

**STANDARDS-RELATED ACTIVITIES AND
DECENT WORK:
PROSPECTS IN THE FIELD OF
SOCIAL SECURITY
SUMMARY REPORT**

The purpose of this report is to present the conclusions reached by the working party set up by the ILO in 2003 to examine the standards-related dimension of the policy to extend social security decided by the International Labour Conference in 2001¹. Following an analysis of the standards-related aspects of the problem of extending social security throughout the world (I), the report recommends that the International Labour Conference adopt a framework agreement paving the way for effective implementation of the international standards in force in the social security field in all the ILO's member countries (II).

- I -

**Extending social security throughout the world –
Standards-related aspects**

1. Social security in the ILO's history

Protecting workers against the risks of a loss of earning capacity was part of the ILO's remit when it was created in 1919, and a first series of conventions and recommendations was adopted to that end before the Second World War. These *first-generation standards* were geared (as was prevalent at the time) towards social insurance protecting specific groups of workers against an initial list of risks (medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity, death).

This outlook changed at the end of the Second World War when the ILO adopted the *Declaration of Philadelphia* in 1944. Under this Declaration, which is annexed to its Constitution, the ILO must “further among the nations of the world programmes which will achieve the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care” (§ III(f)). The objective of establishing social security systems of a universal rather than categorical nature throughout the world was thus enshrined at an international level. This objective is linked in the Declaration with a broader perspective of social protection, in particular including the ILO's support for protection for the life and health of workers in all occupations, protection of child welfare and maternity, access to adequate nutrition and housing and an assurance of equality of educational and vocational opportunity (§ III(g)(h)(i)(j)).

This linkage is also to be found in the *Universal Declaration of Human Rights* adopted by the General Assembly of the United Nations in 1948, under which “everyone, as a member of society, has the right to social security, and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each

¹ This summary report is the outcome of group work. Much of it is drawn, in some cases verbatim, from the oral and written contributions of the experts taking part in the group's work (see annexed list). The rapporteur nevertheless takes sole responsibility for this report.

State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” (Article 22).

Any thinking about “standards-related activities” by the ILO has to start from these fundamental legal bases, of which *the conventions and recommendations subsequently adopted in the social security field* are no more than technical extensions. The most important of these conventions is No 102 [1952] which is the basic convention on minimum social security standards. It has since been supplemented by a series of conventions and recommendations, adopted between 1962 and 2000, some of which are intended to ensure equality of treatment of nationals and non-nationals (Convention No 118 [1962]) or to establish an international system for the maintenance of rights (Convention No 157 [1982]) and others to provide greater protection against certain risks². In order to take account of differing national situations, most of these standards contain flexibility clauses, enabling variable-geometry ratifications from the point of view of the risks covered as well as the degree of coverage and the persons protected. As a result, States can organise their social security systems with a great deal of freedom.

Despite these flexibility clauses, there has been a fairly *low rate of ratification* of the conventions on social security. Convention No 102 has been ratified by only 41 States, not including the United States, Russia, China, Brazil or India. However, the rate of ratification is not really a satisfactory indicator of the actual penetration of ILO standards. Some States ratify conventions without too much concern for their actual implementation, while others introduce social security systems without being bound by ratification. More generally, ratifications tailed off after the fall of the communist regimes and not just in the field of social security. Since that time States have been more interested to commit themselves to the legal disciplines on international trade, about which the least that can be said is that they do not encourage a bold approach to economic and social rights. The very legitimacy of these “second-generation” human rights has been fiercely questioned by the theoreticians of a world legal order based entirely on the notions of rivalry and competition.

2. The new normative context

In 1998, as a reaction to this decline in international labour standards, the ILO adopted a *Declaration on Fundamental Principles and Rights at Work*, which reminds States that in freely joining the ILO, they have endorsed the “principles and rights set out in its Constitution and in the Declaration of Philadelphia” and have undertaken to work towards attaining the overall objectives of the Organisation (Article 1(a)). This general reminder therefore includes the social security rights affirmed in Philadelphia. This reminder is immediately followed, however, by a list of four “principles concerning the fundamental rights” which are the only ones to be respected, promoted and realised in good faith (Article 2) and subject to a follow-up procedure (Article 4). These are: a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour; d) the elimination of discrimination in respect of employment and occupation.

This list does not include social security or even protection of health at work. Bearing in mind the founding role played by workers’ physical protection in the history of labour law, it comes

² For a clear and precise review of these standards, see M. Humblet and R. Silva, *Standards for the XXIst century – social security*, Geneva, ILO, 2002, 70 p.

as no surprise that this Declaration was fiercely criticised³. By affirming the fundamental nature of some rights or principles, this formal text implicitly gives others a secondary status and has rather relegated them to the warehouse of normative accessories. It would nevertheless be simplistic to focus solely on the manifest inadequacy of its substantive content (and its possible perverse effects) and to disregard the novelty and potential of the method used. The merit of this Declaration is that it breaks away from the self-service approach to standards inherent in the ratification system. Bearing in mind the general nature of the “reminder” of the normative scope of the ILO’s founding texts set out in Article 1(a), this Declaration can just as well be seen as a first step towards a genuine international social public order binding on all States as a step back from the ILO’s normative ambitions. *Both of these interpretations are possible* and only history will show which one is correct.

This legal context is obviously the first area that needs to be examined before any normative proposal can be put forward in a field such as social security which is excluded from the list of “fundamental principles and rights” in the 1998 Declaration. This is why we felt that it would be a good *method* for our group to look first at the changes that have taken place in the universe of international labour standards and then to try to pinpoint the opportunities and risks of a normative initiative by the ILO in the social security field.

