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**"AND THE FUTURE IS CERTAIN – GIVE US TIME TO WORK IT OUT":
REFLECTIONS ON LABOUR RIGHTS FIFTY YEARS AFTER THE
UNIVERSAL DECLARATION STANDARDS***

*By Brian Langille***

I. Introduction

As the end of the century grows near we are offered the opportunity to turn away from our normal concerns and reflect more generally upon the human condition, or at least one aspect of it. The opportunity is provided by our arbitrary but wholly admirable custom of celebrating "significant" anniversaries – this time of the *Universal Declaration of Human Rights* of 1948 (*Universal Declaration*).

My topic is not the human condition at the end of the century or even the state of human rights 50 years after the *Universal Declaration*, but rather globalization and labour rights. Still, this is a large and important topic. In fact, I think it is a topic which is more complex than most discussions about human rights. I try to explain this hypothesis in what follows. My main focal point will not be the 1948 *Universal Declaration*, but the 1998 *International Labour Organization Declaration on Fundamental Principles and Rights at Work*.

First, let me start with some reminders.

Eric Hobsbaum, in his book *The Age of Extremes: The History of the World 1914-91*¹ reminds us that at the beginning of this century the word economy was highly "globalized" and very liberal in its orientation. He then reminds us that we can usefully divide the history of the rest of our century, at least to 1991, into three general periods or "ages". Hobsbaum attaches labels to each era as follows:

1. The Age of Catastrophe, 1914-1950
2. The Golden Age, 1951-1972
3. The Landslide, 1973-1991

It does not require a great deal of insight to see some clear parallels between our condition at the end of the century, and its attendant risks, and those prevailing at the time of what Hobsbaum called "The Age of Catastrophe". A clearly relevant question arising

* The portion of the title in quotation marks is borrowed from David Byrne.

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¹ E. Hobsbaum, *The Age of Extremes : The History of the World 1914-1991* (Pantheon : New York, 1994).

² *Ibid.*

now is whether the world can, following yet another round of advanced “neo-liberalism” and “globalization”, avoid the descent into political, economic, and social hell which Hobsbaum described as the defining condition of that era. Our newspapers are filled with discussions of the risk of pending global economic doom. The Asian crisis has proved to be a remarkably persistent one; the Russian crisis almost incomprehensible in its depths. Those who believe that history goes in cycles are not, in these circumstances, foretellers of future fun and fortune.

It was in this context that on June 18, 1998, the International Labour Organization (ILO) adopted, at its 86th Annual Conference, the *ILO Declaration of Fundamental Principles and Rights at Work*³. In this *Declaration*, the ILO declares that all 175 members, even if they have not ratified the relevant ILO Conventions,⁴ have constitutional obligations simply by virtue of ILO membership, to respect, promote, and realize certain fundamental principles, namely:

1. freedom of association and the effective recognition of the right to collective bargaining;
2. the elimination of all forms of forced or compulsory labour;
3. the effective abolition of child labour; and
4. the elimination of discrimination in respect of employment and occupation.

The *ILO Declaration* also rededicates the ILO as an institution to assisting its members in obtaining these objectives “by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources

³ *ILO Declaration of Fundamental Principles and Rights at Work*, online : ILO Homepage <<http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>> (date accessed : 26 June 2000) [hereinafter *ILO Declaration*].

⁴ The ILO Conventions on “core” labour standards and their ratification records

No.	Date	Subject	No. of Signatories
29	1930	Forced labour	149
105	1957	Forced labour	132
87	1948	Freedom of association	122
98	1948	Right to organise and collective bargaining	138
100	1951	Equal remuneration	137
111	1958	Discrimination	128
138	1973	Minimum working age	61
		Number that have ratified all seven	35

Source: ILO, as compiled in *The Economist* (October 3, 1998) at 27.

and support, as well as by encouraging other international organizations with which the ILO has established relations [...] to support these efforts." Annexed to this *Declaration* is the outline of a "follow up" mechanism, still sketchy in its details, which will provide an ongoing system of monitoring success and directing assistance to member nations in the realization of the ambitions of the *Declaration*.

