

## The Declaration of Philadelphia\*

Adalberto Perulli

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## I. Background and context.

The general conference of the International Labour Organization, in its twenty-sixth session on May 10<sup>th</sup> 1944, adopted unanimously the Declaration of Philadelphia, where the aims inspiring the actions of the Organization and the Principles to which the participating States should aspire are set. In actual fact, as we are going to see, the Declaration is a lot more than a text on the ILO's objectives and directive Principles, because it represents the first International Declaration of rights with international vocation, "applicable to all people everywhere". This document, fundamental charter of reference for the ILO and for all the systems of labour law, comes to life in a social-economic context – that of mid 20<sup>th</sup> century – very different from the liberal one that has seen, with the Peace of Versailles, the ILO birth. The social, political and economic reflection of the times, after stating as central the individual's freedom from the State, on the other hand questions itself on how the State may guarantee – in a positive inclination – the social rights that had been dealt with already since the beginning of the century. The Declaration might be intended as a catalogue of the promises made by the leaders of the Allied Forces during the Second World War, giving life to the Principles contained in the 1941 Atlantic Charter, signed by Winston Churchill and Franklin Delano Roosevelt, according to which the post-war Government policies had to aim to "securing for all (countries and people), improved labour standards, economic advancement and social security... (as well as) freedom from fear or want". We may not consider – rather reductively – in the Declaration of Philadelphia "first and foremost a sort of pledge of loyalty to the popular forces in return for the sacrifices they had made during the war"<sup>141</sup>, but it may be considered as a pioneer text, intended to make social justice "the cornerstone of the international juridical order"<sup>142</sup>. Therefore, a text encompassing the need for security, typical of economic liberalism, which guaranteed the reproduction of democratic freedom and, at the same time, social rights. As a matter of fact, according to the New Deal doctrines, the free market could not have maintained the promises for individual freedom, without protecting the people from insecurity, with a new Bill of Rights, to be based on social rights, rather than political freedoms<sup>143</sup>. The value of the Declaration is even more relevant if we consider that the text has been adopted in a period where the universalism, the legitimacy and even the survival of the ILO were being brought into question, following the hard international crisis after the Second World War. So, under this profile, the Declaration expresses the attempt of the ILO to get a relevant place within the forthcoming Bretton Woods Institutions, which would define the general framework of international governance of the political and economic dynamics of the post-war period. In order to define the mission of a renewed International Organization of Labour, the Declaration of Philadelphia has adopted - as we will see in detail, later, within the analysis of the content of the Declaration – new, wider and more ambitious aims compared to those characterizing the actions of the Organization between the two World Wars, giving to the ILO a new lease of life and posing the basis to strengthen its role in the project to re-plan the international architecture in the post-war period.

<sup>141</sup> Francis Maupain, *The Future of the International Labour Organisation in the Global Economy* (Hart Publishing, Oxford and Portland Oregon 2013) 70.

<sup>142</sup> Alain Supiot, *L'esprit de Philadelphie. La justice sociale face au marché total* (Seuil, Paris 2010) 9.

<sup>143</sup> In a perspective intended to highlight the need for governmentality subtended to the dynamic between freedom and security: Michel Foucault, *Naissance de la biopolitique, Cours au Collège de France 1978-1979* (Ehess Gallimard Seuil, Paris 2004) 67.

The Declaration has been inserted in 1946 in the preamble of the ILO's Constitution<sup>144</sup>: "a permanent organization is hereby established for the promotion of the objects set forth in the preamble to this Constitution and in the Declaration concerning the aims and the purposes of the International Labour Organization adopted at Philadelphia on 10 May 1944 the text of which is annexed to this Constitution<sup>145</sup>". In particular, when revising the 1919 Constitution<sup>146</sup>, the original "General Principles" referring to art. 41 were substituted by the content of the Declaration, which, as we said, set wider aims, compared to the ones contained in the previous preamble<sup>147</sup>.

Compared to the 1919 Constitution, which identified the ILO's aim in promoting social justice, in consolidating the international peace and in correcting the international competition, the declaration of Philadelphia is set in continuity as regards the Constitutive Act (perfectly accomplishing the first aim, re-affirming the second and indirectly alluding to the third)<sup>148</sup>. However, the ILO's original mandate, as it was established in the Versailles Peace Treaty and ratified in the Preamble of the Constitution, was limited to the improvement of working conditions, on the basis of a series of important principles and acknowledging some important rights to workers: labour is not a commodity; the right of association both for workers and employers; the payment of a salary which may guarantee an adequate and decent life; the prevision of the maximum duration of work, in 8 daily hours and 48 weekly hours; the prevision of a day of rest during the week, being it Sunday if possible; the elimination of child labour and the regulation of adolescent labour; the Principle "equal pay for equal work"; the non discrimination among all workers legally residing in the Country; the institution, in every Country of a labour inspection service.

