] Representatives of Greenpeace and the World Wildlife Fund attended the congress for the first time that year and called for "closer links" between the organizations. They "urged all those involved in the struggle to concentrate on the things that united them rather than divided them."[56] The unionists responded positively because some had already rethought their position on the environment. The run up to the 1992 Earth Summit in Rio marked the founding moment of an international environmentalist-labor alliance.

This alliance had not been an easy one, as South African labor union official Bheki Ntshalintshali recently remarked, non-governmental organizations involved in the environment "often see trade unions as the opposition on a number of issues."[57] Middle and upper-class environmentalists, for their part, have tried to claim a longer view of the difficulties involved in domination over nature and to call for a sacrifice of economic opportunity in pursuit of a universal good—a sacrifice that usually does not directly affect the middle and upper class as much it does workers. NGOs trying to support disenfranchised groups such as women or indigenous people have also been suspicious of trade unions in the past. These mutual suspicions have made cooperation often difficult, but the ICFTU sustainable development activists have now made cooperation with NGOs a key part of their strategy at the UN. In the first years of the Commission on Sustainable Development after its founding in 1992, the trade unions joined in NGO caucuses and deliberations. They separated from the other NGOS in the mid-90s, becoming what the UN calls a "Major Group" (a group from civil society that the Rio 92 agreement recognized as particularly important for implementing policy). Nonetheless, the unions and the NGOs have maintained close cooperation at the UN sessions. The unions at the UN were even able to have an effective dialogue with some business groups. It is this achievement that paved the way for the success of the unions in pushing through a labor plank at the Johannesburg World Summit in 2002.[58]

The ICFTU's diplomatic success at the UN is due in large part to the skill of labor's diplomats, but it also reflects the politically efficacious nature of the idea of sustainable development in allowing for the perpetuation of this coalition. The change in attitude and relationship occurred not only because of the "direct and profound importance" of the UN discussions, but also because the unions had found a common language and interpretation with the other NGOs. The ICFTU Executive Committee credited the 1987 Brundtland report as "the reference point for all work on environment and development." The idea of sustainability from the Brundtland report "is central to the work of the ICFTU and its affiliates."[59] This revision about environmental issues had been years in the making. Previously, even the language of the ICFTU avoided the difficult concepts that changing environmental policy required. Thus up until 1989 the Oc-

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cupational Health and Safety Working Party referred only to the "working environment." While this term was not fully defined it appeared to refer to the immediate atmosphere and conditions on the job. This meant that the environment that needed regulation was the one that workers as workers were exposed to on the job: the pollutants, the radiation, and so on. This was certainly a reasonable goal, but not one that would work for generalizing to a larger movement.

The 1992 ICFTU World Congress affirmed labor's changed environmental position. The delegates based their stance on the idea "that in a world of finite resources there must be a reconciliation between growth and environmental protection." This reconciliation could only exist because of a program of sustainable development that demanded "the creation and maintenance of socially useful, individually fulfilling and environmentally sound employment." They insisted this was not only an issue of economics and environment, but also involved "broader social issues" such as "the struggle for democracy, human rights, equity and social justice." The source of environmental problems, the ICFTU resolved, "come from the production and consumption patterns" of industrial society—the same source as the exploitation of workers. Moreover, these problems were worsened by the "market-oriented policy framework" of international institutions, multinationals, and governments. The Congress spelled out specific areas for action, including more international activities, research, and coordination of union efforts. In general, it committed the ICFTU to promote workers' involvement in dealing with environmental issues from the shop floor to the UN Assembly hall.[60]

While the 1992 Earth Summit, had been "billed by some as the last big chance to save the planet from environmental catastrophe," the result was disappointing. ICFTU General Secretary Enzo Friso, (who had been an early analyst of the connection of environmental and labor exploitation), wrote: "It was perhaps no surprise that the [Rio summit] did not ultimately live up to the wishes and expectations of many of the participants." Friso maintained that the unions "always had a more realistic expectation of the outcome of the meeting."[61] That realism, however, came not from labor resistance to environmentalist thinking, but rather from labor's long experiences with fighting the sources of unsustainable development. Gereluk and Royer, two key participants in the ICFTU's current formulation of sustainable development policies explain the connection between core trade union issues and unsustainable development:

> Trade unions . . . argue that today's unsustainable patterns of production and consumption are rooted in workplaces that are fundamentally unsustainable. They are, in large part, a "problem of work," of prevailing approaches to management of the workplace that not only prescribe an unhealthy relationship of workers to their work, but also dictate that they should have little say about the terms and conditions under which they work or live. Ultimately, they deny that workers should think for themselves, or take any responsibility for the product, process, or community in which they work. This fragmentation and 'alienation' of work, workers, and community life sets the stage for unsustainable patterns of consumer behavior.[62]

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The main union activists, from Umrath to Royer, have developed a synthetic analysis based in trade unionism's core ideas. As Royer and Winston Gereluk write: "Union achievements in the field of occupational health and safety illustrate how the fight for sustainable forms of production have been central to workers' historical struggles against unjust and unsustainable conditions of work and community life; indeed, they may be described as the 'life and death' aspect of this struggle." Sustainable development and worker empowerment on environmental issues, they continue, go "beyond narrow, technical problems, and becomes part and parcel of the same struggle over work relations that has defined the history of trade unionism."[63]

Royer and Gereluk's work provides a useful reconceptualization of the core of labor's environmentalism. Green unionism has two important sources that make it an integral element of a labor viewpoint and thus part of the reason for the strength of the labor-environmentalist alliance. It is based in both the particularist purpose of unions to protect members and in their more universal purpose as class organizations based on solidarity. The concept of sustainable development, of balancing environmental with economic concerns, has provided a way for unionists to think differently about nature than has previously been done in the movement.

First, labor environmentalism is an outgrowth of occupational health and safety, a particularist goal to protect the members of the unions. To be fair, sources of nonlabor environmentalism are not simply disinterestedly objective or indicative of a higher ability to understand the needs of the world than the supposedly narrow, prosaic concerns of workers' representatives. Often, greens are equally as class- and interest-based as labor. Moreover, the unions can at least claim a certain representativeness; after all, which animals voted to be represented by the World Wildlife Fund? Labor environmentalism is an extension of labor's basic purpose—to protect and improve the lives of workers and their families. Efforts to combat long-term threats to health, to jobs, and to the environment became labor purposes—especially pressing has been the possibility that measures taken to combat environmental problems will be taken at the expense of workers' standards of living, their jobs, and way of life.

Second, labor environmentalism grows from the unions' social democratic and solidaristic impulse. Trade unionists—like environmentalists—know that the biggest danger to their interests is the unchecked growth of capitalist enterprises and free trade in the new era of neoliberal globalization. The power of this system is such that trade unions have had to use their coalition with sympathetic governments and other social groups to advance a people's vision of sustainable development. Environmentalism is a powerful political movement that often confronts the same enemies as labor—multinational corporations and neoliberal or repressive governments. Making an alliance with the greens makes good political sense.[64]

While occupational safety and health seems to logically connect to environmental issues and the ICFTU environmentalists tend to come from OHS, why were ICFTU environmental ideas first grappled with by a committee on

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housing and only later by a committee on occupational health and safety? The conceptual move from occupational safety to environmental concerns seems a natural one, especially to confront the challenges of pollution. The same chemicals that are hazards to workers on the job, for instance, poison downstream communities and kill wildlife. Housing seems more distant—yet the way that housing connects to the environment reveals key aspects of the green thinking of the unions. Housing is about labor's larger ambitions, its social democratic side. It is not simply about wages and working conditions, but emphasizes a wider view that encompasses the families of workers, their communities, and the neighborhoods in which they live. This extension continues outward to encompass the whole of society, of other countries even (hence internationalism). This process similarly connects the "work environment" to the housing environment, to the local ecosystem, the watershed, and the entire natural world.

