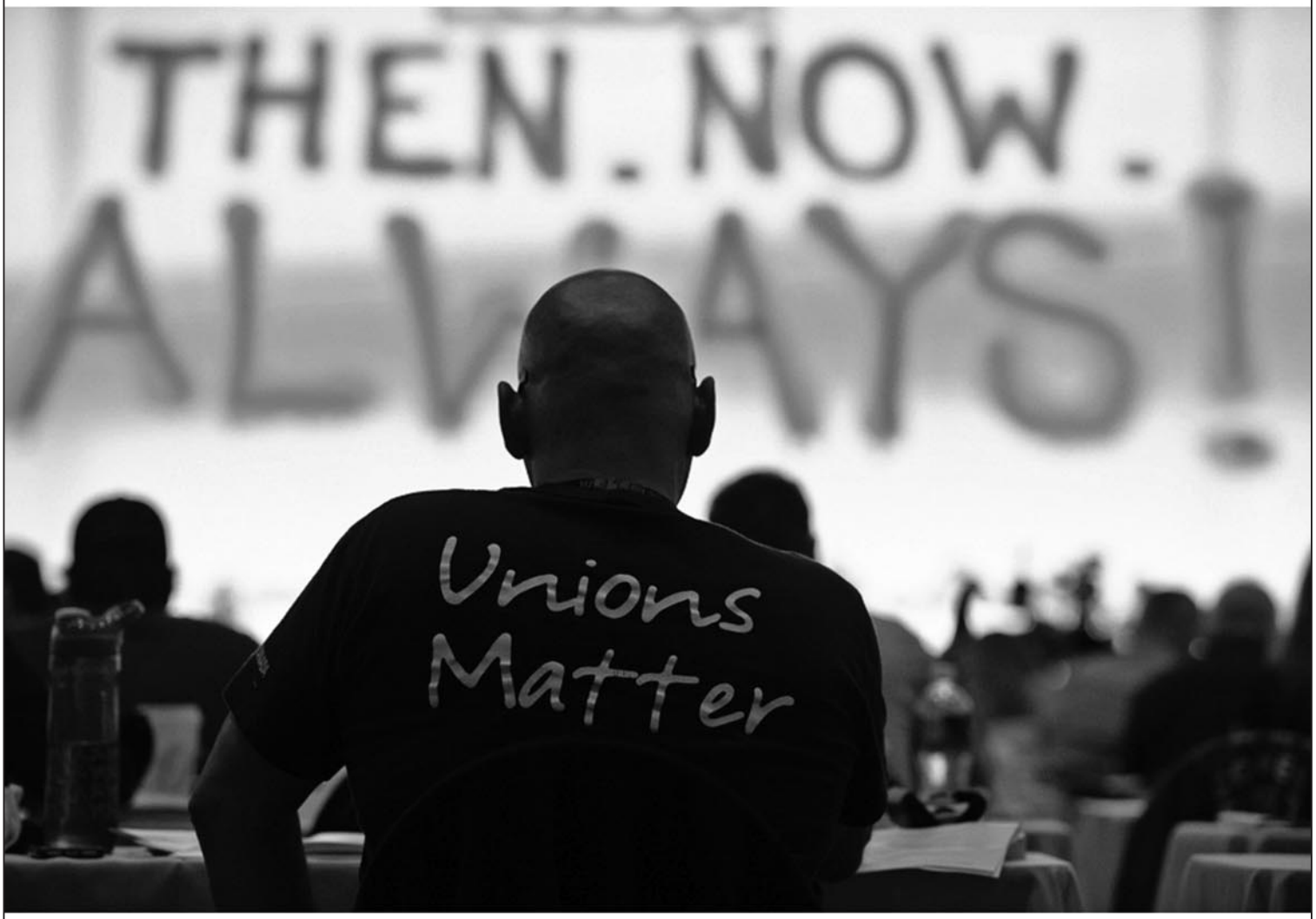
INTERNATIONAL Volume 31 Issue 1 2024

union rights

FOCUS ON The 80th anniversary of the Declaration of Philadelphia and Working Time and Paid Holidays

- ITUC strategies to defend and rebuild democracy
- Derogations and opt-outs from working time rules
- History of working time and holidays



The hope for our best future lies in solidarity. We know how to get things done when we work together. We are the ones who have learned from the past and are working for a better future for everyone.

We are proud of our accomplishments—those that benefit our members and those that benefit everyone else, too. And we have much to be proud of. The basic rights and freedoms Canadians enjoy every day were won through union advocacy.

We fought for the rights of everyone. And we're still fighting for the rights of everyone.

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Contents

Editorial: The 80th anniversary of the Declaration of Philadelphia and the Campaign for Working Time and Paid Holidays

Daniel Blackburn, Editor of IUR

This edition of IUR opens with a contribution from the General Secretary of the ITUC, who has a stark warning to all, that labour movement values "are under attack worldwide". Triangle argues that "unregulated, neo-liberal globalisation" has "left billions of people behind". As he explains, this has created the conditions for a backlash feeding a worrying "rising tide of authoritarian and totalitarian regimes". To respond to these threats, and recapture some initiative, Triangle outlines the ITUC's *For Democracy* campaign, which he describes as "a blueprint for reimagining a more equal global economy in service of humanity". It is time, Triangle urges, "to make good on the promises made in the ILO *Declaration of Philadelphia*". Law professor Alain Supiot shares Triangle's sense of foreboding, observing in interview that "everywhere, we see the dismantling of solidarity systems inherited from tradition or the welfare state" and a "programming" of workers that is "leading to new forms of dehumanisation of work". Social justice, he tells us, "was at the heart of the Declaration of Philadelphia" but "is totally absent" from the new agenda.

Ewing calls Philadelphia "the most progressive legal text in international law ever created" and "a timeless Bill of Workers' Rights, which if fully implemented would transform the lives of workers throughout the world". But he fears that the Declaration "is in danger of becoming a relic of an age long since passed", and shares concerns about new forms of work, where "the commodification of labour is now hidden in plain sight, workers disrespected as objects in a 'labour market' and treated like any other article of commerce: paid by the task, used only when needed, and discarded as quickly as possible". But while our contributors are dismayed, they are not without optimism: Triangle proposes "a more equal global economy in service of humanity"; Ewing observes that the Declaration "remains at least formally a live instrument" and that of the choices currently being actively made by governments around the world "none of these is inevitable"; while Supiot reflects that the referral of the right to strike dispute at the ILO to the International Court of Justice is "a reminder of the primacy of the rule of law over the power relations in the international order".

Turning to the second "focus" of this edition of *IUR*, Byrne and Scalmer examine the regulation of working time in the context of "a broad historical survey of Australian union campaigns, from the eight-hour day to a four-day week" of which modern forms are now "continuing the movement's long tradition of taking action to secure a decent work/life balance for working people". While in agreement that "shorter working hours are a marker of social progress and job creation", Yildirim sets out a more cautious view from France's CGT, observing that some four-day week proposals come "without any reduction in weekly working hours" and warning unions that a reduction in working days on that basis alone "is a false reduction".

Zenroren's Kurosawa is concerned by proposals developed by a government panel reporting on "work style" in Japan that favours 'opt-outs' or 'derogations' from working time limits that were only recently established in a culture where *karoshi* ("death from overwork") remains a significant social problem. Kurosawa observes that "the report's proposals in favour of exemptions from legal obligations are pointless at a time when strict implementation of worker protection provisions of relevant laws is called for". Kurosawa's fears may be well-founded, judging by the issues raised in Moretta's contribution. In the UK, even just three years after working time rules came into force, those employers who were not restrained by collective agreements "came to rely almost exclusively on mass individual opt outs to exempt their workforces from time limits". This situation, Moretta insists, is an "abuse of the individual opt out" and "exactly what one would expect in the circumstances".

Closing this edition, *IUR* looks at the long development of the legal right to paid holidays around the world, and the role of unions in both advocating for these rights and in facilitating union-backed holidays.

Next issue of IUR

Articles between 850 and 1800 words should be sent by email (mail@ictur.org) and accompanied by a photograph and short biographical note of the author. Please send by 1 August 2024 if they are to be considered for publication in the next issue of IUR.

Trade Unions Can and Must Help to Rebuild Democracy

2024 is historic in the story of global democracy. Around four billion people will vote in more than 40 countries. But in what state do we find democracy? The facts speak for themselves – if democracy was a hospital patient, it would need constant care. The global trade union movement, as the world's largest social movement, needs to stand up For Democracy.

Democracy and democratic values are under attack worldwide. Unregulated, neo-liberal globalisation has left billions of people behind and this breeds support for right-wing populists. This has fed a rising tide of authoritarian and totalitarian regimes which neither respect limits on their power nor protect the freedoms and rights of workers, minorities, civil society or trade unions. We face an increase in corporate capture, resulting in the dismantling of established trade union rights and civil liberties and an exacerbation of economic inequalities.

We see more and more the blatant destabilisation and dismantling of political processes in once-established democracies where extremists use traditional and modern media platforms to spread far-right political narratives and disinformation.

A decline of democracy

Democracy is contracting in every region of the world. According to the 2023 Global State of Democracy report from the Swedish International Institute for Democracy and Electoral Assistance, every year since 2018 more countries experienced net declines in democratic processes than net improvements. This includes places that had been thought to be healthy democracies.

These findings are reinforced by the Economist Intelligence Unit's Democracy Index. It calculates that nearly 39.4 per cent of the world's population live under authoritarian rule, and while 45.5 percent reside in a democracy of some sort, only 7.8 percent of people, or fewer than one in ten, live in a "full democracy". It gave the world a total score of 5.22 in 2023, down from 5.29 in 2022, as war and conflict worsen existing, negative, anti-democratic trends.

It is no surprise then that public confidence in democracy and its institutions is in steep decline, particularly among young people. In a 2023 survey by the Open Society Foundation, 82 percent of people said they preferred living in democracies, but that figure dropped to 57 percent for those aged 18-35, with 42 percent supportive of military rule. A decline in democracy goes hand in hand with an increase in attacks on workers' and trade union rights.

This global, anti-democratic trend corresponds with global attacks on trade union membership. Where countries have high rates of trade union density and collective agreement coverage, wealth and power are distributed more equitably and citizens have more trust in democracy.

In 2023, the V-Dem Institute identified Norway, where trade union density is 49 percent and collective agreement coverage is 72.5 percent, as the world's most deliberative and egalitarian democracy. However, researchers have also found that "union density has declined throughout the developed world, and in most countries the union wage premium has fallen as well."

These disturbing anti-trade union, anti-democratic trends are demonstrated by growing attacks on workers' rights documented over ten years by the *ITUC Global Rights Index*. In 2023, violations of key measures reached new highs: 87 percent of countries violated the right to strike while 79 percent violated the right to collective bargaining. These attacks and the parallel rise in economic inequality and insecurity are principal drivers of public discontent, providing fertile ground for far-right groups to push narratives characterised by intolerance and hatred.

Neo-liberal capitalism and the rise of the far right

This rise of nationalism, populism, xenophobia, antisemitism, Islamophobia, climate denial and new forms of fascism have been further fed by capitalism's austerity policies. Instead of delivering stronger economies to support a more inclusive social state, profits have been privatised and costs socialised. The 2023 study *The Political Costs of Austerity* looked at 200 elections in Europe and found that austerity policies had led to "a significant increase in extreme parties' vote share, lower voter turnout, and a rise in political fragmentation."

This embrace of inequitable policies that fail to deliver a better life and hope for working people and their families amounts to a betrayal of the electorate's trust. History has shown us that workers inevitably search for alternatives that promise to address their needs. Populists exploit this to win elections and then dismantle the elements of democracy that handed them power.

No region of the world remains untouched by this rise in anti-democratic forces, from right-wing electoral victories in Argentina and the Netherlands to nationalist resurgences in the United Kingdom and India, from military coups in Myanmar and

Armed conflict is increasing, many countries face threats of economic collapse, the climate emergency is accelerating, and unregulated growth in technology poses enormous risks

Luc Triangle is General Secretary of the International Trade Union Confederation (ITUC) in Brussels

Where trade union density and collective agreement coverage are higher, wealth and power are distributed more equitably and citizens have more trust in democracy

Niger to murderous attacks on trade unionists in Colombia and the Philippines.

This is happening as we witness a convergence of global crisis. Armed conflict, war and the threat of weapons of mass destruction is increasing. The long-ignored debt crisis means that more than 70 countries are on the brink of economic collapse. The climate emergency is accelerating, costing lives and livelihoods, while corporate power and its political allies resist a just transition. The exponential and recklessly unregulated growth in technology poses enormous social, economic and political risks.

Stand up for democracy

The only way that these trends can be addressed, sustainably, is through a truly democratic movement. A movement that crosses borders and sectors, ages and genders, races and religions and has the power, presence and accountability to change the balance of power in every workplace, country and global institution. We are that movement. Trade unions are together the largest social movement in the world. It is time that we trade unionists took up our role as the foremost practitioners and defenders of, and fighters for, the democratic values we exercise every day.

Because democracy is a worker's project, it is time to make good on the promises made in the *ILO Declaration of Philadelphia* as we mark 80 years since its publication. It recognised that democratic rights for workers run parallel with the aim of delivering prosperity for everyone, as it sets out in its fundamental principles:

a) Labour is not a commodity.
b) Freedom of expression and of association are essential to sustained progress.
c) Poverty anywhere constitutes a danger to prosperity everywhere.
d) The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

Even then in 1944 it was known that basic, workplace democratic rights, such as freedom of association, are intrinsically linked to equality and social progress; a fact clearly reinforced by the *ITUC Global Rights Index* in the last decade.

The authors of the Declaration knew that democracy is not just about elections, it is about workplace rights, it is about respecting the democratic values that the United Nations Commission of Human Rights defined in 2002 as "essential elements of democracy":

- Respect for human rights and fundamental freedoms.
- Freedom of association.
- Freedom of expression and opinion.
- Access to power and its exercise in accordance with the rule of law.
- The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people.
- A pluralistic system of political parties and organisations.
- The separation of powers.
- The independence of the judiciary.
- Transparency and accountability in public administration.
- Free, independent and pluralistic media.

The ITUC *For Democracy* campaign will defend these foundations of democracy in three critical arenas: at work, at the national level and globally. From respect for human rights and fundamental freedoms, such as the right to strike, to the separation of powers that act as a necessary brake to governments pushing through legislation arbitrarily, and the importance of an independent judiciary.

Democracy starts for most people in the workplace as they speak their minds for the first time in their union. They learn how to protect one another. They experience the brilliance of collective deliberation and the power of collective action, but for too many people their workplace is where democracy is most lacking. Generations of trade unionists have fought and died, been tried and executed advancing democratic rights. Today, hundreds of trade unionists sit in jail, under house arrest or on trial as they continue to defend it. Through trade union membership democracy can be most effectively realised, enabling collective bargaining for just and equitable conditions.

For *Democracy* at work, trade unions assert our right to freedom of association, to organise unions and to strike. We demand collective bargaining and social dialogue, equal treatment for all workers, equal power in decisions that impact our health, safety, environment, and employment prospects, an

end to workplace violence and harassment, and democracy and representation in our union structures.

For *Democracy* at societal and national level, we assert the right to free speech and protest. We demand true gender equality, equitable and just tax systems where the wealthy contribute their fair share to fund the expansion of social protection, universal healthcare, education and quality public services. We demand a Just Transition that supports all workers to reskill when workplaces shift to zero-emission production to protect both people and the planet. We resist the hate-filled, far-right ideologies and the corporate capture of national policy making by big business and ruthless monetary institutions.