During this first, purely preparatory, stage we took stock of the *proliferation of standards* covering social issues in the context of globalisation. Public and private initiatives in the name of “enterprises’ social responsibility” and the implicit social standards imposed by the international trade and financial institutions (in particular incentives to dismantle the social protection systems inherent in structural adjustment plans) mean that the ILO no longer has a monopoly, assuming that it ever did. The questions that the ILO leaves to one side will undoubtedly be tackled by others, from philosophical and legal standpoints differing from those of its Constitution. This is particularly true of the social security field, where there are such colossal economic and financial issues.

This general thinking about international labour standards also made it possible to pinpoint the strengths and weaknesses of the new legal practices flourishing with the ideals of “*governance*”. While the notion of subjection to general and abstract mandatory rules, which is a feature of hard law, has lost none of its force in the area of international trade, it is disputed, however, in the social field. Countries’ differing social models and unequal wealth have led to the development of various forms of soft law, often as a result of private initiatives (labels, codes of conduct, etc.), which have also been implemented by public institutions. Initially used by enterprises as a management technique, management by objectives has become common in public policy. The 1998 ILO Declaration took this path, moreover, as regards the so-called “fundamental rights” by introducing a “promotional follow-up mechanism” intended both to measure and encourage States’ commitment to pursuing the objectives that it assigns them. The key reference in this case is nevertheless the “open method of coordination” adopted by the European Union in the employment field and extended since then to various fields including social security⁴. Up to now this has been the

³ See, in particular, P. Alston, “‘Core Labour Standards’ and the Transformation of the International Labour Rights Regime”, *The European Journal of International Law* (2004), Vol. 15, No. 3, pp. 457-521.

⁴ The European Commission has thus set four objectives in the field of social protection: a) creating more incentives to work and provide a secure income; b) safeguarding pensions with sustainable pension schemes; c) promoting social inclusion; d) ensuring the high quality and sustainability of health protection (*A concerted strategy for modernising social protection*, COM (1999) 347). Experience gained over a number of years led the Commission to publish a further Communication on *Streamlining open coordination in the field of social protection* (COM (2003) 261 of 27 May 2003).

most advanced attempt to introduce international social governance transcending the conventional legal techniques of government. As laid down by the Lisbon European Council in 2000, it consists in a) formulating guidelines for achieving *objectives* set by the Member States; b) drawing up quantitative and qualitative *indicators* and criteria for assessing best performance; c) translating the guidelines into *national and regional policies*; d) drawing lessons from the evaluation of concrete *cases*, i.e. providing this normative system with feedback from actual cases of its implementation. This method is formally included in various provisions of the Constitutional Treaty of the European Union, currently being ratified⁵.

These new approaches to normative issues in the social sphere should not be immediately ruled out. However, if they are not to undermine the force or the scope of the principles enshrined in the Declaration of Philadelphia and the Universal Declaration of Human Rights, and are, on the contrary, to pave the way for their actual implementation, their use has to be subject to various precautions that the first phase of our group's work helped to pinpoint.

The first of these precautions is not to see soft law as an alternative but rather as a supplement to hard law. If a free market is to be introduced in a sustainable way, it requires a legal framework which takes account of its economic (the need to trade the wealth produced by workers) as well as its social dimension (the needs of the workers producing that wealth). As history shows, neglecting either of these dimensions can lead only to disaster. That would be true of a world legal order where trade in goods was subject to a "hard" law and the fate of men to a "soft" law. Economic and social questions are not independent from one another, and account needs to be taken of the unity and diversity of human societies in both fields. It is therefore necessary, as regards both economic and social standards, to *combine rules applicable to all with rules taking account of differing situations*.

Taking genuine account of these differences and in particular not projecting the ways of thinking of the countries of the north onto the countries of the south is a second key precaution. This is essential from a number of points of view. First, any use of incentive standards must be subject to the existence of *reliable methods of representation of the populations covered by these standards*. If soft law is not to be an instrument conditioning men and women, but a way of ensuring that they participate in formulating a fair order, it has to be rooted in the principle of participation. This is particularly true of workers in the informal economy who are the best experts on this economy. They must therefore have the collective ability to influence the content of standards that cover them if these standards are to be legitimate and in keeping with their actual lives. Second, ways of *gaining a genuine knowledge of the working practices and systems of solidarity* on which action is to be taken need to be found. Failing this – and this is one of the unpalatable lessons of 40 years of "development" policies in many regions of the world – neither the objectives set nor the methods used to achieve them reflect actual local problems. Management by objectives that does not proceed from local knowledge is at best ineffective; at worst, it merely exacerbates the problems that it is supposed to resolve.

Unless these two imperatives are respected – participation by the populations concerned and mobilisation of local knowledge – there can be no hope of reliable indicators through which problems and progress towards the achievement of objectives can be genuinely measured. When they are imposed from outside and designed with scant regard for actual situations, the indicators inherent in management by objectives are no longer measurement instruments, but

⁵ See in particular Articles III-100 (European employment strategy), III-107 and III-111 (labour law and social protection).

hidden and arbitrary standards which elude any democratic debate and any negotiation and are imposed in place of the objectives that they are supposed to serve.

3. The new consensus on social security

These considerations provided a starting point for the second phase of our group's work, focusing on the standards-related dimension of the extension of social security in the world. This thinking took up the prospects sketched out in the *Resolution and Conclusions concerning social security* adopted by the International Labour Conference at its 89th session in 2001. The task of our group was to examine the possible legal ramifications of the "new consensus" on social security reached by the representatives of States, employers and workers⁶.