The adoption of the *ILO Declaration* was regarded by many within and without the ILO as an absolute priority; it was necessary that the ILO do something in order to reassert itself and its mandate in what may be referred to as the "new global economy". Failure to adopt the *Declaration* was regarded as unacceptable because it would have been widely perceived as providing further evidence of irrelevance and marginalization of the ILO. In fact, the ILO regarded itself as having to respond to a *de facto* invitation issued by other international institutions, especially the World Trade Organization (WTO), at its December 1996 Ministerial Meeting in Singapore, to reassert its institutional priority in connection with its traditional set of concerns.

The *ILO Declaration* is an achievement, although one which resulted from a very hard fought political and diplomatic marathon at the June 1998 International Labour Conference, and in the months preceding it. Uncertainty as to whether the *Declaration* would be adopted existed, literally, to the very last moments of the June conference. In short, while the result was delivered, it was delivered in circumstances which can only draw attention to the difficulty of achieving a consensus on the place of the traditional concerns of the ILO in our new economic circumstances.

Surely the first question which poses itself concerning the *ILO Declaration* is – "is that all there is?". It will take some time to answer this question, which invites yet other obvious questions. What exactly does the *Declaration* do, anyway? What does it add to existing ILO powers? What other options proposed with a view to advancing the ILO agenda in the global economy were considered and rejected? What options were not even permitted to be considered? What other options, perhaps external to the ILO, exist?

What seems clear is that the *Declaration* is for now the ILO's stopping point on what has been a long and arduous journey. In broadest terms, the *Declaration* is, at least for the moment, the ILO's resolution of what can be described as an identity crisis with which it has been struggling for some time. That identity crisis revolves around a central existential question – what is the role in the new world of economic integration and "globalization" of the mandate of the organization called the ILO?

The ILO is one of the largest and oldest of the international institutions, created in the aftermath of World War I as part of the *Treaty of Versailles*. The essence of its mission may strike some now as old fashioned on the one hand, or profound and neglected on the other – that "universal and lasting peace can be established only if it is based upon social justice."

It is difficult to believe that this sentiment, while perhaps of some vintage, is not of great relevance to our time. At the time of this writing, the fall of 1998, Russia continues in a state of economic confusion if not chaos; the "Asian flu" continues to be

contagiously affecting not only local currencies and economies, but those of Japan, North America, South America and elsewhere; and all of this is true without mentioning Africa, which remains in many parts an economic and political enigma. Human suffering, exclusion, marginalization, violence, and resulting political, social and economic instability, are evidently the results and causes of these economic events. While some may still see the international market, particularly its Americanized version and the "Washington consensus", as "triumphant", many political observers perceive something quite different. It seems clear that our news headlines are less dominated by "purely" economic news as they seem to have been by the last fifteen years or so, and are increasingly "political" in nature. We are witnessing a return to discussions of political stability, of the quality of governance, of social unrest, and of basic issues of human suffering. Discussions of the market will be tempered by questions of politics – of the relevances of markets to politics and of the relationship of democratic governance to free market ideology. James Wolfensohn, President of the World Bank, made these points dramatically and eloquently in his recent address to the 1998 IMF/World Bank Annual Meeting:

Today, while we talk of financial crisis – 17 million Indonesians have fallen back into poverty and across the region a million children will now not return to school.

Today, while we talk of financial crisis – an estimated 40 percent of the Russian population now lives in poverty.

Today, while we talk of financial crisis – across the world, 1.3 billion people live on less than \$1 a day, 3 billion live under \$2 a day, 1.3 billion have no access to clean water, 3 billion have no sanitation, 2 billion have no access to power.

We talk of financial crisis while in Jakarta, in Moscow, in Sub-Saharan Africa, in the slums of India and the barrios of Latin America, the human pain over poverty is all around us.

Mr. Chairman, we must address this human pain.

We must go beyond financial stabilization. We must address the issues of long-term equitable growth on which prosperity and human progress depend. We must focus on the institutional and structural changes needed for recovery and sustainable development. We must focus on the social issues.