For *Democracy* at global level, we demand the reform of international economic structures to create inclusive systems that prioritise public welfare, human rights and labour standards over private profit. We demand the protection and advancement of representative democratic multilateralism, and progress toward the UN Sustainable Development Goals. We demand just global financial mechanisms that shift the costs of global progress to the richest countries, debt forgiveness for countries facing internal social and economic instability, and equitable global cooperation to achieve universal peace and common security.

A blueprint for a more equal world

At the heart of the *For Democracy* campaign is the call for a New Social Contract; a blueprint for reimagining a more equal global economy in service of humanity. This contract centres workers' voices and is built on the pillars of jobs, rights, wages, social protection, equality and inclusion, to address the convergence of global crises. Only democratic engagement can deliver the New Social Contract through a participatory approach that allows workers to shape their futures collectively, and only a New Social Contract can ensure that democracy is sustainably rebuilt.

The *For Democracy* campaign is a clarion call to workers, trade unions and allies worldwide to rally for democratic change. It offers practical steps for engagement, from organising at the workplace to advocating for policy reforms at the national and international levels. The campaign seeks to galvanise support across borders, sectors and communities, reinforcing the message that democracy is not only a political ideal but a lived reality that working people are best equipped to define, defend and advance.

By asserting our fundamental rights, promoting equitable policies and challenging the dominance of corporate interests in these three key arenas, workers will be the drivers of change and the reinforcers of democracy.

By harnessing the collective power of the trade union movement, we can confront the multifaceted challenges of our time and advocate for a world where democracy thrives at every level of society. We can ensure that the progress envisaged by the authors of the ILO Declaration of Philadelphia in 1944 becomes a reality for more people in 2024 and beyond.

By harnessing the collective power of the trade union movement … we can ensure that the progress envisaged under the Declaration of Philadelphia becomes a reality

Interview: Alain Supiot

Alain Supiot joins IUR to reflect on a landmark proclamation concerning the right of all human beings to pursue together their material progress and their spiritual development

IUR spoke with **Alain Supiot**, Professor Emeritus at the Collège de France, Corresponding Fellow of the British Academy, and author of *The Spirit of Philadelphia: Social Justice vs. the Total Market*

Why are the tools for conflict resolution so often missing?

To be fulfilled, the pacifying function of the law presupposes the possibility of recourse in the event of a dispute to an impartial third party with the authority to enforce it. Freedom of association is part of this ternary structure, but enriches and consolidates it by authorising collective organisations to act peacefully so that their concrete experience of the injustice of the established order is taken into account. In addition to the right to take legal action to obtain the enforcement of the law, it adds a right to act collectively to ensure that the law is reformed. The justice of the rule is then no longer posited as an indisputable axiom, any more than it is supposed to result spontaneously from pure and perfect competition or from the struggle of classes or races; it becomes the very object of a collective contestation governed by the Law. This is why trade union freedom implies not only the right to be represented, but also the right to act and to bargain collectively. The use of these three rights (to organise, to act and to negotiate collectively) makes it possible to metabolise social violence, to convert relations of force into relations of law in an endless movement to approximate justice. These rights to challenge the law are not a factor of legal disorder, but on the contrary of the durability of this order in societies faced with technical, ecological or sociological change.

This new way of achieving justice was the greatest legal invention of the twentieth century, and it is to the labour movement that we owe its international consecration at the end of the First World War. This war was the first full-scale experiment in "total mobilisation", i.e. the transformation of the belligerent countries "into gigantic factories, producing armies on the assembly line that they sent to the battlefield both day and night where an equally mechanical bloody maw took over the role of consumer"[1]. The appalling toll of this first massacre on an industrial scale forced the victorious countries to respond to the aspiration for international social solidarity that the workers' movement had been working towards throughout the 19th century. The Great War was a stinging setback for this workers' internationalism, but also a decisive argument for trying to implement it once peace was restored. In November 1914, the American Federation of Labor, meeting in Philadelphia, adopted a resolution calling for a meeting of workers' representatives from all countries at the same time and place as the Peace Conference "to the end that suggestions may be made and such action taken as shall be helpful in restoring fraternal relations, protecting the interests of the toilers and thereby assisting in laying foundations for a more lasting peace"[2]. A little later, in July 2016, a conference of trade union leaders from the allied countries meeting in Leeds called for the creation at the end of the war of an international organisation that would "insure to the working class of all countries a minimum of guaranties of a moral as well as of material kind concerning the right of coalition, emigration, social insurance, hours of labor, hygiene, and protection of labor, in order to secure them against the attacks of international capitalistic competition". The ILO was created by the Treaty of Versailles to meet this demand. While the United States condemned the League of Nations to failure by refusing to join it, it joined the ILO under the New Deal, which enabled it to survive the Second World War. In 1944, it was the only major international organisation with competence in economic matters. It was in this context that it adopted the Declaration of Philadelphia, which states that "experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice". Indeed, if democratic regimes resisted dictatorships throughout the twentieth century, it was largely thanks to trade union freedom, the legalisation of which made it possible to subject market forces to mechanisms of social justice and thus to combine political and economic democracy. It is in this way that democracies have managed to overcome the crisis of capitalism without sinking into fascism. Unlike political democracy, which confers power on an electoral majority of formally equal individuals, economic democracy allows for the expression of the diversity of experiences of reality that different categories of the population may have. Its scope can therefore extend to the defence of interests other than those of employees and employers, such as those of the self-employed or environmentalists. By bringing leaders back into touch with reality, it reduces their "disconnection" from the problems faced by ordinary people.

These legal foundations of the social state have always been the target of neoliberal ideology, which also took off in the wake of the First World War, as Quinn Slobodian has shown[3]. This religious ideology is based on the belief in the existence of a spontaneous justice of the market, which, like divine providence, is intended to apply to the entire surface of the globe. The immanent laws of the economy that govern this process of globalisation take the place formerly occupied by divine law, and governments

must facilitate their free play, like a watchmaker who "oiled a clockwork, or in any other way secured the conditions that a going mechanism required for its proper functioning"[4]. The first success of the globalists was to torpedo in 1948 the project for an International Trade Organisation, the creation of which had been envisaged by the Havana Charter to implement the programme of international social justice set out in the Declaration of Philadelphia. This failure has not prevented the development of the social state at national level, based on a variety of social models, the three pillars of which are labour law, social security and public services. But these institutions were called into question everywhere from the late 1970s onwards, with the political triumph of neo-liberalism and the conversion of Communist countries to capitalism.

The scale and pace of this dismantling of the welfare state have not been the same in all countries. It has proved more resilient in countries where it had a constitutional basis than in the United States or the United Kingdom. But the pressure exerted by international competition and offshoring has everywhere destroyed the balance of power between trade unions and governments, whose action is limited by national borders, on the one hand, and big business, whose economic power is exercised on a global scale, on the other. The feeling of powerlessness in the world of work that results from this collapse of democracy obviously contributes to all kinds of identity-based withdrawals and to the scapegoating of social misery. We are thus repeating a process that had already been observed between the wars in countries that had not taken the path of economic democracy and that President F.D. Roosevelt had perfectly identified when he declared in his Second Bill of Rights Speech in January 1944 that "true individual freedom cannot exist without economic security and independence. 'Necessitous men are not free men'. People who are hungry and out of a job are the stuff of which dictatorships are made".

Is the digital world necessarily grim? Can digital work even be regulated?

Having devoted an entire book to this subject[5], I will try to summarise the essential points for our purposes. In the long history of human labour, every major technical change has been accompanied by a change in institutions. It seems that the ruling classes have always been inclined to see the world of work as what the seventeenth-century French engineer Vauban called "the immense crowd of bipedal instruments", and to treat workers like the instruments of labour of their time. For example, they were treated like draught animals, i.e. like things that could be bought (as in the case of slaves) or rented (as in the case of labour contracts). From the second industrial revolution onwards, this model was no longer the animal, but the machine. As Fritz Lang and Chaplin showed so well, workers were reduced to cogs, mechanically obeying the impulses they received. The fetish object with which Western culture identified the order of the world was still the clock. Today that object is the computer: it is no longer a watch or a rosary that each of us wears from morning to night as a sign of belonging to that order, but a smartphone. The invention of computers and the rise of cybernetics were accompanied by a managerial shift from Taylorism to management by objectives. Human beings are treated like bipedal computers. From then on, making them work no longer meant subjecting them to orders they had to obey, but programming them, i.e. implanting 'software' in them that would lead them to spontaneously achieve the objectives assigned to them by reacting (feedback) to the quantified signals they received from their environment. This idea of adapting human beings to an immanent order has been and remains common to theorists of neoliberalism and artificial intelligence.

Governance by numbers is the normative expression of this imaginary. It can be seen not only in labour relations within companies, but also in relations between companies within supply chains, or in relations between companies and states, or between states and international economic institutions. What is radically new is not so much "numbers" (already omnipresent in the Taylorian industrial world), but the replacement of government by "governance", in other words the project of a society on automatic pilot, where programming takes the place previously given to legislation. On a global scale, this vision is expressed in the 17 "Sustainable Development Goals", broken down into 169 targets and accompanied by 244 performance indicators. The world is no longer conceived as a concert of nations that must agree on rules based on a shared vision of justice, but as a vast enterprise governed by numbers. Social justice, which was at the heart of the Declaration of Philadelphia, is totally absent from this agenda. Assuming ternarity, it has no place in the contemporary computer imagination, which is binary and tends to substitute governance by numbers for the rule of law.

This programming is leading to new forms of dehumanisation of work. The *denial of thought* which characterised the Taylorist reduction of workers to the status of cogs in a vast clockwork has been replaced by the *denial of reality* suffered by workers programmed to satisfy performance indicators cut off from the concrete experience of their task. This has led to a spectacular rise in psychological disorders and unhappiness at work, the root of which hospital staff in France have grasped perfectly well by denouncing the fact that they are being asked to "look after the indicators rather than the patients".

To break down this kind of resistance, behavioural economics recommends the use of *nudges*. Awarded prestigious prizes[6] and actively promoted by the World Bank[7], this behaviourist approach claims to have turned economics into an experimental science. It borrows the technique of randomised trials from medicine, with the aim of getting people to behave well in the world as it is, rather than questioning the justice of that world. The

Everywhere, we see the dismantling of solidarity systems inherited from tradition or the welfare state leading to the exacerbation of identity-based withdrawal

techniques used for this purpose are not about learning, but about dressage - in other words, a degraded form of education that the great technologist Gilbert Simondon has shown traps the individual in social fatalism[8]. These behavioural techniques are destined to extend to all aspects of human action, as shown by the "social credit" system now in force in China, which is one of the most advanced aspects of the "surveillance capitalism" so accurately described by Shoshana Zuboff[9].

The situation of platform workers - the "Uberised" - is as emblematic of this governance of work by numbers as the situation of assembly-line workers was of Taylorism. Ken Loach showed this in 2018 in his great movie *Sorry we missed you,* which is the contemporary equivalent of Chaplin's *Modern Times.* These workers are controlled and evaluated by algorithms. This control mainly concerns transport and deliveries, but it is destined to extend to many other activities. All over the world, the platforms are lobbying hard for these workers to be classed as self-employed, despite the fact that case law is fairly unanimous in seeing them as subordinates falling within the scope of employment law.

As Fritz Lang and Chaplin showed so well, workers were reduced to cogs, mechanically obeying impulses. Now they are treated like bipedal computers

From a legal point of view, Uberised work is not as radically new as it is made out to be. It resurrects the structure of serfdom. Under feudal law, the serf was not an employee, but the tenant of the "servile tenure" granted to him by his master, in return for a fee. This is exactly what the platforms are trying to impose. They want to benefit from the activity of workers whom they manage, control and, if necessary, "disconnect", without having to assume any employer liability or social security contributions. Such a dissociation between the places where power is exercised and the places where responsibility is attributed is a characteristic feature of the neo-liberal economy. The work under the platform illustrates how governance by numbers resurrects links of allegiance and leads to the establishment of veritable chains of irresponsibility.

But our computing tools do not condemn us to this downward spiral into the dehumanisation of work. They are marvellous instruments that could help us to meet the social and ecological challenges of our time. In the twentieth century, the scope of social justice was limited to the question of economic security. The alienation resulting from the so-called "scientific organisation of work" was deemed inevitable in both communist and capitalist countries. Today, our new tools should make it possible to extend the scope of social justice to work as such, by giving everyone autonomy and responsibility at work. This presupposes that we do not see human beings as extensions of the so (wrongly) called "intelligent machines", but that we put these machines at the service of human intelligence. The demand for justice at work must extend to work "beyond employment", whether self-employment or "invisible work", in particular the educational work carried out in the family sphere, whose importance for society is more vital than any market product or service. It must also extend to the ecological footprint of work, both in terms of its products and the way they are produced[10].

The Declaration of Philadelphia is the only international standard to have addressed this question of "work as such", its meaning and content. It does not merely proclaim the right of all human beings to pursue together their material progress and their spiritual development. It defines the system of work that will ensure this. It is a system that ensures workers "the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well being" (§.III, b). This concise definition of what the preamble to ILO Constitution called (only in its French version!) a *"regime de travail réellement humain"* (genuinely humane work regime) perfectly outlines the horizon of social justice in the 21st century. Advances in robotics and artificial intelligence suggest that machines may take over everything that can be calculated. This in no way means the "end of work" for us, but rather the possibility of concentrating on tasks that require the very human qualities of concern for others, experience, imagination and creativity. We have inherited from the industrial era the idea that all human institutions obey a logic of power, so that to work well would be to submit to power. But the kind of work we need today must be based on authority rather than power. Placed at the service of the idea of work, of the "raison d'être" specific to each company or organisation, authority is exercised by legitimising the expression of workers' skills and knowledge, rather than claiming to dictate or programme their conduct.

In the row over the right to strike, have employers abandoned compromise?

As recently as 1982, the employers' representatives at the ILO did not challenge the freedom of trade unions to strike when it came to condemning the repression of the Solidarność movement by the Polish Communist government. But things changed precisely at that time, with the conversion of Communist China to a market economy and the subsequent implosion of the Soviet system. Since then, we have witnessed throughout the world, in obviously diverse forms, what I have called "the holy union of capitalism and communism"[11]. This process of hybridisation consists, on the one hand, of removing economic policy choices from democracy and, on the other, of allowing the ruling classes to enrich themselves to an extent that neither real communism nor capitalism tempered by the social state would allow. It began with the assimilation of capitalism by Communist China, which then (in 1982) adopted a new Constitution that no longer mentions the right to strike (which had appeared in the Constitutions of 1975 and 1978) and prohibits "any organisation or individual from disturbing the economic order of society" (art. 15). This constitutional provision is the perfect expression of the neoliberal programme to "dethrone politics" and "limit democracy", whether political or social. In all cases, the aim is to prevent

elections or trade union action from disrupting the "spontaneous order of the market".