This new consensus moves towards a *free interpretation of the Declaration on Fundamental Principles and Rights at Work of 1998*. The International Labour Conference starts by affirming that social security is "a *basic human right*" (§ 2). As it comes from the same authority as the 1998 Declaration, this provision makes it clear that the list of fundamental rights is not limited to the four "principles concerning the fundamental rights" set out in Article 2 of the 1998 Declaration, and that the action priority decided for these four principles can be extended to other issues. This interpretation is borne out by the fact that, according to the Conclusions adopted in 2001 (§ 5): "*Of highest priority* are policies and initiatives which can bring social security to those who are not covered by existing systems". By addressing rights to social protection in this way, and going beyond the sphere of labour relations alone, the International Labour Conference supplements the 1998 Declaration which dealt only with fundamental rights *at work*.

Faithful to the Declaration of Philadelphia, whose validity is re-affirmed (§ 1), the 2001 Conclusions adopt a *broad conception of social protection* which, as it incorporates the new risks of exclusion from competences (in particular initial education and lifelong learning), envisages social protection from the point of view of maintaining people's skills in the long term (§§ 3 and 7). There is also a broad conception of the scope of application of social security, which is enhanced by the reference to decent work (§ 17) whose considerable potential is to be tapped. Linking the need for security with the performance of a *task* and not just with work in employment means that positive account can be taken, over and above employment, of self-employment, work in the informal economy (§ 5) and unpaid personal care work chiefly by women as a result of family solidarity (§§ 8, 9 and 10). The reference to *decent work* helps to anchor social security in the principles of dignity (§ 2) and solidarity (§ 13) and thus to rule out any return to risk management on a purely individual basis or a purely charitable approach to poverty.

While affirming a common vision of social security, the new consensus that has emerged in the International Labour Conference also sets great store by the *diversity of national situations*. This diversity is first that of social security models. By stating that "there is no single right model" and that "each society must determine how best to ensure income security and access to health care" (§ 4), the Conference draws useful lessons from the failure of attempts to export a specific model into societies whose cultural and social values, history, institutions and degree of material wealth differ from those of the "exporting" society. While this note of caution obviously applies to north/south exports, it also applies to north/north and

⁶ See *Social security. A new consensus*. Geneva, ILO, 2002.

south/south exports. In particular, social security must not be a way of imposing social choices which are a matter for national sovereignty and individual freedom. If, for instance, equality between men and women is a principle whose validity has been recognised by all the ILO's member countries, this *equality* is not to be seen as an *identity* of conditions. This means, for instance, that social security systems must respect the rights of women who have devoted all or part of their lives to work in the family rather than in the commercial sector (§§ 8, 9 and 10). Diversity also has to be taken into account when defining priority risks and needs. Old-age pensions are a key issue in ageing societies (§ 11) but are fairly irrelevant in countries where life expectancy remains very low, especially those having to cope with major pandemics (AIDS: § 12, as well as malaria) without having a satisfactory system of prevention and care or access to appropriate drugs. Hence the importance of the principle, already discussed above, of representation of the populations concerned since it is only they who can assess what their most pressing needs are (§ 15).

Neither the Resolution nor the Conclusions adopted by the International Labour Conference comment on the normative dimension of the extension of social security. They call on the ILO to run a promotion campaign (§ 17), to organise technical cooperation (§ 19) in the social security field and to research ways and means of achieving its extension (§ 18). The aim is to encourage member countries to draw up a “national strategy for working towards social security for all” (§ 16). The work of our group was part of this remit. Following on from the intellectual approach taken by the Conference, we tried to design a legal mechanism likely to encourage member countries to draw up a national social security strategy. This strategy not only has to be rooted in the guiding principles of social security as set out in existing standards, but also has to start from each country's particular situation. It is for this reason that our group is recommending that the International Labour Conference adopt a framework agreement on social security, under which national agreements could then be negotiated with the member countries.

- II -

The outlines of a framework agreement on national social security strategies

1. Why a framework agreement?

According to the Conclusions adopted in 2001 by the International Labour Conference “ILO activities in social security should be anchored in the Declaration of Philadelphia, the decent work concept and relevant ILO social security standards” (§ 17). This wording suggests two main guidelines. First, that the ILO does not intend to overhaul existing international standards in the social security field and, second, that these existing standards should be reviewed in the light of the decent work concept.

1.1. Standards-related activities on social security must therefore take the relevant standards as a starting point for extending social security to the numerous populations who do not at present benefit from it. This is particularly true of Convention No 102 which has to remain the basic convention in this area. This convention undoubtedly reflects in many respects the socio-economic situation prevailing in 1952 in the industrial countries. Account therefore has to be taken of the fact that some of its provisions relate to an industrial model which no longer corresponds to that of the “developed” or the “developing” countries. In the former, the

“Fordist” model based on a male breadwinner in full-time employment, has given way to a situation that is much less standard, marked by rising unemployment and precarious and badly paid jobs, the massive influx of women into the labour market and diverse and unstable family situations. In the “developing” countries, the wage earner model has undoubtedly gained ground, but has not spread to the extent that was expected; the informal economy has in particular boomed in some of these countries. In practice, an economy of poverty is the lot of a substantial proportion, even a majority, of the population, an economy which eludes the conventional legal classifications of the working world. Despite its undoubted merits, Convention No 102 does not take account of this situation, common in many southern countries, which explains (among other factors) why large States, such as India, have not ratified it. This does not mean, however, that it should be called into question; while some of the technical provisions of Convention No 102 are no longer in keeping with the problems currently raised by social security, the legal principles that it sets out have lost none of their value, and the flexibility clauses that it contains leave considerable room for manoeuvre in its implementation. The problem is not, therefore, one of dismantling this existing standard, but rather of considering it to be a foundation on which national social security strategies in keeping with present times can be built.