The Declaration of Philadelphia, although being in line with the constitutive regulations, has widely updated and widened the ILO's original mandate, including competences which go beyond the relatively limited area of labour conditions, while encompassing the extremely wider area of life conditions of people. This broadening of the teleological perspective goes hand in hand with a wider normative approach compared to the solution of social problems, being certain that the latter may not be solved entirely (and in the long term period) if we do not consider their causes and their effects also in the economic and political fields: "social problems and economic problems are not separate watertight compartments in the international any more than in the national sphere. In International, as in national affairs, economic policy can no longer be an end in itself. It is merely a means for achieving social objectives<sup>149</sup>". As a matter of fact, we can infer the importance and the innovation of the Declaration of Philadelphia precisely from the generality of

<sup>144</sup> ILO Constitution: [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO). (accessed October 1, 2016).

<sup>145</sup> ILO, *Constitution of the International Labour Organization and Standing Orders of the International Labour Conference*, art. 1.

<sup>146</sup> The ILO was created in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The Constitution was drafted between January and April, 1919, by the Labour Commission set up by the Peace Conference, which first met in Paris and then in Versailles.

<sup>147</sup> The ILO and the Versailles Treaty come to life in the same period. For a historical reconstruction, Gerry Rodgers, Eddy Lee, Lee Swebston and Jasmien Van Daele, *The International Labour Organization and the quest for Social Justice, 1919-2009* (Cornell University ILR School, Ithaca and International Labour Office, Geneva 2009) 41.

<sup>148</sup> Victor-Yves Ghebali, Roberto Ago and Nicolás Valticos, *The International Labour Organisation, A Case Study on the Evolution of U.N. Specialised Agencies* (Martinus Nijhoff Publishers, Boston 1989) 62.

<sup>149</sup> Franklin D. Roosevelt, *Address of President Roosevelt to the Delegates of the International Labor Organization Delivered in the White House and broadcast over a nation-wide hookup, November 6, 1941*, [www.ibiblio.org/pha/timeline/411106awp.html](http://www.ibiblio.org/pha/timeline/411106awp.html) (accessed October 1, 2016).

the aim of the Organization's mandate, whose actions are no longer limited to the labour field, but they are addressed to "all human beings, irrespective of race, creed or sex" (who have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity) (Section II, a) and all economic and financial policies have "to be examined and considered in the light of this fundamental objective<sup>150</sup>". Such a wide vision shows how the ILO's main preoccupation is no longer uniquely ascribable to the protection of the worker, but it regards – in a wider and renovated sense – the human being, as well as his/her participation in the social process<sup>151</sup>. This is reflected in the content of this important document: the Declaration (section 2) emphasizes the role of social and economic policies in order to achieve general social goals (section 3) like full occupation and the improvement of life conditions, the extension of social security in order to ensure a basic salary to all workers and health protection to all people, the fight against poverty, a durable peace, social justice, the material well-being and the spiritual development, the improvement of living standards, the common well-being, an adequate level of nutrition and housing, as well as the recreational and education facilities, as well as the guarantee of equal possibility in the educational field. For this reason, the Declaration of Philadelphia represents the first document of international Law focusing on human rights, which will find their consecration in the 1948 Universal Declaration of Human Rights and in the 1951 United Nations Charter.

In 1998, after more than forty years from its publication, the Declaration of Philadelphia was inserted in the ILO's Declaration on Fundamental Principles and Rights at work and its follow-ups<sup>152</sup> (same year), which promotes and re-affirms the principles and the fundamental rights, consecrated by the ILO's Constitution and by the same 1944 Declaration, increasing the emphasis on the human rights aspect of worker's rights. The 1998 Declaration indeed individuates an indefeasible corpus of rights, described as universally acknowledged human rights, known as "*core labour standards*": (a) freedom of association and protection of the right to organise and collective bargaining (Conv. N. 87/1948 and Conv. N. 98/1949); (b) elimination of every form of forced labour (Conv. N. 29/1930, Conv. N. 105/1957); (c) effective elimination of child labour (Conv. N. 138/1973, Conv. N. 182/1999); (d) elimination of discrimination in the field of employment and occupation (Conv. N. 100/1951; Conv. N. 111/1958). According to the 1998 Declaration, all Member States of the ILO, even if they did not ratify the Conventions involved, have an obligation, deriving from their belonging to the Organization, to respect, promote and realize in good faith and complying with the Constitution, the Principles regarding the Fundamental Rights, which are the object of such Conventions. Furthermore, the Member States have accepted the principles and the rights stated in the ILO's Constitution and in the Declaration of Philadelphia, and have committed to operate in order to fulfil the Organization's aims in their entirety, at best of their

<sup>150</sup> ILO Philadelphia Declaration, Section II, d).