Unlike China, the European Union could not abolish the right to strike, which is enshrined in its Charter of Fundamental Rights. However, in 2007, the European Court of Justice (ECJ) ruled in the Viking and Laval cases that the exercise of this right should not hamper the freedom of companies to apply national social rules that are less favourable to employees. This case law was condemned in 2010 by the ILO Committee of Experts, which found it to be contrary to Convention 87 guaranteeing freedom of association. It was this dissenting voice that the International Organisation of Employers decided to silence in 2012, by challenging the legitimacy of the Committee of Experts and blocking the system for supervising international labour standards. In a system governed by law, such a conflict of interpretation can only be resolved by a judge, which is why the ILO's constitution provides that it can set up its own tribunal or, failing that, appeal to the International Court of Justice. Employers' representatives have joined forces with the world's most authoritarian states to oppose any recourse to an impartial judge.

But as you pointed out, this hostility to international recognition of the right to strike is in the minority among States, and so in November 2023 the ILO Governing Body finally decided to refer the matter to the Court in The Hague. This revival of the ILO's standard-setting role is good news, as it serves as a reminder of the primacy of the rule of law over the power relations in the international order. As Convention 87 does not list the types of action that trade unions are free to take, to prohibit them from taking action not covered by the Convention would be to render this freedom meaningless. There are also sound reasons for accepting that the right to strike is part of customary international law (*jus cogens*), as it has been enshrined in a great many regional and international instruments. International recognition of the right to strike does not, of course, mean that there are no limits to it, but that it is a matter for the Member States to regulate, under the supervision of the ILO.

By forcing us to consider the issue of the right to strike at its root, which is trade union freedom, this case is a timely reminder of the diversity of forms of collective action. Strikes are not the only form of non-violent action that can serve to promote social justice. It still occupies a central place, but its effectiveness is reduced by the casualisation of jobs and the reticular organisation of the globalised economy. In supply chains, labour relations no longer have the binary structure that opposed a clearly identifiable employer and an equally identifiable group of workers. The holder of economic power may be a principal established in another country, and the employer in title may in reality be a dependent worker. Fixed-term or self-employed workers cannot strike either. In this type of situation, pre-industrial forms of collective action are re-emerging, far more accessible and effective than strike action, because they can mobilise the international solidarity of workers and consumers.

This is the case with labels and, above all, boycotts. The European Court of Human Rights has recognised that the right to boycott derives from both freedom of association and freedom of expression. Like the right to strike, it must of course be reconciled with respect for other rights and freedoms[12]. This centrality of the principle of trade union freedom is worth noting at a time when trade unions are not only retaining a foothold in the reality of working life that political parties have lost, but are experiencing a new vigour in many sectors of activity (including outsourced work) and in many countries (including the United States).

Do we need a new Declaration of Philadelphia? Is there any prospect we might get one?

The principles that define the normative missions of the ILO – as set out in its Constitution and in the Declaration of Philadelphia – have lost none of their value or relevance. The circumstances in which those missions are carried out have, however, changed profoundly. The results of forty years of market globalisation are catastrophic: accelerated global warming, destruction of biodiversity, retreat of democracy, isolationism, armed conflicts, epidemics, financial crises, explosion of inequalities, riots, migration of populations driven out by war, poverty or the devastation of their homes... The objective interdependence of nations has never been greater, and they all face three challenges that can only be met by joint efforts: a technological challenge, an ecological challenge and an institutional challenge. To meet these challenges, the ILO could be expected to promote three principles, in line with its constitutional missions: the principles of solidarity, economic democracy and socio-ecological responsibility. When I took part in the Commission on the Future of Work, which the ILO convened in the run-up to its centenary, I hoped that this anniversary would provide an opportunity to adopt a declaration committing it to these principles[13]. But this would have presupposed that the ILO revive its central mission as the world parliament of labour and set itself the task of reforming international law in the light of these principles. In other words, it would have required boldness on the part of its leadership, and farsightedness and determination on the part of its members comparable to that shown at the end of the Second World War. It has to be said that these political conditions have not been met, and that everything is pushing the ILO to shirk its normative responsibilities in favour of the more comfortable short-term position of a resources agency in the service of the sustainable development objectives we have mentioned.

Does this mean we should give up? Certainly not! The first essential step in escaping despondency or resignation is to agree on a vision of the world we want for ourselves and for the generations that follow us. The first step out of the darkness is to turn

Making them work no longer meant subjecting them to orders they had to obey, but programming them

on a light, however small. In the worst moments of the Second World War, men and women set about thinking about "the world after", a better and fairer world that would learn from the terrible ordeals they were going through. Think, for example, of the Beveridge Plan in Great Britain or the programme of the *Conseil National de la Résistance* drawn up in France during the Nazi occupation.

Today we are caught between two contemporary forms of capitalism. The first is anarcho-capitalism, or globalism, which consists of oiling the wheels of a market that has become total, supposedly abolishing borders and uniformly governing the planet. As the ILO Constitution warns, this process of standardisation and over-exploitation of mankind and nature can only involve " 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". The second form, now in full swing, is ethno-capitalism, which, without tackling the economic causes of this social anger, directs it towards scapegoats, designated by their religion, sex or origins, and thus offers a mix of neo-liberalism and identitarianism. The standardising pressure of the Total Market and the identity-based reactions it provokes are the two pliers of the same pincers. Everywhere, the dismantling of solidarity systems inherited from tradition or the welfare state is leading to the exacerbation of identity-based withdrawal.

The feeling of powerlessness in the world of work that results from the collapse of democracy contributes to identity-based withdrawals and the scapegoating of social misery

So there is no choice between globalism and identitarianism, between opening up a world without borders and closing it off with walls and barbed wire, because just as Jaurès said about capitalism, globalisation carries the fury of identity with it like the cloud carries the storm. The narrow way out of this false dilemma would therefore be true "mondialisation", in other words, promoting solidarity between nations rather than competition under the aegis of globalisation. The diversity of experiences and cultures is a major anthropological resource for tackling the ecological and social challenges facing all peoples today. Hence the importance of economic democracy, which is the only way to counter the overhanging universalism of *globalisation* with universalism in crucible of *"mondialisation"*[14].

Legal analysis requires a minimum of terminological rigour. We cannot seriously use the same concept to describe the attempt, at the end of the Second World War, to base a new world economic order on solidarity between nations and the attempt, 50 years later, to base this order on competition between all against all. A policy of 'mondialisation' was outlined in the Declaration of Philadelphia in 1944, when it called for "all economic and financial measures and programmes of action" to be subordinated to the achievement of international social justice, and in the Havana Charter in 1948, when it drew up the statutes of an International Trade Organisation (ITO) whose mission would have been to combat both balance of payments surpluses and deficits, to encourage economic cooperation rather than competition between states, to promote compliance with international labour standards, to control capital movements, to work for the stability of commodity prices, and so on. In short, its role would have been more or less the opposite of that assigned to the World Trade Organisation (WTO) in 1994 by the Marrakech Accords, which implemented a policy of "globalisation".

Ignored by the English language, the notion of *mondialisation* comes from the Latin word *mundus,* which designated the inhabited earth, as well as ornamentation or finery. Just as in Greek the *cosmos* is opposed to *chaos,* so in Latin *mundus* is opposed to *immundus,* i.e. filth and refuse, and more generally to anything that threatens human life. In the same spirit, but in a more precise legal sense, in Roman law the mundus was used to designate a monument built at the founding of a city, symbolising both its territorial location and solidarity between generations and between communities of different origins. Unlike the "globe", a geometric object governed by the immanent laws of physics in a Cartesian space, the *monde* (world) refers to the web of relationships that people have with each other and with their living milieu. This fabric, woven from the common fabric of our biological being as *homo faber,* is adorned with motifs as varied as the times, places and cultures.

A "world", thus understood, is an environment made liveable and embellished by the work of its inhabitants. The latter may be of diverse origins, but their cooperation must, from generation to generation, take account of the physical, climatic, historical and cultural particularities of this vital environment; so that the World, in the sense of the inhabited Earth, necessarily contains a plurality of different worlds, which may ignore each other, fight each other or cooperate. Globalisation, understood in this way, is the process of establishing this cooperation. It corresponds to the recommendations made after the war at UNESCO by the great anthropologist Claude Lévi-Strauss: "We can see the diversity of human cultures behind us, around us, and before us. The only demand that we can justly make (entailing corresponding duties for every individual) is that all the forms this diversity may take may be so many contributions to the fullness of all the others"[15].

That's why I'm always urging people not to confuse *globalisation* with *mondialisation.* The distinction is very difficult to translate into English, so the task is probably hopeless. But I thank you warmly for at least giving me the opportunity to promote the idea!

1 E. Jünger, *Die totale Mobilmachung* [1930], Translated by Joel Golb and Richard Wolin

2 See Report of the *Proceedings of the Thirty-Fourth Annual Convention of the American Federation of Labor,* held at Philadelphia, November 9 to 21, 1914 (Washington, DC, 1914), 289-90.

...continued on page 32...

The Declaration of Philadelphia: 80th Anniversary

I

On 10 May 1944 the ILO adopted the Declaration of Philadelphia, as a statement of the aims and purposes of the International Labour Organisation, as well as the "principles which should inspire the policy of its Members". Created as the Second World War was coming to an end, the instrument is a synthesis of the prevailing economic and political cultures and philosophies of the time, but one which the international community has largely failed to respect. It nevertheless remains the most progressive legal text in international law ever created.

II

The Declaration begins with the reaffirmation of the fundamental principles on which the ILO is based, these being the principles set out in the preamble to the Constitution of 1919. Thereafter, Part I specifically highlights four principles, not all of which are to be found in the 1919 Constitution: labour is not a commodity, freedom of expression and freedom of association are essential to sustained progress, poverty anywhere constitutes a danger to prosperity everywhere, and the war against want requires to be carried on with unrelenting vigour within each nation.

It is of course unnecessary to emphasise the extent to which these 'principles' have been traduced since the 1980s as the values by which they were underpinned have been displaced. Now we are governed by different principles based on superficial ideas of freedom which have helped in turn to inform free market economics, the power of global corporations, the declining influence and diluted role of trade unions, and the weakening of nation states which have collectively permitted corporate power to prevail unregulated effectively by either national or international laws.

The commodification of labour is now hidden in plain sight, workers disrespected as objects in a 'labour market' and treated like any other article of commerce: paid by the task, used only when needed, and discarded as quickly as possible. And although freedom of association may be formally protected by international treaties as well as by constitutional law throughout the world, trade union membership levels and/or collective bargaining density are in practice either in retreat or stagnating in many countries, leaving the ambitions of 1944 greatly diminished.

The effect is that success is now judged by the wealth and mobility of global capital, by the sidelining of trade unions, by the State's regulatory retreat, by the steadily increasing precariousness of employment, and by the rising levels of social and economic inequality and poverty. None of these is inevitable. All are the consequence of political choices and the irresponsible use of power. These choices have implications for what we eat, the state of our health, whether there are enough homes for us all, and how long we live.

III

Although progress in the development of the principles set out in Part I of the Declaration of Philadelphia can now be measured by the pace of the retreat, the seeds of a solution to contemporary problems caused by liberalisation, globalisation and free trade are to be found in the Declaration itself, and specifically Part III. A manifesto written in 1944, the latter is nothing short of a timeless Bill of Workers' Rights, which if fully implemented would transform the lives of workers throughout the world. Although it is not possible to look in detail at all of the provisions in Part III, there is one that stands out, not only because of its neglect, but also because it is potentially so transformative in its demands.

The stand out obligation is the fourth. Not "a minimum living wage to all employed and in need of such protection", but the obligation of the ILO to promote "policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection". The key term here is "a just share of the fruits of progress to all", a phrase undefined, but which goes well beyond the requirement for a minimum wage of non-prescribed content, but which surely informs what the content of the minimum wage should be.

It is of course difficult to tell what conception of 'justice' for these purposes the authors of the Declaration of Philadelphia had in mind when they included a commitment to "a just share of the fruits of progress". Given the context, however, we can be confident that they were not contemplating the ideas of justice associated with the author of the Road of Serfdom, a hugely influential work published only a few months before the Declaration of Philadelphia was adopted. Hayek is associated with the justice of the free market which in its most brutal form allocates the largest shares of the pie to those with the greatest economic muscle, the very antithesis of what the ILO text prescribes.

The commodification of labour is now hidden in plain sight, workers disrespected as objects in a 'labour market' and treated like any other article of commerce: paid by the task, used only when needed, and discarded as quickly as possible.

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All are the consequence of political choices and the irresponsible use of power. These choices have implications for what we eat, the state of our health, whether there are enough homes for us all, and how long we live

It is thus more likely that the authors were contemplating theories of justice associated with what was later to be seen in the work of Rawls. It is a theory of justice that invites consideration of what, in addition to a minimum wage, policies in relation to wages and earnings could ensure a 'just share'. As such, it might be suggested first that it is about all earnings as a source of wealth, including earnings from fees and investments. Secondly, it is about the distribution of wealth on an equitable basis, with a maximum as well as a minimum income. And thirdly, within the range of lowest and highest incomes, wage distribution should be informed by principles of equality and fairness.

IV

The big question is how these goals are to be met. Collective bargaining is one answer, as recognised also by Part III of the Declaration, a commitment which refers to the 'effective' recognition of the right to collective bargaining. Here the word 'effective' is meaningful and not tautologous, effectiveness inviting consideration of bargaining levels, employer conduct, as well as compliance and enforcement. But although essential, collective bargaining is not enough on its own. Moreover, collective bargaining has to be regulated, not only to ensure that it takes place, but also to ensure that it produces 'just' outcomes if it is to be the primary instrument for delivering a 'just share' of the fruits of progress.

Collective bargaining thus cannot be 'free', in the sense of being left entirely to the parties. This would be to condemn collective bargaining to be no more than an instrument of what a British Labour Party Deputy Prime Minister denounced in 1947 as a 'laissez faire' or 'Manchester school' attitude. Although it is a step in the direction of a 'just share', collective bargaining does not take us all the way unless it is calibrated specifically to achieve certain goals, with an opportunity provided to challenge collective agreements where these goals are not met. Specifically, a 'just share' implies (i) equal pay for work of equal value, and (ii) fair differentials when work is not of equal value.

The principle of equal pay for work of equal value is a universal principle, as is anticipated in the preamble to the ILO Constitution, which refers to "equal remuneration for work of equal value" as an area where improvement was urgently required. It was not until 1951 that the Equal Remuneration Convention (ILO Convention 100) limited the scope of this general principle to "ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value". The principle thus applies to all workers but only to the extent that there is gender-based discrimination, the Convention nevertheless still too much for some governments, including the British government of the time.

The question now is whether it would be possible to extend the operation of this principle universally without damaging its operation as a tool for equal pay between men and women, and whether it would be possible to do the same for what in most countries is still the nascent principle of fair differentials. The latter is a recognition that the commitment to a just share through fair pay is not a zero-sum game in the sense that if the work is not of equal value then there is no regulatory obligation. On the contrary, if work is not of equal value, this ought not to be a licence for differences in wage rates which bear no relationship to each other and are disproportionate to the 'value' of the work in question.

V

The foregoing suggests that regulated collective bargaining means that the law should set objectives for the bargaining parties. The first should be to ensure equal pay for work of equal value not only to eliminate gender or racial bias (or bias on any other protected characteristic), but also more generally in a manner unrelated to protected characteristics. Secondly, it should be a duty on bargaining parties to ensure that rewards for work of unequal value are proportionate to the value of the work in question. To this end it would be necessary to have regard not only to differentials within the specific bargaining framework, but also to bargaining and other outcomes elsewhere.