We must do all this. Because if we do not have the capacity to deal with social emergencies, if we do not have longer term plans for solid institutions, if we do not have greater equity and social justice, there will be no political stability and without political stability no amount of money put together in financial packages will give us financial stability.⁵

⁵ J. Wolfensohn, "The Other Crisis", Annual Meeting, Washington, D.C., 6 October 1998, online : World Bank website <<http://www.worldbank.org/html/extdr/am98/jdw-sp/index.htm>> (date accessed : 26 June 2000).

All of this points to an obvious, if general, conclusion – that there is a profound link, as the original *ILO Constitution*⁶ clearly stated, between economic progress and economic stability on the one hand, and social and political stability on the other. In this sort of situation how could the ILO be having an identity crisis? And why is the ambition of the ILO limited to issuing a “Declaration”? And why would that *Declaration* be so hotly contested even within the ILO itself?

Some say that the ILO identity crisis was caused by the “collapse of Communism”, the main idea being that, historically, the role of the ILO was to provide a “containing” alternative to revolution. This explanation has always provided an inadequate conception of the ILO’s role, however accurate it might be, as a description of the private motivations of various historical personalities. Current events bear this out. The true fate of the ILO is now made more, not less, relevant in the late 1990s. It is precisely in this era, with the market both triumphant and profoundly problematized, that the truly difficult and subtle issues with which the international community must grapple have emerged with clarity. No longer conveniently obscured by the old political divisions, the central political issues of our time, the virtues and limits of free markets, the relationship of the market to democratic politics and human development, are clarified.

It is no accident that the ILO’s two great “constitutional moments” – its founding in 1919 and the rearticulation of purposes contained in the *Declaration of Philadelphia* in 1944 (with resulting constitutional amendment in 1946) – came at moments when the human costs of political and economic mismanagement were evident, where the need to return to first principles, to sort out means from ends, seemed clear to all.

Well, then, it might be said, and it will be said by optimists and ILO supporters, the adoption by the ILO of the 1998 *Declaration* shows history to be repeating itself. On this view, we have, once again, the international community “doing the right thing” in the face of the economic and political facts of our time. On this view, the *ILO Declaration* is a third “constitutional moment” for the ILO, a moment of renewal and reaffirmation, by the virtually global membership, of basic constitutional values and commitment to social justice on the basis of economic progress. In short, this is a moment in which the ILO re-emerges on stage in the global economic drama to fill its historical mandate, as always, following a time of crisis.

There will be plenty of sceptics about the ILO and its new *Declaration* as well. They will see the *Declaration* not as a new beginning, but as a kind of collective evasion, or worse, a consensus in favour of (continued) irrelevance and marginalization for the ILO. From this perspective, the ILO has been historically powerless. It has no real world “bite”, no sanctions and no real incentives with which to affect behaviour in the world. It is a debating society which has been pushed to the sidelines by the overpowering nature of private global market forces and by the other public international institutions constructing

⁶ *ILO Constitution*, online : ILO Homepage <<http://www.ilo.org/public/english/about/iloconst.htm>> (date accessed : 26 June 2000).

the rules for the international marketplace – the WTO, the IMF, the World Bank, the OECD, etc. On the sceptical view, these are the real, hard-nosed institutions staffed by people with neoclassical or neo-liberal views about the virtues of the “unregulated market”, both domestic and international. In this world, a more complex view of the virtues of markets and their relationship to politics has little resonance. And besides, only institutions with real clout, i.e. real incentives (access to WTO membership, IMF packages, World Bank loans) and sanctions, are capable of guiding behaviour in the real world, even if only at the margins. A sanctionless ILO, armed only with the limited remedy of “shame” (and only then in the most extreme cases) is, on the sceptical view, (a) wrong-headed to begin with, but (b) irrelevant anyway, and should either, (c) be abolished or, (d) be continued, but only as a sop to bleeding hearts and as a way of keeping its agenda “contained”, and thus off the agenda of the “serious” institutions.