<sup>151</sup> Roosevelt (n 9).

<sup>152</sup> *Declaration on Fundamental Principles and Rights at Work and its follow-up*, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (accessed October 1, 2016).

possibilities and fully complying with their specific indications. Hence we can observe the constrainability of the 1944 Declaration, like the ILO's Constitution and 1998 Declaration, for all Member States of the ILO<sup>153</sup>.

In 2008, to confirm its relevance and significance in the current context of globalization, the Declaration has been quoted as a foundation of the 2008 ILO Declaration - Declaration on Social Justice for a Fair Globalization<sup>154</sup> - which was built on the Declaration of Philadelphia and the Declaration on Fundamental Principles and Rights at Work, in order to express the contemporary vision of the ILO's mandate in the era of globalization.

## II. Content of Declaration.

The Declaration of Philadelphia is constituted by a preamble and five different Sections. The preamble of the Declaration affirms that: "The General Conference of the International Labour Organization, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members", highlighting the strict inter-dependency among the ILO's goals and intentions and the Member State policies. The latter effectively implement the ILO's actions: that is to say that no international action in itself is able to achieve the fulfilment of such goals, that depend on the activity of the States.

The opening section of the Declaration lists a series of fundamental Principles on which the ILO is based, and which, moreover, are already included in the Constitution of the Organization and in its Preamble.

### i. Labour is not a commodity.

The first of these principles, in terms of collocation and importance, regards the affirmation of the respect that labour is to be regarded with: "Labour is not a commodity". If labour is not a commodity, but – as Kahn-Freund will write – is matter-of-factly made of "human flesh and blood", the domination of the capital on the human being is achieved through the labour relationship<sup>155</sup>, hence the special function of labour law, consisting in giving some sort of substantial – and not merely formal – form of equality, within the relationship between employer and employee. Through the affirmation of such principle, the ILO's main goal is to spread at an international level the awareness relative to the indivisibility of the labour activity from the individual actually carrying it out: labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being. Economic

<sup>153</sup> The list of the current 187 Member States of the ILO can be viewed here:

<http://www.ilo.org/public/english/standards/reim/country.htm> (accessed October 1, 2016).

<sup>154</sup> The International Labour Conference adopted the Social Justice Declaration on 10 June 2008: it is the third major statement of principles and policies adopted by the International Labour Conference, built on the Declaration of Philadelphia and the ILO Declaration on Fundamental Principles and Rights at Work. The text is available at this link: [http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm) (accessed October 1, 2016).

<sup>155</sup> Bob Hepple, *Equality: A global labour standard, International Labour Standards and Economic Interdependence – Essays in Commemoration of the 75th Anniversary of the Declaration of Philadelphia* (International Labour Office, Geneva 1994) 127.

development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake but to improve the lives of human beings; international labour standards are there to ensure that it remains focused on improving human life and dignity<sup>156</sup>. Therefore, labour is not a mere unanimated product which may be the object of negotiation exclusively on the basis of profit aims, in other words, it's not only labour energies made available implying the involvement of the individual for whom labour is an instrument of affirmation and fulfilment of his/her own dignity<sup>157</sup>. The fundamental discrepancy between labour, intended as the individual's service and as a commodity – considering it as any generic service – is to be found mainly in the moment of bargaining, that is to say in the different functioning of the market where supply and demand meet<sup>158</sup>. As a consequence, the price and social costs connected to labour force, cannot be left to the free bargaining of market forces. This awareness is at the basis of the normative action of the ILO, which is intended to prevent some Countries - in the field of international competition, allowing unacceptable labour conditions, in order to lower the production costs – to act as an obstacle in the implementation of social reforms on the part of the other Countries, willing to pursue social justice (as the 1919 ILO Constitution's Preamble already acknowledged).

These fundamental principles of the ILO is being seriously challenged by neo-liberals and free-marketers, and by the process of re-commercialization of labour, typical of the ultra-liberalistic doctrine, that has been prevailing in national and international policies for more than thirty years, now. In this context of market fundamentalism, the same human is reduced to the state of mere "economic resource"<sup>159</sup>. Moreover, some scholars assume that there is an intrinsic paradox in the principle "labour is not a commodity", adducing the free bargaining nature of the meeting between supply and demand. It asserts as a truth what seems to be false. In fact, on one hand, the worker may not surely be considered as a means of production *tout-court* – like, for example, raw materials or machineries – both because the worker is free whether to accept the contract or not, and because, when stipulating the labour contract, he/she does not become property of the employer, but he/she is subject to rights and duties towards the employer, in accordance with what stated by the labour contract; yet, on the other hand, "as with other market transactions dealing in commodities, the legal expression of this relation between employer and employee is a type of contract. The contract of employment, like other contracts, confers legally enforceable rights and obligations. It seems that labour is in fact regarded much like a commodity in a market society and its laws"<sup>160</sup>.