Where collective agreements fail to meet these objectives, it ought to be possible for the agreements to be challenged and outcomes corrected. A template on which to build for this purpose is provided by the now repealed Equal Pay Act 1970 in Great Britain, which permitted a reference to an arbitral body for amendments to be made to collective agreements to ensure that they did not violate the principle of what at the time was equal pay for men and women. That is a procedure that could be restored as part of a regulatory overhaul if we are to take seriously (and if collective bargaining is to be the means of securing) the great principle that everyone is entitled to a 'just share'.

As a first step, these challenges would be made vertically within collective agreements, empowering a worker or a group of workers to challenge bargaining outcomes where an agreement in a particular sector fails to secure fair differentials. But as suggested above, it would be necessary also to enable challenges to be made horizontally where there are inequalities or disproportionate differences between workers in different sectors or different enterprises under different collective bargaining procedures. To state the obvious: 'a just share' of the fruits of progress will not be secured by a slogan but only by active regulation on a scale currently unimaginable in many countries.

Unless there is a re-imagination, the Declaration of Philadelphia is in danger of becoming a relic of an

age long since passed, a monument to political failure in the years since 1944, and/or a fantasy text for a fantasy world. It is in danger also of being eclipsed in impact by that other text published earlier in the same year. Yet while there were few celebrations of its 80th birthday in the various capitals of the world (by which it was largely ignored where it was not unknown), the Declaration remains at least formally a live instrument, and the most vivid and inspiring expression in international law of how a different kind of world could be underpinned.

Declaration of Philadelphia
Part III

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

(a) full employment and the raising of standards of living;
(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common wellbeing;
(c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
(g) adequate protection for the life and health of workers in all occupations;
(h) provision for child welfare and maternity protection;
(i) the provision of adequate nutrition, housing and facilities for recreation and culture;
(j) the assurance of equality of educational and vocational opportunity.

Colombia

On 22 January 2024, the attorney general's office ordered a raid of the premises of the CUT-affiliated education union FECODE, further to suggestions that the union had potentially broken electoral law by making a donation to the political party Colombia Humana (which is the party of the President of Colombia, Gustavo Petro). Such a donation would not, in principle, be unlawful, but it was alleged that the donation amounted to an unlawful contribution to Petro's election campaign (which the union denies). Both the President and FECODE have condemned various processes underway at the present time as an attempted "soft coup" allegedly being attempted by various State officials appointed under the previous government. Lamenting the situation, President Petro wrote on social media platform X that, "a progressive president, the first in a century, cannot be overthrown because a workers' union contributed legally to a left-wing party". The term of office of the attorney general reached its scheduled end in February, and the previous incumbent Francisco Barbosa (regarded as an open critic of the President) has been replaced by the more moderate Luz Adriana Camargo Garzo.

On 11 March, Guillermo Otero, a teacher and member of the FECODE union, was shot dead at his home by unknown armed men who had followed his journey home from his workplace, a school in Fundación, Magdelena. Witnesses say the masked men opened fire without speaking and then rapidly made their escape by motorcycle.

ICTUR has written to the President of Colombia to express its concerns in relation to this case, emphasising the importance of the ILO principle affirming support for the inviolability of trade union premises, as set out in the Resolution on Trade Union Rights and their Relation to Civil Liberties, 54th Session of the ILO Conference (1970). ICTUR further affirmed the fundamental importance of the protection of the right to life of trade unionists, and urged the Government to continue its efforts to improve the protection of trade unionists, and to take steps to ensure that the murder of Guillermo Otero is promptly investigated and those responsible are brought to justice.

France

On 20 October 2023, Jean-Paul Delscaut, the General Secretary of the UD Nord section of the CGT, was arrested under charges of "incitement to terrorism" and 'incitement to racial hatred" after circulating a leaflet apparently suggesting that the attacks in Israel on 7 October 2023 by Palestinian militants were "provoked" by "the horrors of illegal occupation". Prosecutors argued that this analysis constituted "legitimisation of a mass attack under the cover of a historical analysis". The national CGT recognised that the leaflet was not unproblematic, and recalled and revised it, but stood by Delscaut to argue that "peacefully supporting the rights of Palestinians cannot be so grossly caricatured and criminalised". Sophie Binet, General Secretary of the CGT, described the arrest as "scandalous" and attended a rally in Lille on 28 March when Delscaut was brought before the court. In April, Delscaut was handed a one-year suspended sentence, which the CGT has appealed. The CGT said that the sentence denied "the possibility of carrying a geopolitical analysis" and called the prosecution "a new drift and a significant reduction in the scope of freedom of union and freedom of expression".

ICTUR has written to the authorities to express concern at this case and to emphasise that

"freedom of opinion and expression constitutes one of the basic civil liberties essential for the normal expression of trade union rights" (Compilation of Decisions of the Committee on Freedom of Association, ILO (2018), para. 233), noting that "criminal charges in response to legitimate opinions of trade union representatives may have an intimidating and detrimental effect on the exercise of trade union rights" (CFA, para. 237), and recalling that the Resolution on Trade Union Rights and their Relation to Civil Liberties, 54th Session of the ILO Conference (1970) places "special emphasis on freedom of opinion and expression" (CFA, para. 257).

Pakistan

In January, the interim (or "caretaker") government of Pakistan, which held power between the election and the appointment of the new government, issued a declaration further to section 3 of the Pakistan Essential Services (Maintenance) Act 1952 re-classifying public energy companies as "essential services". This move, which takes effect for a renewable six-months, effectively prohibited trade union activities in the sector, impacting various organisations, including the All Pakistan WAPDA Hydro Electric Labour Union. As well as restricting trade union operations, the Act's powers place power sector workers under strict obligations and criminalise failure to perform work as instructed. The issue has been raised within the ILO by the global union Public Services International.

ICTUR has written to the authorities to express concern at this development, noting that the energy sector has not previously been regarded as "essential in the strict sense" and that WAPDA is home to one of the country's largest and most powerful unions, which has operated for many decades, such that this move significantly restricts the exercise of trade union rights in Pakistan. ICTUR recalled that the CFA examined a previous situation in which the trade union rights at WAPDA were suspended in the 1990s, purportedly on emergency grounds, that the Committee had then urged the Government to take action "with a view to re-establishing the registration of the Pakistan WAPDA Hydro Electric Central Labour Union", and that trade union rights had subsequently been restored.

Palestine

On 7 March, the headquarters of the Palestine General Federation of Trade Unions (PGFTU) was hit by a bomb dropped by an Israeli plane, suffering very significant damage. The attack comes in the context of a massive Israeli military operation that has wrought enormous damage and loss of life throughout the Gaza Strip. The PGFTU has previously suffered bombings of its buildings, not only in Gaza, but also in the West Bank, including in February 2002, when Israeli planes and helicopters carried out an attack in Nablus City, which the ICFTU at that time said had destroyed 40 percent of the organisation's headquarters.

ICTUR has written to the Israeli authorities, emphasising the importance of the ILO principle affirming support for the inviolability of trade union premises, as set out in the Resolution on Trade Union Rights and their Relation to Civil Liberties, 54th Session of the ILO Conference (1970). In relation to the situation taking place in Gaza generally, ICTUR called on Israel to respect and implement in full the provisional measures ordered by the International Court of Justice (ICJ) on 26 January 2024.

Panama

The militant left-wing construction workers' union SUNTRACS has faced a series of apparently anti-union attacks. SUNTRACS is the largest union in the country and is affiliated with the CONUSI Confederation. In November 2023, the State Savings Bank closed the union's accounts and the national Financial Analysis Unit (UAF) opened an investigation into SUNTRACS for alleged money laundering. On 26 February, Jaime Caballeros, International Officer for SUNTRACS was arrested (he was subsequently released). And on 10 March, a SUNTRACS office in La Chorrera was damaged in an apparent arson attack. The union views these actions as part of a coordinated anti-union campaign. Global union BWI called the financial charges a "despicable strategy" to undermine the union's credibility and operations. It has been widely suggested that the situation currently facing the union may be retaliation linked to its role in campaigning for the closure of the Minera Panamá copper mine.

SUNTRACS played a leading role in organising demonstrations in 2023, which – along with a legal campaign – led to the closure of the largest copper mine in the region, operated by Minera Panamá S.A. (MPSA), a subsidiary of Canadian mining company First Quantum Minerals (FQM). SUNTRACS and its civil society allies had argued that the mine would cause social and environmental damage. A complex industrial relations situation existed at the mine, which SUNTRACS repeatedly blockaded over a number of years, but where the UGT-affiliated UTRAMIPA opposed the closure, while the CS-affiliated STM called for "a fair and orderly transition where the rights of mining workers are respected". SUNTRACS dismissed both rival organisations (which had recognised status at the mine) as "yellow" unions. Ultimately, a long-running legal campaign – which argued that original grant of the mining concession was unlawful – was successful, and the Panamanian Constitutional Court ordered the mine to cease operations in December 2023.

ICTUR has written to the authorities, recognising the complex background to this case, but emphasising the importance of prioritising the protection of freedom of association and trade union rights with respect to all parties involved in this case. Specifically, ICTUR called on the authorities to ensure that a prompt and thorough investigation is carried out into the closure of bank accounts belonging to SUNTRACS and that appropriate steps be taken to ensure the independence of the investigation into the trade union that is being conducted by the national UAF agency. ICTUR further called for a full and thorough investigation into the events underlying the arrest of Jaime Caballeros and the arson attack at La Chorrera.

Kenya

On 29 February, Dr. Davji Bhimji Attellah, General Secretary of the Kenyan Medical Practitioners, Pharmacists, and Dentists Union (KMPDU), was shot in the head at close range by a teargas canister during a trade union rally in Nairobi. The union reported that he received "serious" injuries, and says that his life could have been in danger had it not been for the attention of the medical workers marching alongside him who were able to provide immediate care for his injuries and arrange for his transport to hospital. The union was calling for the release of funds, which it says were already allocated to the payment of interns and payment of post-graduate fees. Global union PSI said that "this attack came as a result of pressure from the IMF

and World Bank to cut public spending". These institutions, PSI said, "insist that countries cut wage payments to health personnel" and call for privatisation of public services. "In order to take these measures", PSI continued, "[governments] must undermine trade unions representing public service workers".

ICTUR has written to the authorities to express concern over the police actions in disrupting the workers' protest and to express grave concern for the injuries suffered by Dr. Attellah, recalling that the view of the CFA that where "the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities" (CFA, para. 104).

South Africa

On 26 February, police fired rubber bullets and teargas at striking workers at the University of Pretoria. The strikers, members of the NEHAWU education and health union, were in dispute with the university over a pay award. The university had sought, and obtained, an order to confine picketing to specific areas and restraining the strikers from interrupting work at the campus. Police intervened when the strikers moved beyond the sanctioned picketing area and blocked the university entrance. Footage of the incident indicates a generally peaceful atmosphere, interrupted by police shouting at the strikers before raising their weapons and shooting. There were no reports of injuries, though one union member was arrested. The dispute was resolved in March when the parties agreed a compromise on the pay deal. A NEHAWU spokesperson insisted that the outcome, "vindicated the union's belief in collective bargaining and democratisation of the workplace. It involved compromises by both parties and has been accepted by members".

ICTUR has written to the authorities to express concern over the decision to deploy tear gas and rubber bullets, and questioned whether it was necessary or proportionate for the police to interfere in what was otherwise a peaceful and lawful dispute between workers and their employer.

Türkiye

On 12 February, Makum Alagöz, President of the TÜRK-İŞ-affiliated DERITEKS textile workers' union, was shot in the leg during a meeting with management at the Akar Tekstil factory. The union leader was treated in hospital for his injuries, which included a bone fracture. His assailant was the brother of the factory owner, who later confessed to having fired the shot after becoming frustrated during negotiations with the union leader, who he claimed had spoken to him in a manner that he thought was "sarcastic". The shooter was arrested following the attack. The DERITEKS union has collective bargaining status with the factory, and was involved in negotiations to secure payments to workers following a declaration that the factory had become insolvent.

On 1 May, the authorities once again blocked demonstrations from proceeding to the historic Taksim Square, despite a Constitutional Court ruling issued in 2023, which found that the ban on May Day celebrations in the Square was a breach of Article 34 of the Constitution. This year, as workers marched towards the Square they were corralled by police who fired rubber bullets and tear gas and made up to 200 arrests. Those participating in the May Day rallies included leaders of the DISK trade union centre and various left-wing parties, including the CHP (the largest centre-left party in Türkiye).

ICTUR has written to the authorities to express grave concern at the shooting of trade union leader Makum Alagöz, and to request that the authorities take steps to ensure that the matter is referred to a thorough independent judicial inquiry in order "to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events" (CFA, para. 94).

USA

On 6 March, airport police arrested 15 people, including SEIU executive vice president, Neal Bisno, during a janitors' strike over pay and benefits at Minneapolis-St. Paul International Airport. The strike and picketing carried out by the group was lawful, but they were arrested on grounds of "civil disobedience" after blocking a road at the airport and refusing to obey police instructions to clear the road.

ICTUR has written to the authorities to express concern in relation to this case. While trade unionists are not exempt from ordinary requirements to obey the law, ICTUR expressed concern over the escalation of a civil or industrial matter to a criminal matter, and questioned whether it was necessary or proportionate for the police to interfere in what was otherwise a peaceful and lawful dispute between workers and their employer.

Venezuela

On 21 January, armed police raided the Barinas State office of the FENATEV-affiliated education workers' union SINDITEBA, where they reportedly assaulted a number of trade unionist, confiscated computers, and arrested the local union president Víctor Venegas, before transferring him over 500km to Caracas, further to allegations that the union leader was involved in activities to destabilise the country. The regional union has been leading some of the largest local demonstrations in the country further to a national claim by teachers for wage increases. The arrest was condemned not only by ITUC, but also by its global rival WFTU. ITUC also called for the release of Gabriel Blanco, Communications Director of the Caracas branch of the ITUC-affiliated ASI confederation, detained by military intelligence since July 2022, while WFTU also called for the release of Leonardo Azócar and Daniel Romero of the steelworkers' union SUTISS, who were detained in 2023.

ICTUR has written to the authorities to express concern that arrests of trade unionists have occurred during industrial protests, recalling the view of the CFA that "the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular" (CFA, para. 123) and that "the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards" (CFA, para. 136).

Union Struggles and Working Time in Australia: Past, Present, and Future

In the mid-19th century, Australian stonemasons demanded that human life must allow for opportunities to do more than just "work, eat, and sleep"

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Control of the hours of work is a central aspiration of working people in all lands. Australian unions have been particularly committed to the struggle for reduced hours, and from the mid-nineteenth century the local campaign for the eight-hour day blazed a path for unions everywhere, drawing international acclaim. But the enjoyment of past victories has been compromised by long-term changes in economy and society. Australian unions have therefore begun to re-imagine the nature of a 'fair day's work', beyond the old standard of the 'eight-hour day'.

Recent union campaigns have addressed the right to parental leave, the right to disconnect, the specific needs of Aboriginal and Torres Strait Islander workers, and the possibilities of a four-day week. Below, we offer a broad historical survey of Australian union campaigns, from the eight-hour day to a four-day week. This enables appreciation of the labour movement's transformative impact, just as it does the movement's persistent capacity for renewal.

Union campaigning in Australia: the eight-hour day and the standard working week

In 1856, as tradesmen in most lands habitually worked ten, eleven or twelve hours a day, stonemasons based in Sydney and Melbourne secured an eight-hour day, spread out over six days. While in Sydney this was secured with a reduction of wages, the Melbourne stonemasons won the claim with full pay. The victory was shared among the skilled workers of Melbourne's building trades and celebrated with a proud march through the city's streets. The march became an annual ritual of self-assertion and the stonemasons' victory an inspiration to employees in other trades, in less skilled occupations, and across the continent[1].