On this view the *ILO Declaration*, which is more toothless talk, is not a “constitutional moment”, but either a constitutional running up of a white flag, or a constitutional death rattle.

II. What Does the *ILO Declaration* Really Mean? – Globalization and “Globalization of the Mind”

Well, how properly are we to regard the *ILO Declaration*? Is it a constitutional renewal or a constitutional death rattle? The answer to that question will depend, in my view, not so much upon the words of the *Declaration*, nor the intention of those creating the *Declaration*, but, more importantly, upon the circumstances upon which it falls to be interpreted. This leads to the following question, which is about defining the characteristics of those circumstances – “What is globalization?”. To this I think there are two important answers. First, there is a real world phenomena of globalization, which requires some care in thinking about. Second, and perhaps more importantly, globalization consists of another phenomena – what may be called “globalization of the mind.”⁷

Let me turn to the first answer – globalization as a real world phenomenon.

Often the idea of globalization is collapsed into the idea of, or identified with, “free trade”. This is both a mistake and a feat of misdirection on the part of certain interest groups. It is clear to most people that trade is not the problem – Canada should not try to grow its own mangos. And most people intuitively know something about the theory of comparative advantage because they know the answer to the following question – should Michael Jordan go into the lawn moving business? The answer is no. Even if Michael Jordan is better at both basketball and lawn mowing than the rest of us.

⁷ I borrow this phrase from a very distinguished Canadian, Harry Arthurs : H. W. Arthurs, “Globalization of the Mind : Canadian Elites and the Restructuring of Legal Fields” (1997), 12 *Can. J. of Law & Society* 219.

The phenomenon of globalization is, however, much more than trade in goods. It must be understood as a much more complex phenomenon – circumstances in which not only goods, but all the factors of production – raw materials, semi-finished products, data, ideas, services, and capital are mobile and, pushed by revolutions in communication and transportation technologies, change the world into a potential platform for global production and into the formation of what are called “global commodity chains”.

All factors of production except labour. This is a basic point, it is a structural point. In the labour market we have created a situation in which capital, at least in some very important sectors, is increasingly either mobile, or perhaps more importantly, positioned to credibly threaten mobility, not labour.

Theory, at least anecdotal evidence, and certainly standard political rhetoric (we cannot reform Canadian labour law because we must retain investment – or we must reform Ontario labour law in order to attract investment and jobs etc.), bear out that in the distributional negotiation between capital and labour, the mobile factor (capital) will be able to play off the immobile factor (labour).

And labour is not the only immobile player; the other is that basic object of international law, the nation state. To put it very simplistically, labour and the regulators of labour, i.e. nation states, have been locked in place while the other players have slipped their moorings. This presents a new and profound shift in bargaining power for both states and labour. This is true for both developed and developing states.

Moreover, it is this phenomenon which explains the sense of loss of democratic control, what is referred to as a “democratic deficit” among not only workers, but citizens in the global economy. This democratic deficit grows when citizens and workers observe the impact of multilateral economic treaties, such as NAFTA or the GATT, which over aggressively attack domestic policies on the basis of interpretations of these treaties in a manner deeply hostile to democratic politics.

But this real world phenomenon of globalization is only part, and I am not certain the most important part, of the story. The other important part of the story is what I have referred to as “globalization of the mind”. Here, I refer to the ascendancy, during our time, to almost theological status, of the set of views about a certain version of capitalism and the view of markets both domestically and internationally. This view has a number of dimensions, both macro and micro. The view is often called “neo-liberal” or “neo-classical”, but I prefer the term “libertarian” because I wish to maintain a distinction between libertarianism, on the one hand, and liberalism on the other. This view takes domestic politics and projects it into the international sphere.

On this view, government policies are to be dedicated to open trading, open investment currently convertibility, to monetary and fiscal discipline; that is, to deficit reduction and to the war upon inflation, in other words to higher interest rates at a cost, in terms of growth or unemployment. All of this is disciplined by international markets, currency markets, bond markets, equity markets, which make departures from the orthodoxy expensive and instantly punishable. And that sort of discipline was reserved for

those who were doing reasonably well. For those doing very poorly, the IMF spelled out the rules of the game with brutal authority.