It is worth to remind that the origin of this proposition (labour is not a commodity) is complex. Probably linked to the idea of inequality of bargaining power, it seems to have been a speech by the Irish economist, Dr John Kells Ingram, to the British Trades Union Congress meeting in Dublin

<sup>156</sup> ILO: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm> (accessed October 1, 2016).

<sup>157</sup> Vania Brino, *L'azione normativa dell'Organizzazione internazionale del lavoro nella promozione dei diritti sociali fondamentali*, in V. Brino and A. Perulli (eds), *Manuale di Diritto Internazionale del Lavoro* (Giappichelli, Torino 2015).

<sup>158</sup> See Brian Langille, *Labour Law's Theory of Justice*, in B. Langille, G. Davidov, (ed. by), *The Idea of Labour Law*, (Oxford University Press, Oxford 2011) 106.

<sup>159</sup> Supiot (n 2) 142.

<sup>160</sup> In this sense, Hugh Collins, *Employment Law* (Oxford University Press, Oxford 2010) 26.

in 1880, but it has echoes of Karl Marx's insight that capitalism turns labour power into a commodity, and was also reflected in the "Workers' Chapter" of Pope Leo XIII's Encyclical *Rerum Novarum* (1891)<sup>161</sup>. In fact, we may deduce such principle from sources prior to the Declaration of Philadelphia, such as the 1930 ILO Convention n. 29, in the matter of elimination of forced labour, whose notion is supplied through a series of sub-definitions (the presence of a menace or a penalty, the role of an external constraint or indirect obligation, the possibility for a minor to supply a valid contractual consensus).

Finally, the principle enounced in Philadelphia has got a “competitive” matrix antecedent in the 1914 Clayton Act (USA), enacted by Congress to strengthen the antitrust laws that were put into place by the Sherman Act. The act also deals with the organization of labour unions stating that “the labour of a human being is not a commodity or article of commerce.” Corporations are forbidden from preventing the organization of labour unions. It also keeps labour strikes from being included in antitrust lawsuits. The result of this provision is that labour unions may organize and agree upon wages without being accused of price fixing. The relevance of this concept of labour as foreign to the purely competitive dimension, together with the enhancement of the EU social objectives, is at the center of the dialectic between labor law and European competition law<sup>162</sup>.

#### ii. Freedom of expression, of association and collective bargaining.

The second principle, as much important as the first, is contained in the first Section of the Declaration and regards Freedom of expression and association: (b) freedom of expression and of association are essential to sustained progress. This is one of the pillars upon which democracy is built and at the same time, the cornerstone of the democratic structure of the International Labour Organisation. We are dealing, in fact, with essential instruments in order to achieve Social Justice, whose centrality had already been affirmed in the 1919 Constitutive Act: “without freedom of association or, in other words, without employers’ and workers’ organizations that are autonomous, independent, representative and endowed with the necessary rights of their members and the advancement of the common welfare, the principle of tripartism would be impaired, if not ignored, and chances for greater social justice would be seriously prejudiced<sup>163</sup>”.

The right to freedom of association had, indeed, already been affirmed in the 1919 Constitution, but it was defined as one of the means to improve the conditions of workers and to achieve social peace: 1944 is a fundamental landmark in the ILO’s evolutionary history, as the Declaration of Philadelphia defines the freedom of expression and of association as “fundamental principles on which the organisation is based”, emphasizing its role in the promotion of progress, and laying the foundations to elaborate the following Conventions on the matter. An example is the 1948

<sup>161</sup> Bob Hepple and Bruno Veneziani, *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2000* (Hart Publishing, Oxford 2009) 5.

<sup>162</sup> In *C-67/96 Albany International BV and Stichting Bedrijfspensioenfonds Textielindustrie* the EU Court determined that collective bargaining agreements fell outside the scope of competition law; more recently (*C-413/13 FNV Kunsten Informatie en Media*) the Court introduced a non-formalistic reasoning expanding the scope of Albany to include collective bargaining agreements among the ‘false self-employed’ (the Court decided that an agreement would fall outside the scope of article 101 TFEU if self-employed are in a comparable situation to a worker and if the agreement contributes to social policy).

<sup>163</sup> Alberto Otero and Horacio Guido, *Ilo Law on Freedom of Association, Standards and procedures* (International Labour Office, Geneva 1995) 4.

Freedom of Association and Protection of the Right to Organize Convention (N. 87), which, moreover, explicitly refers to the Declaration of Philadelphia (“Considering that the Declaration of Philadelphia reaffirms that freedom of expression and of association are essential to sustained progress”), further introducing the concept of independency and of non-interference on the part of the authority in the free activity of association: “Workers’ and employers’ organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof<sup>164</sup>”.