Unionists presented an 'eight-hour day' not as a marginal industrial improvement, but rather as a full recognition of their shared humanity. A rich human existence, they said, was distinguished by a process of self-education and intellectual discovery, a capacity to participate in self-government, and by familial and social relationships that gave a life meaning. These could not be enjoyed without time away from work, so that the quest for reduced hours was also a battle for human rights. As stonemason and MP Charles Jardine Don explained in 1858, the campaign reflected the conviction that a human life should be more than "work, eat, and sleep".

The eight-hour ideal was pursued through the formation of new unions, the founding of new political associations, and through strikes, rallies, deputations, and electoral campaigns. By the late nineteenth century, the standard covered perhaps three-quarters of the workforce. Over subsequent years, Australian unionists and their supporters won a half-day holiday on Saturday (a forty-four hour week), and then a forty-hour week spread out over only five days. These victories were generalised more quickly, since a new Labor Party was able to win office and to legislate reductions to working hours, and since a new institution, a Court of Arbitration, was empowered to determine working conditions in situations of industrial conflict. Unionists also enjoyed the selective support of industrial sociologists and medical experts, who drew on experiments and detailed studies to argue that long hours were associated with fatigue, absenteeism, work accidents, and hence reduced efficiency; reduced hours could also mean greater productivity and even greater output. Some employers endorsed these findings. From the beginning of 1948, after a prolonged union campaign, the Commonwealth Court of Arbitration established the forty-hour week as a general standard across the Commonwealth.

The battle for reductions beyond forty hours has been no less determined but notably less successful. From the later 1950s, the peak union body, the Australian Council of Trade Unions, identified a thirty-five hour week as a common goal. It was agreed that this campaign should be spearheaded by workers in those industries most strongly affected by technological change. The introduction of new technology promised increased productivity but fewer jobs; reduced hours could be considered a means of distributing productivity gains to employees. Fighting hard and with imagination, miners, waterside workers, and employees in the oil industry led the charge. But the generalisation of these victories proved more difficult. Despite committed efforts and sometimes bitter strikes, power workers and metal workers struggled to attain the same standard. A compromise agreement in the early 1980s established a thirty-eight hour week as a new norm, though its application has been far from complete.

The last four decades have not extended generalised reductions beyond thirty-eight hours per week, though in any case the notion of a generalised standard has itself come under attack. Employers and conservative politicians have promoted "flexibility" as a primary aim, a quest that in practice has involved the erosion of common labour standards. An increasing number of employees have been employed casually, part-time, or engaged as

"independent contractors". These arrangements have undermined the old centrality of "standard hours". They have also weakened the power of unions to battle for workers' rights. Excessive hours are a particular problem for professional employees. Unpaid overtime is a consistent feature of the workplace, and on average, Australians work more than four hours of unpaid overtime every week[2]. While a path-breaker in the winning of workers' rights from the nineteenth century, more recent Australian efforts to further reduce the working week have faced substantial challenges.

Beyond the eight-hour day: new understandings, new campaigns

The inability to reduce the standard working week below thirty-eight hours should not imply that struggles over working time since the 1980s have been fruitless, for unions have been more successful in winning some recognition of the importance of caring work, and of the right to leave to make such caring possible. Women unionists have been especially active in making these issues central to union campaigns and in the waging of decisive struggles. They have helped to transform our collective understanding of 'working time'. They have secured new industrial rights and reimagined future union struggles.

Parental leave was the first major goal. Over the 1970s, several unions led the battle for maternity leave and in 1979 the ACTU initiated a test case on this matter in the industrial tribunal. The tribunal's judgement led to the introduction of one year's unpaid maternal leave as a general national standard. Its scope was expanded in subsequent years to include mothers of adopted children (1985), fathers (1990), and some casual workers (2001), though the absence of paid leave compromised this victory. A generalised system of paid parental leave was eventually introduced by the Gillard Labor government in 2011, with subsequent union efforts aiming to extend the scope and application of this leave.

Recent unions campaigns have also highlighted the necessity of having specific leave rights that allow workers to respond to moments of threat and crisis. A notable example is the long-running campaign to achieve paid family and domestic violence leave, to ensure support is available to workers leaving a violent relationship. The Australian Services Union won what is believed to be the world's first paid family and domestic violence leave clause in an enterprise agreement in 2010. A subsequent broad-based union campaign focused on expanding this right to other union-negotiated agreements, and waging a twelve year-long campaign to have these rights generalised to all workers. In 2022, the Albanese Labor Government introduced legislation to enshrine 10 days paid family and domestic violence leave as a universal right.

Recent union efforts have also sought to recognise the specific needs of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander unionists have played a significant role in securing leave rights that recognise the importance of their culture and custodianship of country. This includes entitlements, such as cultural leave, and support for flexible working arrangements[3]. These rights do not apply across the workforce, but are dependent on agreements being in place between unions and employers. The campaigns of the National Tertiary Education Union have helped to win these leave rights in workplace agreements in the higher education sector[4].

888 Memorial, Melbourne

It is important that on-going discussions about reduction in the working week in Australia, including the four-day work week, include a focus on the specific implications for Aboriginal and Torres Strait Islander peoples. ACTU Indigenous Officer Lara Watson has explained that a reduced working week would enable Aboriginal and Torres Strait Islander peoples to engage in significant cultural and care responsibilities. It would provide benefits, such as enhancing the capacity for Aboriginal and Torres Strait Islander peoples to teach language and customs, to be able to walk country to teach songs and histories, to perform and teach ceremony, to reconnect to Country, to care and learn from Elders, and to practice traditional dance, art and song.

Watson has explained that the majority of Aboriginal and Torres Strait Islander peoples do not live on traditional country due to the effects of colonisation and dispossession. Time is required for travel to country and for gathering. Watson has outlined that Aboriginal and Torres Strait Islander workers are often subject to "the Western constraints of time", and having |access to a 4 day week could really re-ignite an ancient and vibrant culture that can be shared with all who live on this country".

In more recent times, unions have campaigned for parental leave, the right to disconnect, the specific needs of Aboriginal and Torres Strait Islander workers, and the possibilities of a four-day week

Experiments with the four-day week

Australia's unions have pursued a range of measures to seek greater job security, improved and genuine flexibility to support working peoples caring responsibilities, and enhanced leave entitlements. Unions in some sectors have also drawn upon differing conceptualisations of the four-day work week to restructure working time in a manner that facilitates an improved work/life balance for union members, while meeting the specific requirements of a particular industry, its employers, and its workforce.

While there are many examples of this, here we seek to highlight two recent case studies that have pioneered different forms of the four-day week in enterprise bargaining agreements – the predominant form of collective bargaining in Australia.

The Australian Services Union (ASU) is credited as the first union to attain a four-day working week trial in an enterprise agreement. The union's Victorian Private Sector branch negotiated for the

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measure to be included in the 2023 enterprise agreement for its members working at Oxfam, which employs around 100 staff members. Employees could choose to have their weekly entitlements varied to 30 hours per week with no loss of pay as part of the trial[5].

The four-day week proposal was driven by ASU delegates and members working at Oxfam. ASU Victorian Private Sector Branch Secretary Imogen Sturni noted that the proposal came in the context of the global 4-day week trials being conducted, and changed expectations around the ordering of working lives that followed COVID-19. Sturni commented at the time that "we've had this concept of 'nine-to-five, Monday to Friday' for some time now … Really, with COVID, though, I think we did see a bit of a re-assessment around 'maybe there are better ways — or at least other ways — of doing things'"[6].

Campaigns for reduced working hours continuing a long tradition of taking action to secure a decent work/life balance for working people

Sturni noted that Oxfam's leadership deserve acknowledgement for their receptiveness to the trial, building on an established record of facilitating genuinely flexible working arrangements for its staff, and co-designed the framework for the trial with the union. The trial period is underway at the time of writing.

In terms of the anticipated benefits of the four-day week, Sturni referred to results from international trials that have identified the improved work/life balance and the positive effects this has had on working people's physical and emotional health. It has particular significance in the context of the need to adjust models of work to ensure greater gender equity, and to support all forms of family unit (including working single parents).

Also in 2023, the Shop Distributive and Allied Employees Association (SDA), the union representing retail, warehousing and fast-food workers, concluded an enterprise agreement with the large hardware retailer Bunnings that included making staff eligible for a trial of the four-day week.

The impetus for this agreement came from the results of a survey initiated by the union titled "Who Cares? A Fair Share of Work and Care" in 2021. Conducted by a research team of academics from the University of New South Wales and RMIT University, the survey considered the work and care arrangements of workers across the retail, warehousing, and fast food sectors[7].

888 Memorial, Melbourne

In particular, it analysed how workers in these sectors balanced the needs of work and family, especially in regard to caring responsibilities, and the main challenges that they encountered. The report from the survey concluded that SDA members made vital economic and social contributions through both their working lives, but also their unpaid labour as parents and carers, yet, "these social and economic contributions are poorly recognised and accommodated in their working lives"[8]. 55 percent of all participants in the survey regularly contributed care to another person, but caring responsibilities often encountered burdens imposed by inflexible working arrangements, or 'flexible' arrangements that were too often structured around the needs of the employer, rather than balancing these with the needs of workers[9].

The 2023 enterprise agreement negotiated between SDA and Bunnings was framed to respond to these needs in a manner best suited to both workers and the employer. The agreement included the ability to conduct a trial of a four-day week for full time staff members, in which they could elect to work all their required hours in that four-day span, or alternatively they could work their hours across a nine day fortnight. The agreement also included additional annual leave (a total of five weeks per year), a change to the controversial rostering system, and a 10.8 percent wage increase[10]. SDA National Secretary Gerard Dwyer commented that, "this is a significant breakthrough for work-life balance for workers in the retail sector"[11].

In both case studies, we can see unions seeking to adapt the broad demand for a four-day week to the specific needs of their members and the industries that they work within. In this, these unions and the others in Australia undertaking various campaigns for reduced working hours are continuing the movement's long tradition of taking action to secure a decent work/life balance for working people.

When the Stonemasons campaigned for the right to an eight-hour day in the 1850s, they were asserting their fundamental humanity. While they were skilled professionals who were proud of their labour, they declared that they also had a right to a life outside of work. James Galloway, a significant leader of the campaign, declared that the Stonemasons wanted to play more than "the mere part of machinery".

This is a humanising claim that continues to inspire the movement. Though the specific demands have changed drastically since the 1850s, the need to claim the right to a life outside of the workplace remains.

1 Australian Trade Union Institute (ATUI), "21 April 1856 – Melbourne Stonemasons take action for the 8 Hour Day", *ATUI,* accessed: https://atui.org.au/2022/04/14/21-april-1856-melbourne-stone masons-take-action-for-the-8-hour-day/; Sean Scalmer, "Lessons from the campaign for the eight-hour day", *ATUI,* accessed: https:// atui.org.au/2023/04/24/lessons-from-the-campaign-for-the-eight-hour-day/

2 Centre for Future Work, *Australians Working 6 Weeks Unpaid Overtime, Costing Economy Over $92 Billion: Go Home on Time Day Report,* 22 November 2022, accessed: https://futurework.org.au/ post/australians-working-6-weeks-unpaid-overtime-costing-economy-over-92-billion-go-home-on-time-day-report/

3 Fair Work Ombudsman (FWO), "Aboriginal and Torres Strait Islander Peoples", FWO, accessed: https://www.fairwork.gov.au/find-help-for/aboriginal-and-torres-strait-islander-people

...continued on page32...

The Four-Day Week, a False Good Idea?

In order to sweeten the pill of the pension reform forced upon us in 2023, the Macron government is now swearing by the four-day week, launching an experimental phase in the French civil service in the spring, with no plans to reduce working hours. Under these conditions, the four-day week meets the aspirations not of workers, but of employers.

In a social context where salaries are falling, purchasing power at half-mast, and where, particularly since the Covid crisis, we are witnessing a growing quest for meaning in one's work, a reduction in working hours is undeniably one of the concrete answers to be provided. It is one of the most effective ways of boosting a country's economy and reducing inequalities. In fact, shorter working hours have always been a marker of social progress and job creation.

However, the CGT is opposed to a four-day week without any reduction in weekly working hours, because it would mean that employees themselves would pay for a false reduction in working hours, since their workload would be maintained and the pace intensified. The four-day week does not in itself guarantee a reduction in working hours, but rather a different organisation of working hours. In such a configuration, the employer requires workers to concentrate into four days what they now do in 5 days, with the physical and psychological risks that this automatically entails.

The real reduction in working hours is 32 hours, with no loss of pay thanks to an increase in the hourly wage rate, and with increased hiring at the end of the day. This would make it possible to safeguard and create jobs rapidly and on a massive scale. The CGT estimates the number of jobs concerned at 4 million.

In France, "unregulated" experiments with a four-day week without any reduction in working hours have been carried out recently. When not accompanied by a reduction in working hours, and when not carried out in consultation with employees, an intensification of work cadences has been noticed that can put off the vast majority of employees who aspire to work less and work better. There are several concrete examples, but let's just mention Sodexo. The company quickly went back on its project, and for good reason: the daily workload had increased enormously, and the cumulative fatigue – from standing, repetitive movements, etc. – was so great that the three days' rest were not enough to dissipate the fatigue. Without mentioning the organisational constraints, restaurants not initially designed for this model, found it difficult to perform under these conditions while ensuring food safety for customers. In the end, the employees, who were initially quite willing to take three days off, were happy for it to be over.

In contrast, French companies that have experimented with a four-day week and reduced working hours have achieved excellent results in terms of both productivity and employee well-being, which is intrinsically linked to productivity and job creation. In other words, when it works, it's because employers have created jobs to compensate for the one day less worked, and have reduced work week hours. This is the case for a number of pioneering companies in France: the LDLC IT group (in the Rhône-Alpes region), the Neuhauser industrial bakery (in Moselle), and the Tetrapack brickworks (in Dijon), under an agreement negotiated by the CGT.

Therefore, the real reduction in working hours, and the best way of reconciling work and private life, is the switch to 32 hours, based on:

- The restoration of a hierarchy of standards, a protective measure for all employees, without which they are put in competition according to the wishes of employers.
- A law setting a new weekly working time of 32 hours. It is imperative to create a protective national and interprofessional framework that enables all workers to access this right regardless of the employer's whim.
- Wage levels to be maintained, with an increase in the hourly rate proportional to the reduction in the working week.
- Hiring corresponding to the fraction of hours reduced.
- New rights of intervention and negotiation to prevent a deterioration in working conditions, with all the physical and psychological risks that might entail.

Moreover if there is to be a phase of experimentation, it must be framed by an obligation to reduce working hours, and be negotiated with the unions when there are any.

In addition, it should be noted that the primary explanatory factor of professional inequalities is that women's time is very different from men's. As they still take on the bulk of household tasks, women have to work double shifts, and 30 percent of them are trapped in part-time jobs. The result: partial pay, frequently changing work schedules and maximum working hours.

Reducing working hours means freeing up time for both men and women for parenthood, leisure activities and social and societal commitments. As

...continued on page 32...