The unions' way of practicing solidarity with nature is often contradicted by labor's particularist impulse. Indeed, it is this latter drive of the movement that underlies racial and ethnic exclusion, or self-interested corruption. But particularism is also about the power to get something good for people who might not have a chance to get it otherwise. This internal contradiction along with the two-sides of the union movement, solidarity and exclusion, are expressed in the movement's almost schizophrenic politics as it weaves from fights to protect jobs at any price to advocacy of wholesale social democratic planning, universal standards, environmentalism, and so on. By understanding the domination and exploitation of workers and of nature as inextricable, labor environmentalists situate humans within the natural. Exploitation is the unifying term, which makes the common enemy common; both kinds of exploitation result from one process. For green unionists the separations between humans, the work environment, human environment, natural environment, and nature itself have become elided. This interconnection allows a unified approach to workers' problems and the environment's needs. It encourages a common solution and offers a profound basis for alliance with environmentalists around the world.

NOTES

1. The author would like to thank Winston Gereluk, Lucien Royer and James Howard of the ICFTU, the editors of ILWCA and the staff of the International Institute for Social History for their assistance and suggestions on this project. The European Union Center of California, Pomona College's Research Committee, and International Relations Program, provided funding to support this research.

2. While the anti-globalization movement has been the object of many studies, none have looked at the underlying ideological changes in the labor movement on a global scale. What little work there is at present focuses almost exclusively on single national movements or on more or less celebratory description. A few exceptions: Roger McElrath, "Environmental Issues and the Strategies of the International Trade Union Movement," *Columbia Journal of World Business* 23 (Mar 1988) 63–8; Bill Jordan, "Transforming the WTO into a Vehicle for Social Progress, the Environment and Development: A Post-Seattle View of the International Trade Union Movement," *Transnational Associations* 52: 4(Jul/Aug 2000) 158–62; Martin Hart-Landsberg, "After Seattle: Strategic Thinking about Movement Building," *Monthly Review* 52:3 (July/Aug. 2000) 103–26; Jay Mazur, "Labor's New Internationalism," *Foreign Affairs* 79,

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1 (Jan./Feb. 2000) 79–93; Peter Waterman, *Globalization, Social Movements and the New Internationalisms* (New York, 2001).

3. On the history of the ICFTU, see Anthony Carew, Michel Dreyfus, Geert Van Goethem, Rebecca Gumbrell-McCormick, Marcel van der Linden, eds., *The International Confederation of Free Trade Unions* (Bern, 2000).

4. World Commission, "Report of the World Commission on Environment and Development" [Brundtland Report], (New York, 1987) 43, quoted in Winston Gereluk and Lucien Royer, "Sustainable Development of the Global Economy: A Trade Union Perspective," (Geneva, 2001) 9.

5.http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter29.htm.

6. Enzo Friso, "Circular #61 (1992), Environment and Development," July 20, 1992, Archives of the International Confederation of Free Trade Unions, International Institute of Social History (hereafter ICFTU Records), File 1418, 2.

7. Winston Gereluk, interview with author, New York, March 5, 2003.

8. Jt. ICFTU/IFBWW Conference on Housing for the Millions, "Statement," Brussels, October 29, 1964, ICFTU Records, File 2355.

9. See for instance: Minutes, "Committee on Atomic Energy" Fifth meeting, Brussels, May 31, 1959, ICFTU Records, File 1407.

10. Heinz Umrath, "The Human Environment: A Question of Priority," *Free Labour World* 238 (April 1970) 16.

11. "Free Trade Unions and the Challenge of the Human Environment," *ICFTU Economic and Social Bulletin* 19:5 (August 1971).

12. [OHSE Working Party], "Nuclear Safety: ICFTU Proposal for the International Control of the Nuclear Energy Industry," [n.d., 1988], ICFTU Records, File 1412, 2.

13. Ibid., 3–4; Agenda Item 5, Minutes, Occupational Health and Safety Working Party, Brussels, October 9–10 1986, ICFTU Records, File 1409.

14. Executive Committee Meeting, "Agenda Item 5: Energy Policy Following Recent Events," May 23, 1986, Archives of the European Trade Union Confederation, International Institute of Social History, Amsterdam, (hereafter ETUC), file 3052, 4.

15. The ICFTU/IFBWW International Housing Committee was formed in 1965 as a follow up to the organizations' 1964 joint "Conference on Housing for the Millions." See Omar Beçu, "Circular no. ESP/1," February 1, 1965, ICFTU Records, File 2355.