Still concerning Union rights, in the Section three, catch e) of the Declaration the right to collective bargaining is ratified: 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. We are dealing with a freedom that the ILO has been reaffirming throughout the years, and consequently it has been stated in a plurality of normative sources. The most relevant are the 1949 Convention n. 98 - which was almost unanimously ratified and inserted in the list of the Core Labour Conventions, promoters of Core Labour Standards - the 1981 Collective Bargaining Convention (n. 154), reaffirming the provision of the Declaration of Philadelphia recognizing “the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining, and noting that this principle is fully applicable to all people everywhere<sup>165</sup>”. Further on, we have the 1951 Recommendation n. 91, which, for the first time ever, specifies in detail what the term “collective agreements” refers to: “ (...) all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on one hand, and one or more representative of workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other<sup>166</sup>”. We have already recalled the essentially important 1998 Declaration of the International Labour Organization on the principles and fundamental labour rights and its follow-ups, where the Conventions in the matter are quoted and considered as “fundamental” by the same ILO. Ranking first in the list of such rights is exactly the right to freedom of association and the effective acknowledgement of the right to collective bargaining, confirming its centrality starting from 1944.

### iii. Poverty.

The third principle enounced in the first Section of the Declaration regards the topic of poverty, instead: “(c) poverty anywhere constitutes a danger to prosperity everywhere”. The war against poverty, likewise the “war against want”, mentioned in letter d) have since always constituted the primary interest of the ILO and its Member States. We are dealing with problematic issues both after the war and nowadays: it is enough to say that the UN strongly re-asserted its aim to

<sup>164</sup> Art. 3, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

<sup>165</sup> Preamble Collective Bargaining Convention, 1981 (No. 154).

<sup>166</sup> R091 - Collective Agreements Recommendation, 1951 (No. 91), Section II. Definition of Collective Agreements, art. 2, 1).



fight against poverty in the recent Sustainable Development Goals (SDGs) (“End poverty in all its forms everywhere”)<sup>167</sup>.

The data gathered by the UN show that the extreme poverty has declined significantly over the last two decades. Globally, the number of people living in extreme poverty has declined by more than half, falling from 1.9 billion in 1990 to 836 million in 2015 and most progress has occurred since 2000. While this is a remarkable achievement, we must point out that one in five people in developing regions still live on less than \$1.25 a day, and there are millions more who make little more than this daily amount, plus many people risk slipping back into poverty<sup>168</sup>.

On the other hand, the World Bank, in its report “Poverty and Shared Prosperity 2016” has highlighted how the average country is more unequal today than 25 years ago. Within-country inequality as a whole - that is, considering together the trends of all countries on which evidence is available - only started to narrow in the last decade, after peaking in the 1990s. Inequality remains unacceptably high in many countries around the world. Developing countries tend to exhibit higher levels of inequality than developed countries. Between-country inequality declined. In contrast, within-country inequality, the other component of global inequality, took on a greater role in global inequality<sup>169</sup>.

Regarding this, it is interesting to notice how the ILO, back in 1944, had pointed out to Member States, with the principle “poverty anywhere constitutes a danger to prosperity everywhere”, the importance to pursue a shared prosperity towards poverty eradication. While development assistance remains important, countries that managed to pull themselves out of poverty were those that were able to move from low to higher productive activities, while strengthening institutions for governance and social protection for workers and their families. On the basis of these premises, the ILO keeps on committing itself to the war against poverty, through the promotion of *decent work*, of full occupation and sustainable development.

#### iv. War to want and tripartism.

The fourth and last principle of the first Section of the Declaration states: “(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”.

The ILO believes in fighting the war against want, through the social dialogue among the different actors, that are the government, the representatives of employers and employees, according to the constitutive model of governance of the Organization itself. The ILO is matter-of-factly the only Institution of the United Nations with a tripartite nature: it is composed of the Governments’ representatives, entrepreneurs and workers, to whom the right of actively and democratically participate in the definition and implementation of the policies and of the programmes of the

<sup>167</sup> On 1 January 2016, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development, adopted by world leaders in September 2015 at an , officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind.

<sup>168</sup> United Nation, The Millennium Development Goals Report, United Nation, New York, 2015.

<sup>169</sup> World Bank. 2016. *Poverty and Shared Prosperity 2016: Taking on Inequality*. Washington, DC, World Bank.

Organization is acknowledged. Basically, within the decision-making authorities, workers and entrepreneurs together have the same influence as Governments. This ensures that the labour international norms, the policies and the programmes reflect the point of view of all social parties interacting in a social dialogue (that is in processes of negotiation and consultation among representatives of entrepreneurs, of workers and of Governments). Social Dialogue and tripartism covers negotiation, consultation and information exchange between and among the different actors; collective bargaining; dispute prevention and resolution; and other instruments of social dialogue, including corporate social responsibility and international framework agreements.