Shorter working hours are a marker of social progress and job creation, but a four-day week without any reduction in weekly working hours is a false reduction

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Zenroren Demand Government Panel's Report on 'Work-Style' Reform Be Retracted

In 2018, upper limits to overtime, including work on holiday, were introduced. The panel favours exempting such work from the law if there is a labour-management agreement

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In 2023, the Government tasked a panel with examining a range of issues relating to labour rights and "work style", including the question of working time, which only recently received stronger legal protection. The panel has now produced its report, but the report's proposals in favour of exemptions from legal obligations are pointless at a time when strict implementation of worker protection provisions of relevant laws is called for.

The report calls for the provisions and the basic principles of the Act, which are regarded as a labour charter, to continue to be maintained, along with provisions that rule out all feudalistic labour practices. It also says that the spirit of worker protection must not be forgotten. These can be taken as a matter of course. But what is needed with respect to the Labour Standards Act and to matters of labour administration generally is not just passive responses like this.

Japanese workers in the workplace are faced with a prevailing tendency towards anti-labour practices, which include discrimination against women, discrimination based on type of employment, increasingly precarious employment, and the irregular use of workers by concealing their status as workers. Many workers are forced into harsh working conditions that increasingly cause health problems, both physical and mental. And there is no end in sight to the scandal of *karoshi* ("death from overwork"), an occupational health phenomenon first identified in Japan, which ILO has called "an important social problem in Japan"[1]. Actually, the fact that this phenomenon remains a serious social problem is a shocking indictment of the kind of working practices that exist in modern Japan. Equality in industrial relations is far from being realised. The reality is that many workers are not allowed to exercise even basic labour rights.

It is regrettable that there are many workplaces that fail to comply with the basic principles and provisions of the Labour Standards Act. Particularly, the law's central provisions regarding working time regulation is not adequately implemented in many cases. The strict implementation of labour laws are thus neglected. What is more, work style is changing due to an increase in platform workers using information technology and those who work remotely. It is necessary to develop new means of strictly implementing the worker protection laws to cover these new forms of work. Under these circumstances, the government panel is called upon to come up with a report on ideas as to what should be done to meet the requirements set by the Labour Standards Act. What the present panel have included in their report fails to address any of these issues and is totally pointless.

Relying on 'deregulation and market forces' is denial of labour administration.

The trade union, which constantly receives complaints about the worker rights being violated, would point out - in place of the panel's report - that the need now is to not just strictly implement the provisions of the Labour Standards Act. In addition to that, the union would demand the abolition of the easily set exemptions to working time regulations; the union would call for expanding worker protection and penalty provisions; and the union would call for expanding the scope of application of the laws (through improving the standards to identify a worker's status as an employee). The union would also call for improvement of the labour standards administration in order to secure the implementation of the law, and for the reactivation of the exercise of the authority of judicial police in this area. And the union would further call for the improvement of staffing of regular officials at the labour standards inspection office, and of technical officials and secretaries with the Health, Labour and Welfare Ministry, all of which are needed to make the implementation possible.

What we point out is missing from the panel's report. To our surprise, it even goes on to call for "encouraging businesses to voluntarily improve their business activity on their own through the function of market forces". We do not reject the notion that the notion that good businesses will survive the market competition and that poor businesses may be dumped into the dustbin as one of the economic policies. But, the history of industrial relations since the establishment of the Labour Standards Act shows that we cannot believe that market forces are a *panacea.* The labour ministry should realise that emphasising the role of market forces in discussing the Labour Standards Act is tantamount to arguing that, "if you are not satisfied with the present company, you might take up a job at a new company. Labour laws are not necessary".

Arguing that labour practices can be exempt from labour law requirements as long as they are supported by labour-management agreement is a dangerous view that will gut the Labour Standards Act.

The panel's report also says that it is necessary to review the Labour Standards Act so that choices made by labour and management be reflected. The

current Labour Standards Act has Article 36, which enables the employer to have employees work in the manner that violates the law if the employer has a written agreement with a union. In order to reduce harmful effects of the provision, upper limits to overtime, including work on holiday, were introduced in 2018. But the panel's report is in favour of making such overtime work totally exempt from the law if there is a labour-management agreement. This is a dangerous argument that will gut the Labour Standards Act. Even if only a portion of employees have agreed to make such overtime work exempt from the law, the employer would prefer to use a workforce that is free of worker protection provisions.

It is not difficult to imagine that the workers, who opt to continue to work under the Labour Standards Act, will likely be pressurised to work without labour law protection in relation with their employment and promotion. The Labour Standards Act should be invoked to invalidate any labour-management agreement reached on overtime work that exceeds the limits set under the law. It is shocking that the Labour Ministry's study panel came up with proposals that makes light of the Labour Standards Act. This is really the Ministry's blunder.

It is essential for equality in industrial relations to be realised through trade unions, not by way of a separate channel.

To begin with, the employer has more power than the employees in the workplace. A labour-management choice would strongly reflect the employer's intent. If equality is to be achieved between labour and management, the trade union's role is essential. The panel's report says that the trade union continues to have a great role to play. But the report does not include an analysis of why the unionisation rate has been declining. It also fails to consider taking policy or institutional measures to boost the rate, including steps to expand the framework for determining the workers' status as employees under the Labour Standards Act and the Labour Union Act, or to prevent the employer from making attacks on the union. It instead proposes improving labour-management communications separate from the union. But this should not be exempt from the labour laws and regulations.

Shrewd tricks to get the employer relieved of the responsibility to protect employees and force the employees to take responsibility for their problems.

Worker protection laws must be applied to all workers under any circumstances. This is what the Constitution of Japan calls for as a fundamental requirement regardless of changes taking place as time passes. The diversity of working people's options should be recognised only when the options are on better conditions than the labour standards. The need to ensure the diversity should not be used to justify creating exemptions from the Labour Standards Act or for expanding the categories of exempted employees. The panel's report calls for encouraging working people to choose from a variety of work styles without worker protection laws on condition of labour-management agreement and the worker's consent. It requires such people to have self-management skills or to make efforts to develop their own ability or career and also calls for the employer to support employees' efforts to do so. This is a shrewd trick for the employers to relinquish their responsibility to protect the employees and to force employees to take responsibility for their problems. Clearly, it is not commensurate with the panel's task of discussing the Labour Standards Act.

This is a dangerous argument as it is likely workers will be pressurised to agree to overtime work that exceeds the limits set under the law

We demand that the Labour Standards Act provisions be drastically strengthened, including the working hours regulation, instead of easing the regulation.

The Japanese government has ratified none of the ILO conventions concerning working hours. The fundamental problem lies in the weak government regulations on working hours. Everyone has a right to live in good health. Men and women alike need to have time to bring up children or carry out nursing care. In this regard, it is important to strengthen the working hour regulation in terms of gender equality and the effort to reverse the birthrate decline. The task is for the government to create an environment that guarantees workers' rights and that enables people to give birth to children and to bring them up without worry, which is conducive to every citizen's happiness.

Zenroren is making efforts to build a society in which everyone can continue to work without worry. It demands that the government strengthen regulations under the Labour Standards Act and improve the setup for labour standards administration, establish a national uniform minimum wage system, and improve and expand social services. We call on all workers to unite to achieve these objectives and establish worker rights in the workplace.

1 World Day for Safety and Health at Work 2013 Case Study: Karoshi: Death from overwork (ILO), at: https://www.ilo.org/safework/info/publications/WCMS_211571/lang--en/index.htm

The UK and the regulation of working time [1]

Three years after the regulations came into force, where there was no collective agreement in place, employers were relying almost exclusively on mass individual opt outs

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The UK Government has traditionally been hostile to the statutory supervision of working time. It has been especially hostile to the prospect of becoming treaty bound to implement limits on the hours of work and the provision of rest days and holidays. None of the 23 non maritime International Labour Organisation ('ILO') Conventions which have imposed, or continue to impose, state obligations on the management of working time have ever been ratified by the UK.

Post-War the reasons cited for the UK's refusals to ratify the ILO instruments changed as the UK abandoned social and liberal democracy for neo-liberalism. The question of whether the Hours of Work Convention No. 1 of 1919 should be ratified was revisited in 1959 and 1965, the Government taking the view that "hours of work have generally been regarded as best settled by voluntary collective bargaining…without intervention by the state"[2]. This reflected faith in so called 'voluntarism,' as closely related trade union suspicion of the intrusion of the law into industrial relations and the desire of employers to be free as circumstances – and the unions - permitted employers to demand whatever they wanted of their workforces. Respect for voluntarism became a standard justification for such refusals in the 1970s and even the 1980s. By the early 1990s, trade union freedom and power had been severely restricted and the Government had long been routinely equating regulation and demands for decent terms and conditions of employment with the high levels of unemployment created by neo-liberal economic policies. Consequently the argument was now that the 'regulation of working hours, other than for health and safety reasons, would be a major barrier to employment,' with such regulation represented as likely to 'impose unrealistic restrictions on business, reduce productive capacity and erode competitiveness'. That subsequently much-repeated passage ends with the statement: "Employment growth is the best way of raising living standards generally".

A similarly evolving view was taken of the Weekly Rest (Industry) Convention (No. 14) of 1921 - in 1962 UK 'voluntarism' was cited as the principal barrier to ratification. Even in 1983 the Government argument was that these were "matters for collective bargaining…although they may sometimes be determined by [the soon largely to be abolished] Wages Councils". By 1992 the argument was that ratification would be 'a burden on business'. Dropping any reference to collective bargaining, and reflecting the promotion of 'take it or leave it' so called individual contracts of employment imposed unilaterally by the employer, the Government stated that it thought weekly rest 'best left for negotiation between the parties directly'. Exactly the same arguments to justify non-ratification of Convention No. 1 were trotted out by the Major government in relation to the Hours of Work (Commerce and Offices) Convention (No. 30), the 40 Hour Week Convention (No. 47), the Reduction of Hours of Work (Public Works) Convention (No. 51), the Reduction of Hours of Work (Textiles) Convention (No. 61): "The regulation of working time, other than for health and safety reasons, would be a major barrier to employment". A slightly different formulation was employed to dismiss any prospect of ratification of the Holidays with Pay Convention (No. 132), 1970[3], initially rejected by the Heath government as a matter – along with 'wages, hours and other similar conditions of work' - for employers and the unions 'without detailed statutory intervention'.

It thus came as no surprise that during the 1990s the Major government sought to resist the obligation to implement the EU Working Time Directive ('WTD')[4], the terms of which are broadly similar to ILO Convention No. 1, into UK law. It argued at the Court of Justice of the European Union that it was a 'social' measure rather than the primarily occupational safety and health directive that the European Commission held it to be, and thus an element of the Maastricht Treaty 'social chapter' which the Major Government had so famously declined to ratify. Therefore, it argued, the UK was not bound to implement it. However, that argument was rejected and the Government lost its case.

The WTD was, of course, implemented as the Working Time Regulations 1998 by the 'New Labour' Government shortly after it was returned to power in 1997. However, employers were given considerable scope to avoid the necessity to impose a 48-hour maximum working week.

The principal tool of evasion in the UK regulations is the individual 'opt-out'.[5] However, the UK went further than the WTD allowed by permitting employers to require workers to sign an opt-out as a condition of recruitment. Although this surrender of OSH protection can subsequently be withdrawn, it is nevertheless the case that despite the anti-detriment provisions of the regulations and unfair dismissal 'protection', unless backed by a vigorous trade union, few workers

would relish telling their employer that they were withdrawing the undertaking. Fewer still would be aware that such a withdrawal is not a breach of contract.

The EU Commission issued a Communication in 2003[6], arguing that the availability in the UK of the recruitment requirement undermines the principle of free consent on which the legitimacy of the opt-out depends, and which the Directive demanded. The Commission also observed that the Directive required a record to be kept of the hours worked by workers who work in excess of the 48-hour average, in contrast to the UK regulations which require only that a record is kept of the decision to opt out[7]. Compliance was also said to have been compromised by the failure of the regulations to require employer to make a record of breaks taken by all workers[8].

Of more significance than sub-minimal record keeping requirements in undermining the WTR, is the fact that while tribunal claims can be made for breaches of the rest break, daily and weekly rest and holiday entitlements, only modest amounts of compensation are awarded. Such claims are thus discouraged, tending to be made after employment has been terminated and as a claim ancillary to one attracting more worthwhile compensation. Awards are made at the discretion of the tribunal according to "equity and the substantive merits of the case"[9], and are rarely sufficiently dissuasive. For example, in *Miles v Linkage Community Trust* [2008],[10] the EAT upheld a tribunal's decision to award no compensation to a claimant who had succeeded in a claim for a breach of Reg. 24 of the WTR governing daily rest because he suffered no pecuniary loss, and there was "no culpable default" on the part of the employer, who was confused by the complexity of the WTR[11]. Such is the inadequacy of the individual enforcement regime employers sometimes prefer to continue to breach the regulations even after a tribunal has found against them – a prime example of the 'commodification' of employment rights.

Perhaps more significantly still, the regulations do not provide standing for workers to bring a tribunal claim to either compensate a worker for being compelled to work in breach of the 48-hour limit, or to oblige an employer to adhere to the 48-hour limit[12]. After workers had been obliged to work in excess of the WTR limits, a claim for breach of contract was successful in the High Court in *Barber v RJB Mining*[13]. However, the case does not amount to a precedent[14], and the remedy was merely a declaration that there had been a breach of Reg.4(1) - the injunction sought was not granted. Any detriment or dismissal that followed the exercise of their right to cease work would therefore have seen the employee 'protected' only by the prospect of a compensatory award under section 45A or 101A of the Employment Rights Act 1996,[15] rather than by the criminal law.

Unfortunately, not only are the judiciary traditionally reluctant to grant injunctive relief in such cases, but tribunals are able only to grant interim relief only in very limited circumstances, and breach of contract claims can be brought to tribunal only after the employment relationship has terminated. Workers still under contract must go to the County or High Court.

As a substitute for litigation, employers and workers are steered towards the Arbitration, Conciliation and Arbitration Service (ACAS) for advice, with – depending on the nature of the undertaking - the Health and Safety Executive ('HSE') or the relevant local authority serving as a backstop if ACAS cannot broker agreement. However, while the impoverished and over stretched HSE and the similarly cash strapped local authorities have a measure of supervisory authority, they too are able to do little more than advise. Working Time Officers are 'reactive'. They don't inspect, they respond to complaints, which are 'prioritised', and investigated initially by 'non visit methods' – by a telephone call to the employer, when advice and guidance is given. Thus there is no incentive for employers to comply with regulations until and unless approached by Working Time Officers. Enforcement action is almost unheard of.

This abuse of the individual opt out is exactly what one would expect in the circumstances

The HSE is also responsible for overseeing the use of agreements, collective and otherwise, to circumvent the regulations. Article 17 of the WTD permitted worker rest entitlements, the general 'daily' night work limit of 8 hours[16], and the general 48-hour average to be varied by collective agreement at enterprise, national, or sectoral level, to tailor them to the needs of a particular industry, or for with particularly busy periods of work. Crucially, Article 17(2) required compensatory rest to be provided to 'rebalance the books', with an extended reference period of up to six months to accommodate the extra rest to bring the overall weekly average down to 48 hours.