16. The ICFTU had regional organizations for Europe, Asia, Africa, and the Americas. These groups had been developed to give the regional powers more influence over specific developments and because the ICFTU had its origins in the Trade Union Advisory Committee to the Marshall Plan Administration. See Anthony Carew, *Labour Under the Marshall Plan: the Politics of Productivity and the Marketing of Management Science* (Manchester, 1987) and Idem, "Conflict Within the ICFTU: Anti-Communism and Anti-Colonialism in the 1950s," *International Review of Social History* 41 (1996) 147–81.

17. "Report," International Housing Committee, th Meeting, May 20–21, 1968, ICFTU Records, File 1449, 2–3. See also International Housing Committee, "Financing Housing and Its Environments: Report by the Working Party," January 1968, ICFTU Records, File 2356, 2.

18. International Housing Committee, "Discussion Paper, Financing of Housing and its Environments, WP/67/6," 1967, ICFTU Records, File 2351.

19. Heinz Umrath to Heribert Maier, October 27, 1971, ICFTU Records, File 2352e.

20. Both the ICFTU and the ITS were eager to work on the issue. For instance, see: D.F. Hodson, to Maier, November 20, 1971, ICFTU Records, File 2288.

21. Caps in original. Housing Committee, "Discussion Paper, Financing of Housing and its Environments," 3.

22. ICFTU, "Free Trade Unions and the Challenge of the Human Environment," 18.

23. Enzo Friso, "The Consumer Society: Primary Needs May be Satisfied—But What About the Quality of Life?" *Free Labour World* 255 (September 1971) 15.

24. ICFTU, *Report of the Tenth World Congress: London, 10–14 July 1972,* (Brussels, ICFTU: 1973), 566.

25. Otto Kersten, "Introductory Speech, Agenda item 5, report on Activities, ICFTU 10th World Congress, July 10–14 1972, 10 GA/5/D," ICFTU Records, File 443b, 7

26. G. Debunne, "Introductory Speech: Agenda Item 7: The challenge of the Future, Human environment, ICFTU 1th World Congress, 10–14 July 1972, 10GA/7/D.9" ICFTU Records, File 443b, 1–2.

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27. International Housing Committee ICFTU/IFBWW th mtg. 15 Feb. 1972 in ICFTU Circular No. 29 (1972), 30 March, 1972, ICFTU Records File 2352c, p. 3.
28. D. Edwards to H.G. Buiter, September 10, 1971, ICFTU Records, File 2288.
29. International Housing Committee ICFTU/IFBWW th mtg., 1–2, 5.
30. Otto Kersten, "Introductory Speech," 7.
31. Maier to Umrath, May 29, 1972, ICFTU Records, File 2288.
32. "Third session of the Preparatory Committee for the UN Conference on the Environment, New York, 13–24 September 1971" ICFTU Records, File 2352e, 1–2.
33. ICFTU, "Free Trade Unions and the Challenge of the Human Environment," 3.
34. "Third session of the Preparatory Committee," 2.
35. Umrath to M. Dehareng, January 26, 1971, ICFTU Records, File 2289.
36. Umrath to Maier, October 15, 1969 and Maier to Umrath, October 24, 1969, ICFTU Records, File 2289.
37. Umrath to Maier, June 19, 1972, ICFTU Records, File 2288.
38. ICFTU/ITS OHS Working Party, "Agenda Item 6: Trade Unions and the Environment," September 6–8, 1989, ICFTU Records, File 1414.
39. ICFTU Executive Board, "Environment and Development: Draft ICFTU Statement to the UN Conference," June 26–28, 1991, in OHSE, "Agenda Item: United Nations Conference on environment and Development," October 21–23, 1991, ICFTU Records, File 1415.
40. T. Rasschaert to Colleagues, November 19, 1975, ETUC Records, File 3044.
41. F. Staedlin to Colleagues, June 24, 1977, ETUC Records, File 3044.
42. Hubert Howe Bancroft, *The Book of the Fair* (Chicago, 1893), 948.
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