Despite such mechanism of functioning is a guarantee for democracy and participation, we cannot deny that tripartism has revealed, in the course of years, as the main limitation to a regular functioning of the Organization. The difficulty in achieving a constructive dialogue and in reaching a consensus among actors with contrasting interests, perspectives and opinions, often put the Organization in situations of strong political and decisional impasse. For example, we may recall the sensational opposition of entrepreneurs to an extensive interpretation of Convention n. 87 on the freedom of Union Organization, with the possibility of including the right to strike, which has stopped - the mediation among parties started in 2012 and ended in February 2015 – the operations of the Committee of Experts and the Assessment Commission of the modalities of application of Conventions on the part of Member States<sup>170</sup>.

#### v. Social Justice.

The concept of “Social Justice” opens the second Section of the Declaration of Philadelphia: “lasting peace can be established only if it is based on social justice”, which is stated into a series of principles. The 1919 ILO Constitution had already established in a general way the aims to be pursued through an International. However, the Declaration, indeed, deeply innovates as regards to this concept, supplying a comprehensive and global definition of Social Justice. In actual fact, the latter can be defined as the fair and proper administration of laws conforming to the natural law that all persons, irrespective of ethnic origin, gender, possessions, race, religion, etc. are to be treated equally and without prejudice. The most explicative provision of the concept of Social Justice in the Declaration is contained in the first principle of the Section: (art. II a): “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. It is worth to point out that the stress on freedom and dignity of the human-worker represented in 1944 a thoroughly new concept, which marked a discontinuity with the founding assumption of the Industrial Society. This assumption stated that once the worker got through the Factory’s gate, as being subject to an obligation of juridical subordination, he/she would lose his/her freedoms as a Citizen, to be inserted in a context governed by the scientific organization of labour, and uniquely ruled by efficiency imperatives, leaving justice apart<sup>171</sup>. Not only will freedom and human dignity as prominent values as regards to the economic sphere supply the basis, in international law and in several national systems, to the development of a

<sup>170</sup> 1948 Tripartite Meeting on the Convention n. 87, on Union Freedom, and the protection of Union Right, as regards the right to strike, likewise the modalities and the praxis of the action of Strike at National level, TMFAPROC/2015/2, Geneva, 22-25<sup>th</sup> February 2015.

<sup>171</sup> Supiot (n 2) 132.

new conception of horizontal equality<sup>172</sup>, but they also justify a vision – central in the “essence” of the Declaration – of subjugation of economy and finance to the objectives of social justice, towards which national and international policies should aim. This is clearly affirmed in art. II b) which states that the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy. And it is not enough. The spirit of Philadelphia is not only able to normativize a teleologically-oriented vision towards social justice, making economy and finance means available to humanity, but it explicitly affirms that (art. II c) “all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective”. Again, the letter d) of art. II declares the responsibility of the ILO to “(...) examine and consider all international economic and financial policies and measures in the light of this fundamental objective”. The cornerstone value of this affirmation is evident, like its absolute modernity.

It is enough to point out that this principle is at the basis of the 2008 ILO Declaration on Social Justice for a Fair Globalisation, a powerful reaffirmation of ILO values and ILO’s key role in helping to achieve progress and social justice in the context of globalization, and it substantially constitutes the concept expressed in the 2009 Lisbon Charter, with which the EU has adopted an horizontal social clause: “in defining and implementing its policies and actions, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of health<sup>173</sup>”. This clause introduces a sort of social condition in EU “actions” and “policies”, which consists in complying with the constraints imposed through the respect of social values<sup>174</sup>. It stipulates that EU policies must now take social requirements into account, to ensure consistency between the various policies and the social objective: this clause obliges the European Union and also its Member States to better consider the social dimension when implementing new policies and actions, doing a precautionary evaluation of the social impact of each new actions and policies, requiring an evaluation ex-ante and ex-post decision, implying a constant monitoring of the EU policies impact on the social dimension.

In the same way, the principle stated in letter d) of Section II imposes on the Organization the duty to control ex ante and ex post the policies and the fiscal and economical actions of international organizations and national legislators of Member States, in the light of its objective of social justice. Such commitment may be considered as the seed of the more recent concept of “sustainable development<sup>175</sup>” (as much as the horizontal social clause represents an applicative example of the concept) within the continuous attempt to reach a balance among economic, political and social aims, outlining integrated solutions of social conditionality, in the field of the regulation of the international context.

This is to show the absolute modernity of the document in comments.

<sup>172</sup> Hepple (n 14) 127.

<sup>173</sup> Art. 9, TFUE.