However, in the UK, where a union is not recognised, employers are permitted by Schedule 1 of the WTRs to use a 'Workforce Agreement' ('WA') to impose the working patterns they require on particular shifts, or categories of workers – even, in practice, on the entire workforce. Copies of the agreement (valid for up to 5 years) and written guidance (or merely verbal guidance if the employer might reasonably think that is what is required), must given to all the workers affected. No other body receives a copy. The employer decides on how many 'workforce representatives' are necessary and must organise a secret ballot to permit the affected workers to vote for the candidates. The workers don't actually vote on whether to accept the WA, they merely select the representatives who will validate the WA - the agreement requires the signature of the representatives to become effective. Where 20 or fewer workers are concerned the WA can be signed

by either the representatives of the workforce or by the majority of the workforce. Such arrangements arguably amount to no more than an administrative chore for Human Resources (HR).

The concept of compensatory rest has, along with the concept of the regulation of working time as a justiciable matter, been allowed to fade out of public consciousness. While failures to provide compensatory rest or to keep records of WAs are criminal offences, prosecutions are unheard of. As a consequence, many employers who do not recognise a trade union see no need even for Workplace Agreements. Frequently relied upon before it had become generally understood that the Regulations were subject only to notional enforcement[17], after 2000 interest in this means of securing formal avoidance of the regulations rapidly waned. A survey conducted towards the end of 2002[18], three years after the regulations came into force, indicated that where there was no collective agreement in place employers were relying almost exclusively on mass individual opt outs.

The absolute cap in the Road Transport Working Time Regulations is routinely broken and the Regulations very rarely enforced

This abuse of the individual opt out is exactly what one would expect in the circumstances. Even where five-day shifts of 12 hours duration (common in warehouses and factories which run 24 hours a day) are worked as a matter of routine, the use of the opt-out would suffice as a gesture sufficient to convince the workforce in a non-union workplace that their employer is doing it 'by the book'. No need, of course, under the regulations, to keep a record of breaks taken and hours worked. Keeping a record of the opt-out signed by each worker would likely be sufficient to convince the local authority or HSE, of the absence of *Miles* style 'culpable default' of the breach in the unlikely event of their taking an interest in the hours worked in a particular firm.

That this *laissez faire* attitude to the Working Time Regulations was a calculated government policy was confirmed when the working time regime was extended to the transport sector by the 2002 Road Transport Working Time Directive[19], and the 2005 Road Transport (Working Time Regulations). Just as cash strapped local authorities and the beleaguered HSE were given responsibility for enforcing the general Working Time regime, what is now known as the Driver and Vehicle Standards Agency – a public sector body that was being cut to the bone long before 'austerity' kicked in - were given responsibility for enforcement of the 2005 regulations.

The Road Transport WTRs (which are not concerned merely with the driving time governed by tachograph regulations but with all working time) impose an *absolute* cap of 60 hours on a week's work, and require that the driver works no more than an average of 48 hours per week, calculated over a 17 week, or 26-week reference period. The directive does not allow individual opt-outs or negotiated variations. A breach of the RT WTRs is, of course, a criminal offence. However, unlike the general WTR which provide sanctions only against the employer, both the employer and the driver may be prosecuted[20]. Nevertheless, the absolute cap is routinely broken in the road haulage industry, because the RT WTR are very rarely enforced[21].

More remarkably still, the government connived with the Road Haulage firms to create the 'period of availability' ['POA'] permitting employers to deduct inactive time when the driver's working time is calculated. The driver, although being paid, and responsible for many hundreds of thousands of pounds worth of vehicle and freight – who may have 'clocked on' only half an hour earlier - *is deemed to be no longer working.* Employers unprepared to run the – albeit minimal – risk of ignoring the RT WTR while demanding long hours of their drivers will often now press drivers to record every significant period when vehicles are not being driven or unloaded as a 'period of availability'.

The POA scheme offends against common sense[23]. It is also at odds with the interpretation of the 2003 general WTD by the ECJ in *Dellas*[24]. In that case the court held that there was no intermediate category between rest and working time - 'The fact that on-call duty includes some period of inactivity is thus completely irrelevant...' . The Court of Appeal in *Gallagher v Alpha Catering Services* [2005][25], a case concerning airport lorry drivers who, their employers claimed, when waiting in their vehicle for fresh instructions were taking rest breaks, held that even if in retrospect the workers had enjoyed an uninterrupted period without being required to work it did not amount to a rest break, and was work time, unless they knew at the start of the period that it they would not be required to work for a specified period.

The 2002 Directive required penalties for breaches of the WTR to be 'effective, proportional and dissuasive'[26], yet the Secretary of State for Transport chose instead to implement a regime of improvement and prohibition notices to be issued by the Driver and Vehicle Standards Agency to recalcitrant employers before a prosecution is contemplated. No prosecutions against employers have been brought under the regulations. Drivers found to be breaching the regulations are, in theory, subject to a system of penalties, although prosecutions are vanishingly rare, occasionally taking place following very serious road accidents when driving time and working hours are subject to close scrutiny.

This potential liability ensures that drivers are discouraged from drawing attention to breaches of the regulations by employers, and the fact that they are unable to enforce the 2005 regulations against their employer in the employment tribunal serves to make doubly sure that the wheels keep turning[27]. While Reg. 32 of the 1998 WTR provide that a worker dismissed for refusing to work in breach of the regulations is to be regarded as unfairly

dismissed, no such protection is afforded to drivers. Instead, in such circumstances, they are obliged to report their employer (and, in effect, themselves) to the DVSA. If dismissed or subject to some other detriment as a consequence, they must avail themselves at tribunal to the 'whistle blowing' protections afforded by the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996.

Conclusion

As a totemic supposed example of European 'interference' in industrial relations, the WTRs had long been identified as the likely first choice for post Brexit 'deregulation'[28]. However, consultation on the WTRs has been limited to record keeping and holiday pay calculations. In contrast to some of the crude Brexiteering 'spin' accompanying pronouncements on this inconsequential initiative, the Government has quietly made it plain that it will do no more than clarify the current minimal record keeping requirements and that "It has never been the government's intention to remove the protections provided to workers by the Working Time Regulations"[29]. However, interesting as Conservative politicians will find these statements, they are of little or no consequence to those outside their party. What is of consequence is whether or not the anticipated 2024 Labour government, guided by the WTDs, the Court of Justice of the European Union jurisprudence and by the relevant ILO Conventions and recommendations[30], is prepared to dispense with the calculated lacuna in the UK working time regime considered in the preceding pages and provide an effective working time regime for the UK.

1 Sections of this article feature in chapter 4 part 2 of *Benchmarking Workplace Rights* (PhD Thesis, University of Liverpool, 2019) by the author and in chapter 4 of *International health and safety standards after Brexit* (IER, Liverpool, 2020), by the author and Prof. David Whyte of Queen Mary University of London.
2 The National Archives files LAB 13/3063/2&3. These files contain records of reviews of unratified ILO Conventions conducted by the Department of Employment/ Department for Education and Employment and their predecessors. These often cite the White Papers issued following the adoption of an instrument by the ILO. All subsequent comments on reasons for non-ratification are taken from this file.
3 By 1997 under New Labour and with the implementation of the WTD in progress along with a drive to ratify more ILO instruments, it was envisaged that the Convention would be ratified.
4 Directive 93/104/EC. This has now been replaced by Council Directive 2003/88/EC.
5 See Article 22 of the 2003 directive and 'Miscellaneous Provisions', specifically Article 1 (a)-(d) of those provisions. The 48 hours includes overtime work, but annual leave and sick leave should not be included in the calculation.
6 COM (2003) 843, 30 December 2003.
7 As a result of amendments to the regulations made in 1999.
8 COM (2003) 843, 30 December 2003, para 2.2.1.2.
9 "...having regard to" the default of the employer and the loss to the worker (Reg.30(4)(a) and (b).
10 UKEAT/0618/07/DA
11 Ibid, paras 11 & 12 and 30-34.
12 Although if there has been no opt out criminal penalties are a theoretical possibility (Reg 4(2)).
13 *Barber v RJB Mining* [1999] ICR 679.
14 In *Sayer v Cambridgeshire County Council* [2007] EWHC 2029 (QB) the High Court held that a breach of statutory duty could not amount to a breach of contract.
15 *Barber* p686.
16 Capped at 8 hours, and which cannot be the subject of an individual opt out.
17 See a survey in Neathey and Arrowsmith, 'Implementation of the Working Time Regulations', EMAR Series 11 (DTI,2001) which saw 3 out of 20 respondents reporting using workplace agreements and the 1999 *Warwick Pay and Working Time Survey* which reported a significant number of the 300 employers surveyed using WAs
18 See 'Opting out of the 48 hour week: employer necessity or individual choice?' Barnard, Deakin and Hobbs (2003) 32*ILJ* 223.
19 Directive2002/15/EC
20 Schedule 2, reg 17(1).
21 Reg. 10 requires employers to inform employees of the requirements of the regulations.
22 Even business lunches are deemed to be working time under the 2003 WTR (See Gov.UK 'Maximum weekly working hours' 2: 'Calculating your working hours.'
23 2005, *op cit.*
24 Ibid, para 47.
25 IRLR 102
26 Article 11, Directive 2002/15/EC (above).
27 Reg.30.
28 *The Sun,* 16 December 2017: 'SHACKLES COME OFF. British workers set for post-Brexit overtime boom as ministers plot to scrap EU limits.' The paper told readers that 'A Sun analysis suggests that the current limit could cost some families £1,200 in lost pay….'
29 Department for Business and Trade, 'Retained EU Employment Law: A government response to the consultation on reforms to retained EU employment law and the consultation on calculating holiday entitlement for part-year and irregular hours workers' 8 November 2023.
30 Para 6 of the preamble to WTD 2003/88/EC requires that when implementing the directive, 'Account should be taken of the principles of the International Labour Organisation with regard to the organisation of working time, including those relating to night work.'

Drivers are often pressed to record any time the vehicle is not being driven or unloaded as a 'Period of Availability', which periods are discounted from working time calculations

From Char-A-Bancs to Holiday Camps: The Campaign for Paid Rest

The British TUC launched its first paid holiday campaign in 1911, but the first paid holiday law in the UK only appeared in 1938

In the pre-industrial period, legally mandated vacations with pay were unheard of, yet many working people, whose lives revolved around the rhythms of nature and tradition, enjoyed regular breaks from working life, even if their lives were hard and the work demanding[1]. But as agriculture gave way to industry, to the rhythms of the factories, and to the incessant demand for continuous production, the informal – and natural – periods of relative relaxation began to disappear[2]. The new working life for industrial workers was relentless, and those who toiled in mines, factories and mills would stay chained to this unceasing mechanical rhythm for many years. The 100-hour week was not unusual in US factories[3], and the issue of working time could be incendiary; literally in 1886 at Haymarket in Chicago when events at a strike in support of the eight-hour day spiralled violently out of control (this incident is often cited as spurring global recognition of 1 May as International Workers' Day)[4]. But the first national changes in most countries were modest, such as the Bank Holiday Act of 1871 in the UK, which gave workers three or four holiday days each year. Paid leave over and above this minimum remained rare and was typically a contractual benefit for managerial workers. In 1911, the British TUC launched its first paid holiday campaign[5].

Early 20th century: paid vacation begins in Europe

In 1918, paid vacation was written into the draft Soviet Labour Code. The draft was adopted four years later, when the Soviet Union became the first country in the world to offer comprehensive paid statutory holiday to workers. The Soviet model offered a minimum of two weeks paid time off per year to all workers who were 18 years or older, and a full month of paid leave for workers under the age of 18. The basic entitlement was extended to one month after one year in employment[6]. A decree mandating the eight-hour working day had been introduced as early as 1917[7], though the Soviets were actually beaten to that record by the progressive Colorado government that flourished in early 20th century Uruguay, which set an eight-hour standard as early as 1915[8] (and eight-hour campaigns had been won elsewhere for some groups of workers, even in the 19th century[9]). France and Germany followed suit and both introduced the eight-hour day in 1919, prompted by the Soviet example and by the demands of workers demobilised from the First World War. Around Europe, eight-hour legislation became common, and in the UK the principle was widely adopted under collective agreements (but was not universal). Highlighting the international priority of working time in this period, the first instrument adopted in 1919 by the newly formed International Labour Organisation (ILO) was the Hours of Work (Industry) Convention (No. 1), setting the standards of both an eight-hour day and a forty-eight hour week[10].

On paid vacation, however, most countries lagged. Despite concessions on working hours, paid holidays remained uncommon. But change did come, through workers' agitation and popular campaigns (later encouraged by the adoption of another important ILO instrument). Spain was an early pioneer, establishing 15 days holiday for public employees from 1919 (though the law did not apply either to the private sector, nor to agricultural workers)[11]. Italy later mandated a right to paid holidays to all workers who had completed one year of employment (though the legislation specified no duration for these holidays)[12]. And in 1931, Spain widened its holiday law to cover all salaried workers (it still did not apply to agricultural workers, the majority of the workforce at that time)[13]. In France, a landslide victory for the Popular front – and pressure from widespread strikes and factory occupations – led in 1936 to the signing of the Matignon Accords, and the introduction of both a 40-hour week and two weeks of paid holidays for all workers. The same year, the ILO adopted the Holidays with Pay Convention (no.52), which called for an annual holiday with pay of at least six working days, after one year of continuous service, increased to twelve days for under-16s (again, only after one year of continuous service). Two years later, in the UK, the Holidays with Pay Act was passed in 1938, giving many workers their first legally mandated week of paid holiday. It was, however, only half the amount that the TUC had called for[14].

The age of the holiday camp

Despite absence of paid holidays as we understand them in the modern sense, day trips to the coast were common for workers in the UK, even in early 20th century. The expense involved meant many such trips were brief, perhaps for a single day. These trips were often organised by – and funded by – the employers, with dozens of workers often crammed into the peculiar open-top passenger vehicles of the day known as char-a-bancs[15]. The Twickenham Museum (which hosts photographs of these outings), observes that, "such a trip might be the only day out during

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the year for people without statutory holidays"[16]. When employers became legally obliged to offer paid holidays, one unfortunate outcome was that they began to withdraw funding for these previously widely-enjoyed trips[17]. A worker might now have paid holiday, but the costs of the holiday (a seaside hotel, for example) still remained beyond the means of many. The solution was the workers' holiday camp. Initially there were just crude tents, but the camps evolved to include huts, cabins, and chalets. By the mid-1930s, such camps were widespread along the English coast[18].

These camps were primarily profit-making businesses, such as Butlin's, which kept prices down by catering for thousands at a time, with all-inclusive accommodation, meals and entertainments laid on at a fixed price[19]. An alternative model was developed in the 1930s in the form of the Derbyshire Miners' Camp on the British coast at Skegness. This camp was owned by a trade union welfare organisation, and was subsidised for union members by a levy on coal. In its initial season, it catered for 15,000 miners and their families[20]. Across Europe's deep ideological divides, there was broad interest in this idea of the union-run holiday system. Soviet vacations typically took place at grand resorts that were owned and managed by the trade unions, and which offered a similarly inclusive experience, with accommodation, meals, sports and health treatments, and with concerts and dancing in the evening. And even in Nazi Germany, an organisation linked to the fascist trade union centre *Deutsche Arbeitsfront* organised holidays for millions of (ethnic German) workers[21]. During the War, many of these camps were turned into military bases, and some remained so into the Cold War.