1.2. Standards-related activities must then take up the objective of decent work for all. By referring to the concept of decent work *after* the Declaration of Philadelphia, but *before* the social security standards, the International Labour Conference is clearly calling for an interpretation of these standards in the light of this concept which encapsulates and updates the spirit of Philadelphia. As we know, the decent work concept is not an operative legal concept but rather a guide that the ILO has used since 1999 to shape its action: “the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity” (see *Decent work*, Report of the Director General to the 87th session of the International Labour Conference, Geneva, 1999, p. 3). The reference to decent work makes it necessary to review the ILO’s founding principles, adopt a comprehensive view of work, and take account of differing situations and socio-economic models throughout the world. Hence the need for “exploring new methods of standard setting” (*op. cit.*, p. 17) able to supplement the system of declarations, conventions and recommendations. There is a particularly pressing need for new normative methods for the extension of social protection and social security which is one of the four priority programmes contained within the framework of the decent work objective (alongside the implementation of the 1998 Declaration and the application of international labour standards, the promotion of the volume and quality of employment and the strengthening of social dialogue: *op. cit.*, pp. 13 ff.). Protecting men and women against life’s risks is undoubtedly the field in which the diversity of societies, cultural models and degrees of material wealth has the most intense impact. It is also the expression of a need – the need for all men and women to have the minimum material wealth that they need to live and act – whose universal nature is not disputed by anyone.

1.3. This provides an outline for a new method of standards-related activities, placing the new consensus of 2001 on social security on a legal footing. This method has to satisfy at least the following four conditions:

- it must not duplicate or water down the relevant existing standards, but pave the way for an extension of their scope of application;
- it must embody the guiding principles of social security as set out in these standards and in the Declaration of Philadelphia;

- it must take account of the actual situations of the populations concerned by the extension;
- it must have real legal force and thus put a stop to any weakening of social standards in comparison with economic standards.

Within this framework, our group took up the proposal from one its members (Professor Goldin of the University of Buenos Aires) to design a contractual mechanism providing a legal base for the formulation of national strategies to extend social security. This contract would include a non-negotiable part involving acceptance of the guiding principles of social security as set out in existing international standards, and a negotiated part laying down the method by which the national social security plan is to be drawn up and the resources that the ILO and any other contributors would mobilise to help with the formulation and implementation of this plan. Unlike the ratification of an ILO convention, such a contract would oblige the State not to obtain a certain result but to use all the necessary means in order to draw up and implement a social security extension plan in keeping with the country's situation and the objectives that it has itself set in this area. In a reciprocal way, the counterpart to this undertaking would be technical and financial assistance in achieving these objectives.

Combining the heteronomy of the principles recognised by international society and the autonomy of States as to their implementation, these contracts would take the form of *national agreements* to extend social security concluded between the ILO and the State concerned, with which other international organisations able, through their own competences, to help with this extension could possibly be associated. These agreements would be negotiated with States in accordance with a *framework agreement* adopted by the International Labour Conference; other partners could nevertheless be involved in their implementation through the national agreements. This opportunity to extend the circle of parties to national agreements is in keeping with the International Labour Conference's call in 2001 for other international organisations, including the IMF and the World Bank, to cooperate with the ILO in its action to extend social protection (see the above-mentioned Conclusions concerning social security, § 21). The efficiency of this mechanism would clearly depend on the extent of the resources mobilised to encourage States to commit to it; on their own, the ILO's resources might well not be enough for this purpose. This extension of the circle of parties would also have the merit of confirming these other organisations' explicit acceptance of the guiding principles of social security.

2. Acceptance of the guiding principles of social security

In accordance with the above-mentioned Conclusions of the International Labour Conference, the framework agreement on social security should "be anchored in the Declaration of Philadelphia, the decent work concept and relevant ILO social security standards" (§ 17). Anchoring the framework agreement in this way makes it necessary to include a fixed part recapitulating the guiding principles of social security. According to the Conclusions of the Conference "all systems should conform to certain basic principles" (§ 4). Some of these principles, such as equality of treatment, have already been formulated as such in existing standards, while others, without having been affirmed as such, are clearly evident from these standards or the decent work concept. This is true of dignity, solidarity and participation. The drafting of a framework agreement by the International Labour Conference would therefore offer an opportunity for a valuable recapitulation of these principles, of which the list that we have drawn up is no more than an initial outline. This list should in any case include four

principles whose meaning and legal scope as regards social security law need to be briefly reviewed: dignity, solidarity, equality and participation.

2.1. *The principle of dignity*

The dignity of the human being was not mentioned in the first declarations of rights adopted by the United States and France at the end of the 18th century. The “human being” of these initial declarations of rights was a pure being of reason whose physical existence was envisaged only from the point of view of criminal law. History has shown that the civil and political rights enshrined in these initial declarations lacked meaning and were threatened with extinction in places where whole masses of humanity lived in poverty and fear. If people are to be concerned with defending democracy or the right of ownership, they first need a minimum of physical and economic security and cannot be prey to aggression, hunger, cold or disease. One of the lessons of the 1930s was that mass unemployment and poverty pave the way for dictatorships and that there can be no freedom where there is physical and economic insecurity; hence the affirmation of social rights after the War.

The notion of dignity appeared after the War in international law in support of this affirmation of economic and social rights, called second-generation human rights. The Declaration of Philadelphia is the first to use it. Referring to the tragic events of the Second World War which had just shown that lasting peace can be established only if it is based on social justice, it affirms that “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” (§ II(a)). The attainment of this right has to constitute “the central aim of national and international policy” (§ II(b)). The same link between dignity and social rights is to be found in the Universal Declaration of Human Rights which, after referring to it in general terms in its introduction⁷, mentions human dignity on two occasions: in support of the right to social security (Article 22) and the right to work (Article 23). In recent times, human dignity has been raised to the rank of a principle, initially in the legislation on bio-ethics and then in the European Charter of Fundamental Rights, where it takes first place, above freedom, equality and solidarity, as a foundation for the rights of integrity of the person (deriving in particular from the prohibition of the death penalty, non-consensual medical experimentation or treatments, torture, cloning, forced labour, slavery and trafficking in human beings).