<sup>174</sup> Adalberto Perulli, ‘Fundamental Social Rights, Market Regulation and EU External Action’ (2014) 30 *IJCLIR* 34.

<sup>175</sup> See Adalberto Perulli, *Sustainability, Social Rights and International Trade: The TTIP* (2015) 31 *IJCLIR* 473. The Sustainable Development is the “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. United Nation, Report of the World Commission on Environment and Development: Our Common Future, 1987.

vi. The Broadening of the ILO's mandate.

Beside the affirmation considering Social Justice as a fundamental goal, in accordance with which all the programmes of action and the national and international measures in economic and financial matters should be taken, we have the broadening of the ILO's mandate. Now, the ILO is in charge of controlling that all national and international economic and financial policies (and not only those relative to labour conditions) aim to the fundamental objective of Social Justice, and of possibly orienting them through the elaboration of appropriate decisions and Recommendations (“(d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective; (e) in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate”). So, the social aim becomes the guiding criteria in order to judge the economic and financial policies, for the first time in history. We may for sure define this Principle as revolutionary, and it is the result of the awareness acquired during the tragic period of the Great Depression starting in 1929 and of the following mass unemployment and poverty, of how deep the impact of economic policies could be on life and working conditions<sup>176</sup>. As Harold Butler said in 1930, it was a matter of relocating the centre of gravity of the ILO “from the purely social to the economic sphere”, hence

The principles referring to catches d) and e) ratify the ILO's veritable "right of oversight" over economic, financial and commercial matters, and making it the organisation's responsibility "to examine and consider all international economic and financial and commercial matters", and making it the organisation's responsibility "to examine and consider all international economic and financial policies and measures in the light of this fundamental objective", i.e. in the light of understanding that "lasting peace can be established only if it is based on social justice" (Principle II, d). The need for a change to the ILO's Constitution had already been underlined in the previous sessions of the Governing Body, by inserting a provision affirming the Competence of the Organization also in economic matters. The inclusion of the Declaration in the Constitution of the ILO (particularly catches d) and e) have legitimated the Organization to manage issues being non-purely relative to labour standards, ensuring the ILO a new and wider mission, expanding the sphere of the ILO's concern from “labour” to “social” question.

vii. Full occupation, minimum wage and social security.

The third section of the Declaration of Philadelphia specifically indicates the new mandate of the ILO's policy. Full occupation has gained a central role among the main goals of social and economic policies: “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”. Considering the economic context of the involved document, towards the end and the immediate post-war period, the main concern regarded the re-employment of million of men and women previously employed in the army or in

<sup>176</sup> E Lee, *The Declaration of Philadelphia: Retrospect and prospect* (1994) 4, ILR, 468.

the production of weapons: the full employment sought by the ILO is a full employment for welfare and not full employment for warfare<sup>177</sup>. The principles that follow the corollary of the concept of full occupation – professional training and realization, flexibility in the transfer of labour, an adequate salary and right to bargaining – show how the ILO is committed to a valuable employment: “(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 well-being; (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”.

In the matter of working conditions, we ought to point out that at that time – contrary to the ILO’s Constitution’s provisions – no hour limitation was stated (neither daily, nor weekly) to the working activity: as experience has shown that under present conditions of technological development any figure is likely to become rapidly out of date in the industries with the most modern technical equipment, while remaining an objective for future effort in industries which are technically less advanced<sup>178</sup>. The second part of the third section reaffirms the extent of the Organization’s mandate, underlining the importance of the provision of a minimum wage and a valid system of welfare for all Citizens. The Declaration maintains the importance of the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care (f) and at the same time it places the individual, considered as beyond the state of mere worker, and as central as regards the provisions of child welfare and maternity protection (f); the provision of adequate nutrition, housing and facilities for recreation and culture (i) and the assurance of equality of educational and vocational opportunity (j).

#### viii. International cooperation and the Declaration’s Universality.

The fourth Section of the Declaration deals with the relationships between the ILO and the other international organizations, recognizing the importance of the ILO’s full collaboration, being fully conscious of the communion of responsibilities for the promotion of health, education and well-being of all people. Further, the organization reaffirms the importance of a national and international effective action “including measures to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade”. The ILO’s main representatives in the fulfilment of the goals quoted above are the UN (the ILO being its first specialised agency, since 1946), the G20, the International Monetary Fund, the OECD and the World Bank.

Finally, the fifth and last Section of the Declaration affirm the universality of the Declaration and, matter-of-factly, of the Principles in it stated: “the conference affirms that the principles set forth

<sup>177</sup> International Labour Conference, 26th session, Future Policy, Programme and Status of the ILO, International Labour Office, Montreal 1944, p. 12.

<sup>178</sup> International Labour Conference (n 26) 14.

in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world". This statement reaffirms the humanitarian mission of the ILO, identifying, once again, as beneficiaries of the Declaration all people everywhere, and not only workers.