In modern times, the fate of these various holiday centres is mixed, and seems to speak to Europe's complicated relationship to the ideological divisions of its 20th century past. In Russia and Belarus, many are a little dilapidated, but still function more or less as they always did, and still provide subsidised holidays for union members[22] (low prices mean that they have also remained surprisingly popular destinations for holiday-makers from the Baltics, particularly Lithuania[23]). In Ukraine, the government has long sought to confiscate the huge resorts owned by the FPU trade union centre[24], while in Georgia other camps were abandoned and fell into disrepair[25]. In the UK, the miners' holiday camp was closed in the 1990s when the UK coal industry was run down, but its commercial rival Butlin's continues (though reduced in scale since the era of cheap international flights began). Meanwhile, on the northern coast of Germany, the giant Nazi workers' holiday centre *Prora* has been rehabilitated as a modern luxury resort offering spa treatments, yoga, and "wellness"[26].

Paid leave in international law

The ILO may have been quick to adopt a standard on working time, but it was slower off the mark with respect to paid holidays. The first instrument mandating workers' annual leave appeared in 1936, and called only for "at least six" days of vacation (and this was to apply only after one year of continuous service). This modest demand remained the most progressive ILO standard on paid leave until 1970. Other human rights institutions picked up on the theme, and the United Nations placed the goal of workers' rest in the centre of its human rights framework, but Article 24 of the Universal Declaration of Human Rights cast these rights in quite general terms, "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay", giving little concrete guidance as to what might actually count as "reasonable" or "periodic"[27]. Article 7 of the International Covenant on Social, Economic and Cultural Rights sets out a similar standard[28]. A decisive step forward came in 1970, as the ILO adopted a revised Holidays with Pay Convention (No. 132)[29]. This new instrument called for a minimum of three weeks' annual paid leave. Fifty-four years later, it remains the current ILO standard[30].

As legal rights to leisure became established, unions became involved in facilitating workers' holidays

The European model

The UK's 1938 holiday legislation was gutted during mid-1970s industrial relations reforms[31], and it was repealed entirely in 2004[32]. But the idea of comprehensive paid annual leave had taken a firm hold in Europe by this stage. The EU Working Time Directive was adopted on 23 November 1993, and set a standard of four weeks' annual leave. The UK abstained from the vote and resisted implementing the Directive. Many UK workers still enjoyed holidays under private employment contracts, typically won by collective bargaining, but other workers had few protections. In October 1998, a newly-elected Labour government finally implemented the EU Working Time Directive in the form of a set of UK Working Time Regulations, establishing a right to four week's annual leave for all workers. According to the TUC, when this happened, "six million workers got more paid holiday than before – and two million of those got their first paid holiday ever"[33]. Over time, these rights have been developed, and – despite leaving the EU– holiday entitlement in the UK is now extensive and almost universal, with most workers now legally entitled to 5.6 weeks' paid holiday each year[34].

The land without leave: the USA

As of 2024, the US remains one of very few countries in the world – and the *only* country in the OECD group of advanced economies – that still "has no national policy guaranteeing workers paid annual leave"[35]. This doesn't mean that Americans take no holidays; many American workers enjoy reasonable, and in some cases very good, holiday provision. But there is no legislative requirement to provide paid holidays. Any benefit, including the provision of paid holidays, "is entirely up to the discretion of private employers"[36]. While this works for some, the

situation is grim for many, and "almost one in four Americans have no vacation at all"[37]. Even among union members the situation is far from ideal, as recent AFL-CIO research reveals, "seventy-nine percent (79 percent) of union members enjoy access to paid vacation"[38] – though this implies that even 21 percent of union members don't have any paid vacation at all. For non-members, however, the situation is worse, "only 68 percent of non-members have paid vacations[39]. Earlier this year, on social media platform X, the AFL-CIO posted that "it is inexcusable that we are still the only industrialized country in the world without guaranteed paid vacation leave"[40].

Alone among the industrialised nations, the US remains the only "land without leave"

Although there is no statutory right to paid annual holidays, the US does at least have eleven recognised federal public holidays, and individual States recognise various additional holidays[41]. On these days, government employees normally enjoy paid leave or a premium rate for working. Some holidays are also widely observed by private businesses (large companies in particular), and tend to provide paid time off for New Year, Thanksgiving, Christmas, Independence Day and Labour Day. But no private businesses are actually required to provide paid time off, and private sector employees have no rights to claim paid time off. The result of this is that while some workers enjoy decent holiday provision, there are many others with no or only minimal holiday entitlement. According to research from the CEPR, "the average worker in the private sector receives only 10 paid vacation days and six paid holidays a year, which is far less than in almost every advanced economy except Japan"[42].

At various times in US history, efforts have been made to challenge the country's startling lack of statutory holiday provision. One such effort is currently underway. In March 2024, Democrats brought draft legislation before Congress that would call for a statutory two weeks of paid annual leave per year (framed as one hour of paid annual leave for every 25 hours worked). This is the ambition of the Protected Time Off Act, a new Bill that has been raised in the Congress and in the Senate[43]. If passed, the draft law would grant paid holidays to an estimated 27 million Americans who don't currently enjoy such rights[44]. A number of unions, including the AFL-CIO and the SEIU have endorsed the legislation, which is generating a renewed burst of interest in the issue. But hopes that the law will pass are muted – a similar Bill was introduced in 2015 and failed to gain sufficient support from legislators.

A 20th century struggle facing new threats

In much of the industrialised world (apart from the US), the struggle for basic paid holiday provision was won during the 20th century. It also became fairly well established in many developing countries (though with limited relevance to the sprawling millions who find work in subsistence agriculture or the informal economy). But in the industrialised world, exceptions and exclusions have also been growing. Here there have always been highly skilled "independent contractors", who typically set their own rates and choose their clients, and who have factored their holiday costs into the rates they set for each project. But under the explosion of independent contracting linked to platform work it seems inappropriate to apply simplistic independent contractor logic to these new workers (when many thousands work for a single platform, and look for all the world like a workforce working for an employer). Typically, these workers (in food delivery, for example) lack any genuine capacity to set their own rates, and undertake thousands of "jobs" at rates and under a system that is controlled by the platforms they work for. The idea that these platforms have no obligation to provide these thousands of workers with paid holidays began to look to many like a profound injustice.

There has been kickback against this model around the world (see IUR 29.2 and 30.3). One such effort in Europe has been the development of the Platform Workers Directive, which had the objective of reversing the burden of proof around contractor status and creating a basic assumption that platform workers were employees, with access to full employment rights, including holidays. The Directive has faced some fierce resistance, and its initial ambitions have become rather more muted, but in early 2024 it finally secured the necessary support and will now be adopted and pass into European law[45]. Depending how the model is applied in practice, and with a keen eye on the progress of the Protected Time Off Act in the US, there are encouraging signs in the present climate that advances continue in the struggle to make universal paid holidays a truly universal workers' right around the world.

1 E.P. Thompson, *The Making of the English Working Class* (Gollancz, 1963), pp442-446
2 C*ampaigning for Paid Holiday for Everyone,* TUC 150 Project, at: https://tuc150.tuc.org.uk/stories/campaigning-for-paid-holiday-for-everyone/
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In the platform economy, rights won a century ago are once again under threat

worldwide

EU: Platforms and Supply Chains

The *Platform Work Directive* has been approved by the European Parliament, following sustained opposition by a number of governments who finally backed down after supporters of the Directive reluctantly agreed to significant revisions. The Directive is still pending adoption by the European Council, but should now pass into law. The changes that were made will leave greater leeway to Member States when it comes to implementing the Directive, specifically in relation to the burden of proof and the criteria surrounding the determination of whether or not an employment relationship exists (achieving better regulation of this issue was one of the fundamental objectives of the Directive). Despite this "watering down" of initial ambition, the adoption of the amended draft has been greeted by unions and labour rights activists as an important step towards better regulation of the platform work sector.

Also approved, though similarly pending endorsement by the European Council, is the *Corporate Sustainability Due Diligence Directive,* which requires the implementation of new rules applicable to large businesses that will oblige their directors to exercise social and environmental "due diligence" in their decision-making. The main definition was further amended and now refers to only very large companies (those with more than 1000 employees and with a net turnover of at least €450m). Despite the high thresholds that will leave most companies unaffected by the Directive it is estimated that up to 17,000 companies will fall within the new rules. A related instrument, the *Corporate Sustainability Reporting Directive,* which obliges large companies to report on their environment, social and sustainability risks and impacts, is already in force since last year. The newer instrument develops this reporting obligation and requires positive action to be taken to anticipate, plan for, avoid, and mitigate adverse environmental and human rights impacts throughout their supply chains.

Climate change

A new *Global Report* from ILO looks at the effects of climate change on the safety and health of workers. *Ensuring safety and health at work in a changing climate,* analyses the detrimental and long-lasting impacts on the occupational safety and health (OSH) of billions of workers around the world resulting from hazards that are "exacerbated by climate change". The report pulls together data on deaths, injuries and illnesses, and examines risks arising under the thematic headings of: excessive heat; UV radiation; extreme weather events; workplace air pollution; vector-borne diseases; and agrochemicals. Global health and safety magazine IOSH called the reports' findings "alarming" and "disturbing".

Meanwhile, UK-based Hazards magazine (in association with ITUC) has also published a round-up of alarming evidence from diverse sources all pointing to an accelerating crisis with grave implications for workers. *Working in a bad climate: ITUC-Hazards climate crisis special report* collates and links to reports from the World Health Organisation, ILO, ITUC, the American Association of Geographers, UCLA, the US National Bureau of Economic Research, the American Journal of Industrial Medicine, the Journal of Nursing Scholarship, research produced by trade unions around the world, and other diverse research sources. The report is available from www.hazards.org, where IUR readers and other visitors can – and should, if they are able – make a donation to the current urgent financial appeal to support the work of Hazards.

Organising update: Starbucks (USA)

After years of combative industrial relations Starbucks and the SEIU-affiliated Workers United union have agreed a "foundational framework" for collective bargaining. The framework is not a collective agreement as such, but it has been hailed as a major step forwards for organising at the company. The union says that Starbucks has agreed to provide pay increases and benefits and to implement collective agreements at all unionised stores, as well as adopting a "fair organizing process" at other stores where workers are seeking union representation. The company has also reportedly agreed to "resolve" all on-going litigation, which includes not only hundreds of unfair labour practice and dismissal cases but also a "trademark infringement" case against the union that was filed in relation to social media posts concerning Israel / Palestine. This latter issue is likely an important factor influencing the company's new commitment to seek accommodation with SEIU: the company acknowledges that what it calls the "misperception" of its position on the issue had resulted in an "impact" on its sales. Whatever may be motivating the company towards its new position, the "foundational framework" has been welcomed by international foodworkers' union IUF.

Organising update: Volkswagen (USA)

The National Labor Relations Board has certified the UAW at a Volkswagen (VW) plant in the southern US after the union secured 73 percent of votes in a workplace representation election. The union narrowly lost elections in 2014 and 2019 at the same plant, and the recent win is viewed as historic in a region that has traditionally shunned unions. The ITUC said that this was "the first successful vote for unionisation at an auto factory in the southern USA since the 1940s". The difficult organising environment in the southern States is in stark contrast to the UAW's historic strength in the vehicle manufacturing plants in the northern US. The union is now considering how it can expand on this success to secure union representation for an estimated 150,000 workers at other vehicle factories in the southern US. Global union Industriall has welcome the election result, and thanked its German affiliate IG Metall and the VW works council for their assistance in liaising with VW's head office and ensuring that the organising campaign and the election proceeded smoothly.

Organising update: Amazon (UK)

The Central Arbitration Committee has approved an application by the GMB for a recognition vote to be held at an Amazon warehouse in Coventry, where the union has been holding rallies and protests for the past year, and the company has been accused of circulating messages opposing

unionisation and hiring large numbers of additional workers in an effort, the union argues, to hinder the organising campaign. A legal challenge is underway accusing the company of "inducement", contrary to UK trade union law. Despite these challenges, the GMB reckons it has been successful in recruiting many of the new workers and has expressed confidence about the outcome of the vote, which could lead to the union being recognised by June this year. If the union is successful, this would be the first recognition deal at an Amazon warehouse in the UK. GMB has also been working with the global union UNI to coordinate efforts to organise Amazon in countries around the world.

South Korea

In December 2023, the Supreme Court issued a ruling that permits employees to be required to work overtime without any maximum daily limit, so long as no more than 52 hours are spent working in any given week. The case concerned an aircraft cabin-cleaning company that required an employee to work 15-hour shifts, three times per week. The three 15-hour shifts were not classed as a violation, even though each shift was almost double the normal daily working time of eight-hours, beyond which work is classed as "overtime". Unions responded with dismay to the ruling, with the FKTU trade union centre stating that the decision "overshadowed the purpose of setting eight hours a day as legal working hours" and the KCTU trade union centre arguing that stronger working time regulation was needed to "prevent excessive labor beyond employees' physical limitations", and calling for rules that would require 11 consecutive hours of rest.

UK

The Supreme Court has found that an unusual loophole in UK industrial law, which permitted employers to discipline workers for taking part in strike action, is contrary to the concept of freedom of association as protected by Article 11 of the European Convention on Human Rights. The problem arose despite provisions preventing either dismissal for lawful strike action or discipline for trade union activities, as the latter only applied either outside of working time or with the permission of the employer, while the former only prevented dismissal. The case only reached the UK's highest court following the Government's intervention in the case after an Employment Appeal Tribunal originally determined the incompatibility with Article 11. An amendment to the legislation will presumably follow from the Court's findings, but with elections approaching it may be some time before the law is actually changed. Even prior to amendment of the legislation, the loophole can in practice be regarded as closed.

Shipbreaking

In February, the H*ong Kong Convention for the Safe and Environmentally Sound Recycling of Ships* was ratified within the framework of the International Maritime Organisation, promising a long-awaited basis for the improved regulation of one of the world's most dangerous sectors for workers. Shipbreaking yards have long been associated with severe and diverse hazards for workers, including exposure to toxic materials and dangers associated with heavy engineering and working at height in what are typically poorly regulated working environments, where work is often precarious and casual. Although expectations about the impact of the new instrument are modest, there is nonetheless wide agreement that it provides an important step forward. The global union Industriall says that "all of the major shipbreaking and flag States have now ratified the Convention", and it will enter into force on 26 June 2025. The instrument requires improved collection of worker and contractor data, the preparation of plans for each shipyard, including details of safety training, which must address hazardous materials and other known risks.

USMCA North American trade agreement

The Maquila Solidarity Network, a long-established labour rights NGO that folded recently, only to re-open (apparently with a considerably expanded budget) has published a new resource *What Have Rapid Response Labour Complaints Achieved For Mexican Workers?*

Presented as a series of case summaries, the resources discusses "the first dozen complaints filed under the Rapid Response Labour Mechanism (RRLM)" associated with the USMCA North American trade agreement that replaced the former NAFTA agreement. Broadly optimistic, the resource finds that in most cases companies have "complied with the remediation plan, and the case is now closed", but adds that in two cases "the company closed the factory". MSN says that it hopes the resource will "offer lessons for workers, unions, and labour rights organizations on when and how to make use of this new tool to help achieve respect for Mexican workers' associational rights" and that it may also "serve as a guide for employers on how to ensure compliance with Mexico's new labour regulations".

worldwide

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demonstrated by the results of the French 35-hour working week reform of 2002, and despite unsatisfactory implementation conditions, it is also a way of reducing the number of part-time workers and creating jobs (at least 350,000 direct jobs) without harming business activity.

Linked to a reorganisation of work, the 32-hour week would enable the establishment of a new mode of economic and social development, for the good of all and in the general interest.

Also in this issue

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