There is nothing surprising in the fact that dignity was first invoked as a foundation for the rights to work and social protection, and then for the rights to physical and mental integrity. It is recognised in both cases that the value of humanity is at issue in the material existence of every human being and that nothing should prejudice this value, not even the person in whom it is invested. Used in this sense by the first humanists of the western Renaissance⁸, it has retained this meaning in its modern usage. The dignity of man means that all human beings embody the principle of humanity and must therefore be treated, alive and even after death, as

⁷ First recital: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article 1: “All human beings are born free and equal in dignity and rights”.

⁸ In the vocabulary of the western Middle Ages, Dignity represented a corporation by succession, not in space but in time. Embodying an imaginary oneness between predecessors and potential successors, all present in and part of the holder of the moment, Dignity, by definition, never dies. Used first for the royal function, the concept started to be “democratised” by the first humanists of the Renaissance for whom every man, as a mortal being, embodied the immortal dignity of *humanitas*. See E. Kantorowicz, *Les deux corps du Roi*, op. cit., p. 278 ff. Pico de la Mirandola, *Oratio de hominis Dignitat - De la dignité de l'Homme*, bilingual edition by Y. Hersant, Combas, Éd. de l'éclat, 1993).

ends in themselves and never as mere means (with the result that terms such as “human resources” and “human capital” should be banned from the legal vocabulary).

If social security has seemed from the outset to be a manifestation of the principle of dignity, it is because it invests human beings with the right to lead a decent life whatever the physical and material vicissitudes of that life. In contrast to alms, or aid given unilaterally to those in want, social security includes individuals in a collective exchange mechanism, where *receiving is a right whose counterpart is an obligation to give or make some return*. It is for this reason that the common provisions of Convention No 102 guarantee the right to take legal action to have them respected (Article 70(1)). It is also the reason why the Beveridge report ruled out any notion of making the recognition of social rights subject to means testing. A system of benefits based on means testing divides society into two types of member – creditors and debtors – whereas everyone should be able to be both a creditor and a debtor and to participate fully in the play of exchanges. Assigning every member of society rights based on what they contribute to this society is fully to recognise their dignity. Denying a human being the ability to contribute something for his counterparts is, in contrast, an attack on his dignity.

Making every person the holder of genuine rights is therefore a way of recognising their *capacities*, and of helping to maintain and increase these capacities. In its legal sense, capacity means the ability of individuals and organisations to enter into contracts and, more broadly, to manage their affairs themselves. In this sense, legal capacity enables access to the play of exchanges in a market economy. In liberal legal thinking, capacity tends to appear only negatively, i.e. through its absence: very young, very old or very sick people may lose the capacity to enter into binding contracts. They are in practice deemed to be incapable of rationally evaluating their personal interest. Social security makes it possible to move away from this negative approach to a positive and dynamic approach more in keeping with the principle of dignity: rather than endorsing incapacity, it tends to preserve people’s capacity by providing them with resources to cope with the risks of incapacity. In this way it is a powerful factor of economic dynamism and a key component of an economy of sustainable development, as outlined in the work of Amartya Sen in particular.

Anchoring the extension of social security in the principle of dignity should therefore provide it with new extensions by broadening it, over and above the risks covered by Convention No 102, to support for people’s capacities in a diverse and changing world. Many different examples can be given of these possible extensions. One is funeral costs, which weigh heavily on the budgets of people in very poor countries such as Mali where the old-age risk is unfortunately of little relevance. Another example, as mentioned in the Declaration of Philadelphia and by the International Labour Conference in its 2001 Conclusions on social security (§ 7), is the right of access to education and lifelong learning systems. The “social drawing rights”, whose purpose is not to enable people to cope with the occurrence of a risk but to support the concrete exercise of a freedom, are another more general example⁹. The reference to dignity therefore means that social security is situated in the more general framework of a *policy on capacities* which, in contrast to policies on employability, does not envisage the human being as a resource to be adapted to the needs of enterprises (from this

⁹ See A .Supiot (ed.) *Au-delà de l’emploi, Transformation du travail et devenir du droit de travail en Europe* (Report for the European Commission), Paris, Flammarion, 1999 p. 90 ff. Published in English as “Beyond Employment: Changes in Work and the Future of Labour Law in Europe”, OUP, 2001.

point of view, the concept of employability is not really compatible with the principle of dignity) but rather as the ultimate goal and lifeblood of any enterprise.

The principle of dignity thus makes it necessary to place the economy at the service of man, which has very concrete normative consequences that the Declaration of Philadelphia expresses in terms that are clear enough merely to be repeated rather than paraphrased here. After proclaiming the right of all human beings to “pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”, it affirms that “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” (§ II(c)) and gives the International Labour Organisation the task of “examining and considering all international economic and financial policies and measures in the light of this fundamental objective” (§ II(d)). We cannot fail to be struck by the total reversal of this attitude underway at present in the area of trade liberalisation, and the way in which some recent international standards envisage man as a means serving economic purposes. This is true for instance of the provisions of the Treaty on European Union, taken up in the draft Constitutional Treaty, under which one of the Union’s goals is to adapt the labour force to market needs (Article III-203). The ILO itself has not always evaded this trend in the recent past. Taken literally, Article 5 of its 1998 Declaration, according to which “the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up”, does not seem compatible with the guidelines of the Declaration of Philadelphia discussed above¹⁰. The negotiation of national social security plans on the basis of the framework agreement proposed here could provide an opportunity to implement these guidelines. First, by evaluating the impact of economic and financial action programmes (structural adjustment plans in particular, but poverty alleviation plans as well) on people’s economic security and capacity. Second, by providing a legal framework promoting cooperation between the ILO and the international economic and financial organisations, and by placing this cooperation under the aegis of the guiding principles of social security.