Further, we may notice how the Declaration leaves a wide margin of discretionary power to interested Member States, allowing them to apply the enounced principles in accordance to their level of social and economic development, as it is - as a rule - for Conventions and Recommendations. Such provision implies on the part of the Organization a strong, and for some reasons "obligated", flexibility: if the ILO were not to consider the vastness and the variety of Member States subject to the Declaration and their different evolutionary phases, it could not wish for the implementation of the enounced principles on the part of all Members of the Organization, but only on the part of the most developed ones. We may point out that the adaptability of the implementation of these principles and values at different application level allows a certain flexibility in the adoption of the latter, being aware that such method results as the only one able to allow at least a spread application of the Declaration. However, on the other hand, such advantage granted to Member States should under no circumstance represent an alibi not to adopt these principles with loyalty and consistency. In the wake of this, the provision contained in the - already quoted - 2008 ILO Declaration fits perfectly. It states that "the violation of the principles and fundamental labour rights may neither be invoked, nor used as a legitimate comparative advantage, and that the international labour norms should not be used to obtain trade protectionism<sup>179</sup>".

### III. The Declaration's value nowadays: still an on-going challenge.

Beyond the historical value of the Document involved, the importance of the Declaration pertains first to the change of perspective of the Organization: from international organization for the protection of workers, to international organization for human beings' fundamental social rights. After the adoption of the Declaration of Philadelphia, the ILO - while carrying on with the activity of elaboration and monitoring of the implementation of international labour standards in all the world - went beyond the borders of labour legislation, adopting Conventions such as: Employment Policy Convention, 1964 (n. 122) and the Human Resources Development Convention, 1975 (n. 142), which define wide aims and guidelines for national policies in these fields<sup>180</sup>.

The Declaration is a binding Document for all 187 Member States of the ILO, being it a fundamental and essential part of the Constitution of the Organization: it is binding upon the organisation, binding upon its member states, and binding upon the United Nations as a statement of the Organisation's mandate<sup>181</sup>. This means that the Countries may not avoid taking into consideration the content of the Declaration in the elaboration of their social, economic and financial policies.

<sup>179</sup> ILO, ILO Declaration on social justice for a fair Globalization, Section I, A, IVILO, (ILO, Geneva 2008) 11.

<sup>180</sup> Lee (n 25) 479.

<sup>181</sup> Wilfred Jenks, *The Declaration of Philadelphia after 25 Years*, Temple University, Conference on Human Rights, Human Resources and Social Progress, Philadelphia, 8 May 1969, reproduced in *ILO, Social Policy in a Changing World: The ILO Response: Selected Speeches by Wilfred Jenks* (Geneva, ILO 1976).

Finally, it is worth to reflect on the modernity of its content, in a period where Philadelphia's basic assumptions seem to have been overturned, substituting the aim of Social Justice with capital valorisation, free movement of goods, of market and exchanges liberalization. For this reason, the Declaration is to represent a model for all people believing in the freedom and dignity of human beings, in their spiritual development and in economic security with equal opportunities. Essentially, the Declaration still constitutes valid guidelines for economic and social policy at the national and international levels in today's changed world. Therefore, the Declaration is as relevant to current socio-economic realities as it was years ago: although we are dealing with principles established in the first half of last century, it remains a powerful text in the pursuit of social justice, which reminds the solemn commitment by the ILO Member States. It can safely be affirmed that non-compliance with the principle contained in the Declaration is the major cause of the poverty, social instability and insecurity in the world today<sup>182</sup>.

Therefore, the current value of Philadelphia's principles must be treated considering the forms of labour in which social protection, union rights – more in general, everything that may be considered as labour right to a modern extent – still do not exist, both in developing and developed countries. We are referring, for example, to the issue, still unresolved, concerning the liability of the multinationals face of violations of fundamental social rights, to the failure to recognize the right to strike, the protection of social rights in the context of the liberalization of trade; think also to Sharing Economy and Labour on Demand, where the so-called “workers on tap”, suffer from a very high deficit of protection, facing even cases of racial discrimination, deriving from the selection systems on platform. On one hand, this re-launches the ILO's function, that is to say a very useful normative action in order to individuate universally acknowledged social standards, on the other hand, it highlights its limits, and the scarce effectiveness of a regulation still centred on the single States' responsibility.

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<sup>182</sup> Hassan A. Sunmonu, *Contemporary Challenges for labour standards resulting from globalization* in W. Sengenberger and D. Campbell (eds), *International labour standards and economic interdependence, Essays in commemoration of the 75th anniversary of the International Labour Organization and the 50th anniversary of the Declaration of Philadelphia* (International Institute for Labour Studies, Geneva 1994) 105.



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