The tradeoffs could not be clearer. For example, we can see the tradeoffs in recent events concerning Canada. Canada has been a success at playing this game. But then the inevitable followed, and is found in the sort of critique which Philip Alston and the United Nations Committee on Economic Social and Cultural Regimes delivered last week in Geneva regarding the social consequences of playing the game according to the rules.

At the micro level, and, in particular, the labour market, the consensus was also clear. There was a need for flexibility, which means for many people doing away with labour standards and collective bargaining. This is described as deregulation of the labour market, but it means not de-regulation but re-regulation by the rules of the common law of contract defined in libertarian terms. The old model of our long-term contract of employment was to be revisited in light of the theory of what might be thought of as a "spot market" in labour. Flexibility meant the ability to lay off, contract out, out source, utilize contingent forms of employment such as part-time, casual and labour only contracts, etc. There is, in addition, a "theory of the firm" which accompanied this package of views, a theory which insists upon the sole end of "maximization of shareholder value".

It is this "globalization of the mind" which is the "core challenge".

It is "globalization of the mind" which makes discussion of labour rights more difficult, perhaps, than the discussion of other human rights. This is an intellectual challenge to basic labour rights, particularly freedom of association and collective bargaining. I do not say that the intellectual challenge necessarily extends to the other core rights identified by the *ILO Declaration* – child labour, forced labour in discrimination, but it certainly exists regarding freedom of association.

On this view this fundamental right is not a right, but a wrong. The key to this view is that respect for core rights are a cost, a barrier to economic progress and social development. On this view, labour rights are a kind of luxury good. At most they are a hope for *product* of economic development, which may, depending upon one's tastes, be purchased with the gains from development.

This view is shallow. Yet it is a deep belief in the world of the globalized mind. It may be, for example, and in spite of Mr. Wolfensohn's comments, the dominant view of managers at the World Bank. In this world, labour rights, the *Universal Declaration*, the ILO, Departments of Labour, are either marginalized, ignored, valued not at all, or viewed as problems.

The contrary view is that respect for core rights is *not* a luxury. It is *not* a hope for product of economic development, *not* something to be delayed and perhaps purchased with the fruits of globalization, but rather a necessary ingredient of, and indeed the point of, social and economic development.

I cannot make the case for this view here. The case for this is being made, and will be made, in the long-term resolution of the potential global economic and social crisis we see all around us. We see it emerging in the words of Mr. Wolfensohn and in recent World Bank critiques of the IMF. But a wonderful and condensed version of the point I am trying to make is found in the very recent report by the ILO on the *Asian Financial Crisis: The Challenge for Social Policy* by Mr. Eddie Lee. I recommend it to you heartily. In that report, after describing the Asian financial crisis and its social impact, Mr. Lee turns, in his final chapter, to what he refers to as the "challenge of social policy". Although he does not use the term "globalization of the mind" he offers a robust reputation of its essential ideological core, through dispassionate empirical and normative reasoning.

To the argument that basic civil and political rights, such as freedom of association, are harmful for development, and must be delayed until development is sufficiently robust, Mr. Lee points out that, "these claims do not stand up to scrutiny [...]". Mr. Lee also clearly demonstrates that there is no clear-cut empirical evidence to support the neo-liberal or libertarian view of the economically harmful effects of collective bargaining. In addition to these negative points, contrary to some fundamental elements of the phenomenon of "globalization of the mind", the report is a helpful distillation of the positive account of the wider benefits for developing societies of "freedom of association".

This kind of case against "globalization of the mind" is absolutely crucial. But making the case in its empirical and consequential way, that is partly on utilitarian grounds, will cause alarm in some quarters.

Some will say that these fundamental rights are simply "rights", regardless of their instrumental or economic consequences.

This brings us back to the *ILO Declaration*.

III. What Does the *ILO Declaration* Really Mean? – "The Future is Certain..."

The *ILO Declaration* could be viewed as the crowning achievement of "globalization of the mind". Or it could be viewed as a turning point, a potential line in the sand which will help the world community advance, and be seen as the world community awakening, from the bad dream of the globalization of the mind just in time to avoid another of Hobsbawm's horror shows.