2.2. The principle of solidarity

Like dignity, solidarity has long remained a philosophical and political notion and it is only recently that it has been raised to the rank of a legal principle. The principle of solidarity was first affirmed in some national legal orders which made it the basis for their social security systems. Inherited from Roman law, solidarity was initially a legal technique intended to settle cases of a plurality of creditors (active solidarity) or debtors (passive solidarity) of a same obligation. While civil law generally apprehends the relationship of obligation only on an individual basis, solidarity made it possible to envisage it from a collective point of view (community of creditors and debtors) in the absence of any collective link and any individual consent (enabling social solidarity to free itself from the insurance contract). It is evident how this concept could flourish in social law. Put forward by sociologists and political theorists at the end of the 19th century, solidarity offered a good starting point for those who wished to remedy the excesses of individualism without breathing new life into the parish, religious or corporative communities of the pre-industrial era. The main merit of solidarity was in practice to locate the constructs of social law on the law of obligations and thus to preserve the principles of equality and individual liberty that any direct reference to these “natural

¹⁰ This is why this Article 5 has to be interpreted as a simple reminder of the obligation of implementation in good faith.

communities” would have endangered. Transplanted into social law, the notion has developed and changed to the extent that, in some countries, it has become the only general principle to which social security is referred¹¹. This shift from local solidarities based on membership of traditional communities towards broad systems of solidarity under the auspices of the State is a constant in the history of social security systems, as diverse as these systems are.

Although it is not explicitly stated, the principle of solidarity is clearly evident from Convention No 102. In Part XIII, setting out common provisions from which the States ratifying it cannot derogate, this convention states that social security must be financed from “contributions or taxation (...) in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected” (Article 71(1)). This provision expresses the essence of solidarity, which is to establish, within a human community, a common pot into which everyone has to pay according to their means and on which they may draw according to their needs, within the limits laid down by the system’s administration. The obligation that it places on everyone to contribute to the protection of all is undoubtedly one of the duties of man, implicitly or explicitly recognised by the declarations on fundamental rights. This mutualisation replaces a calculation of individual utility with a calculation of collective utility. From the economic point of view, it is an arrangement under which its members’ interests take priority over those of third parties and the collective interest takes priority over the individual interest. This mutualisation means that the services to which it relates are not subject to free competition and that individual liberty is limited. It is for this reason, in a legal universe governed by free trade, that it can be recognised and developed only on a specific legal basis. Because it provides such a basis, solidarity has gradually acquired the value of a legal principle in the international arena. In substance, this is the legal translation of the very simple idea that any human society needs cooperation as well as competition and that a world that claimed to disregard one or other of these values would be doomed to failure.

The collision of social law and competition law led in 1993 to the affirmation of the principle of solidarity in the European legal order, a matter that is worth examining in detail here as it is the only transnational normative area in which an attempt has been made to combine the principles of international trade with those of social protection. This collision took place when free competition was invoked by insured persons to avoid paying compulsory contributions to specific social protection schemes, or by employers to avoid the normative force of collective agreements. The argument was that such schemes or agreements were prohibited understandings contrary to the principle of free competition. This led the Court of Justice to judge the solidarity in play in social security organisations to be a lawful exception, to be restrictively interpreted, to the principles of free competition (*Poucet and Pistre*, 1993; *Coreva*, 1995; *Garcia*, 1996). According to this case-law, solidarity schemes are intended “to provide cover for all the persons to whom they apply against the risks of (...) regardless of their financial status or their state of health at the time of affiliation” (*Poucet and Pistre*, 1993). Similarly, the Court of Justice has deemed collective agreements to be a restriction of competition between the signatory enterprises and considers that they are not prohibited economic understandings in so far as they pursue a social policy objective (*Albany*, 1999). The same reasoning has been applied to the monopolies of public service enterprises. Such monopolies are tolerated in so far as they are necessary to “offset less profitable sectors against the profitable sectors and hence justify a restriction of competition from individual undertakings where the economically profitable sectors are concerned” (*Corbeau*, 1993).

¹¹ See the first article of the French social security code: “The organisation of social security shall be founded on the principle of national solidarity” (Social Security Code, Article L 111(1)).

The principle of solidarity therefore takes various forms depending on the issues to which it is applied. In the social security field, it always involves compulsory affiliation (i.e. an obligation on people to pay, through contributions or taxation, towards the financing of the system of which they are beneficiaries), but its practical forms vary depending on the contingencies with which solidarity makes it possible to cope. In the area of health, solidarity takes the concrete form of compulsory contributions proportional to income and identical benefits for all beneficiaries (*Poucet and Pistre, 1993*). In the case of old age, it is reflected by the fact that the contributions paid by workers in employment serve to finance the pensions of retired workers and by the existence of pension rights not proportional to the contributions paid (*Poucet and Pistre, 1993*). In the relations between social security schemes, solidarity lies in the participation of schemes that are in surplus in financing schemes facing structural difficulties (*Poucet and Pistre, 1993*). Here is not the place to discuss the technical inadequacies of the definition of solidarity adopted by the Court of Justice. It is enough to note that a twofold movement to reaffirm and reinterpret the principle of solidarity is already underway in Europe and that this movement has come about from the opening up of borders to free competition.

The first international declaration expressly to enshrine the principle of solidarity is the African Charter on Human and Peoples' Rights of 27 June 1981¹². As its name implies, this Charter, while taking up the individual rights set out in the western declarations, includes them in a conception of man which is not that of man as an island, but of man as a being joined to his counterparts. Whereas the principle of solidarity takes the (implicit) form in the Universal Declaration of 1948 only of individual *rights* (right to social security, to an adequate standard of living, to security against the risk of loss of means of subsistence, see Articles 22 and 15), in the African Charter it is a *duty* (Article 29(4): "the individual shall have the duty to preserve and strengthen social and national solidarity"). In one case, therefore, solidarity is expressed as an individual's claim on society and in the other as a debt. In both cases credit and debt are in practice linked. The counterpart to the *rights to ...* affirmed in the north has everywhere been a duty to contribute towards solidarity by paying compulsory contributions (social security contributions and taxation)¹³. These compulsory levies, representing, as we know, a very heavy burden in the social model of the "old Europe", are the structural equivalent of the duty of solidarity on any African with means. However, while this traditional solidarity takes the form of personal links, the price of this "modern" solidarity is paid to anonymous organisations which may be the State in the case of public services or social security schemes.

Twenty years after the African Charter, the European Charter of Fundamental Human Rights, which was adopted in Nice in 2000 and was incorporated in the text of the EU Constitutional Treaty (currently being ratified), enshrined the principle of solidarity in its turn, albeit with certain new extensions. In this Charter (Chapter 4, Article 27 et seq.), solidarity covers not just the social rights already referred to in the Universal Declaration, but also new fundamental rights (workers' right to information, the right of collective bargaining and action, the right of access to placement services) and certain principles which the public

¹² See the text reproduced in P. Ardant, *Les textes sur les droits de l'Homme*, Paris, PUF, 2nd ed., 1993, p. 92; brief presentation in F. Sudre, *Droit international et européen des droits de l'homme*, Paris, PUF, 5th ed., 2001, No. 76 ff.

¹³ This duty is explicitly set out in the American Declaration of the Rights and Duties of Man (1948), under which "it is the duty of every person to cooperate with the state and the community with respect to social security and welfare in accordance with his ability and with existing circumstances" (Article 35), and "it is the duty of every person to pay the taxes established by law for the support of public services" (Article 36).

authorities and enterprises have to respect (reconciliation of family life and professional life, environmental protection, consumer protection). With this definition, solidarity could help to contain the effects of social disintegration associated with globalisation, in two ways. First, it recognises the right of those whose living and working conditions are affected by international trade liberalisation to organise themselves, to take action and to negotiate at an international level. Here, solidarity is no longer envisaged only as a way of protecting people against life's risks, but as also giving them practical ways of exercising certain freedoms, like many traditional forms of solidarity practised outside the west, such as the tontine in Africa, which thus appears surprisingly modern. Secondly, this definition of the principle of solidarity allows steps to be taken to combat the avoidance of social charges and responsibilities made possible by the closely interwoven organisation of the economy today. All those who benefit from an economic operation should be held jointly liable for any resulting damage to the environment, workers and consumers, regardless of the legal form of the enterprise¹⁴.

This brings us back to the first meaning of solidarity, the civil law meaning, which has long been eclipsed in the social field by techniques taken from insurance. It is strangely similar to the "traditional" forms of solidarity still found outside the west, which involve the personal responsibility of those linked by that solidarity. Thinking through the notion of social responsibility in enterprises operating on an international level would mean that this type of solidarity would have to exist between the various entities in a transnational industry or network. On that basis entities which are "able to exercise a significant influence over the activities of others"¹⁵ could then be prosecuted for liability in the countries where they are established, and could be forced to answer for entities belonging to the same industry or network which fail to observe these principles in their "host countries". This requirement would encourage good sub-contracting practice and discourage bad. Prosecutions for liability could be conducted by the industry's or network's trade unions working together.

If the principle of solidarity is to be included in a framework agreement on social security, account would have to be taken of these recent developments in the concept. First of all, a fairly broad conception should be used in order to encompass both the anonymous solidarity mechanisms of the welfare state and forms of solidarity based on personal or local links, which used to be regarded as peculiar to traditional societies, but which are re-emerging as ultra-modern features with the globalisation of trade. This broad conception naturally includes the public services which a State may decide to use in the context of national solidarity, in order to ensure equal access to certain basic services such as preventive medicine and health care or vocational training. But it is also a way to avoid the opposition between forms of solidarity found in labour law (collective organisation, bargaining and action) and those expressed through the social security systems (mutual benefit associations, occupational schemes, tax-funded public schemes) or in local forms of solidarity. Instead, it establishes links between them so that the systems of protection are universal and coherent. This broad definition is consistent with the wishes of the International Labour Conference, which observes in its new consensus on social security that "there is no single right model of social security. It grows and evolves over time" (§ 4).

Secondly, the framework agreement should remind States that they must continue to guarantee the implementation of the principle of solidarity, though this does not necessarily

¹⁴ This was the solution used in the EC Council Directive of 25 July 1985 concerning liability for defective products. It was also used very effectively by the USA following the *Exxon Valdes* oil spill; American law now allows all those involved in transport operations, whether near or far, to be prosecuted for liability.

¹⁵ Wording taken from the *OECD Guidelines for Multinational Enterprises* (1976, revised in 2000).

mean that they should be in charge of it. Providing this guarantee is essential for the financial viability of the protection systems in the long term, and it is also justified by the fact that all institutions founded on the principle of solidarity place the collective interest above the individual interest, and the interest of members of the group above those outside the group. Only the State can ensure that these institutions work in the common interest and do not pose an excessive threat to individual freedom. Only the State can also organise solidarity between the various occupational, mutual or community schemes that exist within the country. If such schemes are not brought within a coherent national framework, they can promote the fragmentation of society into inward-looking groups which exclude anyone who does not belong. Providing this guarantee means that the State has to respect the independence of these schemes and apply the principle of participation for the persons protected, which is essential if the schemes are to be legitimate and effective (see below, § 2.4).