The *ILO Declaration* was the ILO's response to the WTO's *Singapore Declaration*⁸. I think, in fact, that the 1996 WTO *Singapore Declaration* does represent the high water mark of the success of the globalization of the mind phenomenon. In that

⁸ WTO, Ministerial Declaration, WT/MIN(96)/DEC, 18 December 1996, online: WTO Homepage <http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec.htm> (date accessed: 26 June 2000) [hereinafter *Singapore Declaration*].

Declaration, the world rejected labour standards as part of the agenda of global economic governance. It mouthed support for the ILO, knowing precisely that relegating labour issues to the ILO, which is sanctionless, it was relegating them to a second class status compared to other vital interests – such as intellectual property rights – which would receive a warm response within the WTO community. The WTO went further and in its *Declaration* said that while they respected core labour rights:

We reject the use of labour standards for protectionist purposes, and agree that the comparative advantages of countries, particularly low-wage developing countries, must in no way be put into question.⁹

This paragraph suggests, on its face, that violation of labour standards can be an element of comparative advantage.

The *ILO Declaration* should be a full-bodied response to this possible interpretation. Maybe it will be; maybe it won't. Much depends upon the view the world takes. And that depends upon the shape of the world itself. Will the Asian crisis, the Russian crisis, the potential crisis in Latin America, the continuing crisis in Africa, the interesting dialogue between the IMF and the World Bank, the shift in European politics, and so on, constitute an environment in which the *ILO Declaration* can be seen, not as a submission to the globalization of the mind, but rather the first important move in a rejection or reshaping of it?

The two views may be set out as follows. For those who believe the ILO has succumbed to "globalization of the mind", the argument is that by focussing upon four core rights, the ILO has retreated from its standard and historical mandate of protecting all labour standards equally. It has made the shift from positive to negative rights, it has shifted from a concern with substance to a concern with process. It has shifted from a "standards" to a "rights" based discourse. In so doing, it has adopted a strategy of narrowing its mandate and succumbing to the logic of economic analysis. It has been forced to articulate the grammar of fundamental rights in utilitarian, economic terms.

On the other hand, defenders of the ILO and defenders of the *Declaration* as a rejection of globalization of the mind will point to the *Declaration* as the first time in which the ILO and, thus, the world community, has committed itself, and empowered itself, to act concerning labour rights regardless of whether the relevant Conventions have been ratified by the almost universal membership. And it happened at precisely the moment when the "market triumphant" and the "Washington consensus" were being called into question. On this view, interpreted in the right context, the *Declaration* signals not a giving in to the WTO view of the world, but rather a profound rejection of it. Which view is right? Time will tell.

I conclude with two remarks. First, if you are in any doubt about the costs of getting this wrong, read Hobsbawm. One of his insights is that we now tend to live in a "permanent present", without history. We should not.

⁹ *Ibid.*

Second, to those who say it is unworthy of the content of basic rights to argue for them in utilitarian or economic terms, as Eddy Lee does in part, and as the ILO should in the defence of its *Declaration* (it is “market friendly”), it is important to point out that there is a real risk of moral preciousness here. The fact that rights can and should be defended and understood in “deontological” terms does not mean that they cannot be also argued for on utilitarian lines as well. Finding common ground is not giving ground. Moreover, this sort of argument is necessary in our times if the “two solitudes” of economics and human rights are to “touch and greet each other.” And, most crucially, proceeding in this way has the benefit of reminding us of the deeply ethical foundation of markets and market ordering. The threat here is not to rights, but to an overly narrow view of markets. This type of argument is essential in coming to grips with “globalization of the mind” or any ideology. It is perhaps characteristic of ideologies that means have become separated from the human ends they were designed to serve and take on a self-perpetuating logic of their own. The sort of dialogue I am encouraging is an invitation to sort out our ends and means and to remind ourselves of the fact that markets are not ends in themselves.