In its 2001 Conclusions concerning social security (§ 4), the International Labour Conference referred to this pivotal role of the State, which was already evident from the common provisions of Convention No 102. According to Article 71 of that convention, which implicitly suggests the principle of solidarity (see above), the State must “accept general responsibility for the due provision of the benefits” and must take all measures required for this purpose. This responsibility relates primarily to the financial equilibrium of the social protection systems, and the convention requires States to “ensure [...] that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions or the taxes allocated to covering the contingencies in question”. The need for “good governance” and more generally for what Convention No 102 calls the “proper administration” (Article 72(2)) of the institutions in charge of social security is thus an essential component in the application of the principle of solidarity. The State’s general responsibility in this field should therefore be referred to in any framework agreement linking it to the ILO.

2.3. *The principle of equality*

In the legal sense the principle of equality refers both to equality before the law, which should apply to everyone equally and should offer the same rights to those in similar conditions, and to equality within the law, which in some cases prohibits the legislature itself from taking account of certain actual or supposed differences such as race, gender, religion, nationality, trade union membership, etc.

In the social security field, it has not been possible to keep to the purely formal and abstract concept of equality that applies with civil and political rights. Thus the Declaration of Philadelphia mentions *equal opportunity* in the pursuit of material well-being and spiritual development (§ II(a), referred to earlier). Equal opportunity is not just a right, it is also a goal, a “fundamental objective” which the Declaration assigns to the ILO, its member countries and all international economic and financial policies adopted (see § II(b), (c), (d)). In other words, it is not enough to affirm equality of opportunity for it to exist, since it generates what lawyers refer to as a general ‘obligation of means’, in other words an obligation to work towards its achievement.

The common provisions of Convention No 102 set out the principle of *equal treatment* for non-national residents (Article 68). Like equal opportunity, if equal treatment for non-nationals is to be applied in the social security field appropriate institutional mechanisms are needed, more specifically instruments for coordinating the national social security systems.

This is why it was dealt with in an ad hoc convention, No 118 [1962], which is one of the rare ILO conventions to make the binding force of some of its provisions subject to reciprocity between States (see, on this reciprocal effect, Articles 3, 5, 6 and 7; refugees and stateless persons are exempted under Article 10). Equal treatment for nationals and non-nationals thus involves the establishment of a certain degree of solidarity between the national social security systems, and this is particularly true in regional economic areas such as the European Union or the Organisation for the Harmonisation of Business Law in Africa (OHADA).

The principle of equality is also dealt with in the “new consensus” concerning social security that was reached by the International Labour Conference in 2001. In its Conclusions, the Conference looks at equality between men and women, which Convention No 102 does not mention. According to these Conclusions, social security should promote and be founded on the principle of gender equality. This implies “not only equal treatment for men and women in the same or similar situations, but also *measures to ensure equitable outcomes for women*” (§ 8). In particular, account should be taken of the fact that “society derives great benefit from the unpaid care which women [...] provide to children, parents and infirm family members”. According to the International Labour Conference “women should not be systematically disadvantaged later in life because they made this contribution during their working years” (§ 8). In other words, although the Conference accepts that the gradual disappearance of the male breadwinner model has implications for labour standards, it nevertheless calls for provisions “to protect women whose life course and expectations have been based on the patterns of the past” (sic) (§ 9). The attention given to the diversity of lifestyles and gender relations in the world thus still precludes a purely formal and abstract concept of equality, since such an abstract concept cannot take account of the different lives that women actually lead. Applying it to social security would make social security an instrument for imposing one family model rather than another and would discriminate against men or women who, whether intentionally or not, did not fit in with this model.

In social security, the principle of equality means that the same rights must be given to those who, regardless of gender or nationality, have the same burdens and are exposed to the same risks, but it also means that those who do not have the same resources must not be subject to the same obligations. This is the only interpretation consistent with the aim of decent work, in that it requires account to be taken not just of work carried out in the commercial sphere, but also of any work of benefit to the community, including work within the family. Basing individuals’ rights and obligations on their resources and objective burdens rather than on their gender means accepting, for example, that “social security benefits for childcare purposes should be made available to the caregiver” (§ 10). This interpretation of equality is also the only one that is consistent with the principle of solidarity. One of the effects of the principle of solidarity is that it ensures that access to certain fundamental benefits is not subject solely to the discrimination legitimised by competition law: discrimination on the basis of money.

2.4. The principle of participation of those protected

The principle of participation of those protected stems first of all from the Declaration of Philadelphia, which calls for “the collaboration of workers and employers in the preparation and application of social and economic measures” (§ III(e)). This requirement is also found in the “new consensus” reached by the International Labour Conference in 2001, which states that “in order to be effective, initiatives to establish or extend social security require social dialogue” (§ 16), and which gives the ILO the task of helping the social partners “to

participate in policy development and to serve effectively on joint or tripartite governing bodies of social security institutions” (§ 19). It is also evident from the common provisions of Convention No 102, which state that where social security is not directly managed by the State, “representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities” (Article 72). A number of useful points can be inferred from these various provisions.

As regards the material scope of the principle of participation, the provisions distinguish two different levels on which it operates: in the formation and development of social policy, and in the management of the social security institutions. When it comes to developing, analysing or reforming social security the principle of participation has general scope, whereas its application to management depends on whether the institutions providing solidarity are public, private or joint.

As regards the personal scope of the principle, Convention No 102 distinguishes between the participation of the persons protected, which is compulsory, and the participation of employers, which is optional. The concept of “person protected” used by this Convention should be understood to include anyone encompassed by the links of solidarity that make up the fabric of the social security system, in other words anyone contributing to it and able to benefit from it directly (beneficiaries) or indirectly (their employers). This is a crucial point, since it draws a clear distinction in the application of the principle of participation between organisations based on affiliation, which can claim that their members are entitled to participate and which are thus able to represent them in exercising that entitlement, and charitable NGOs, which are not qualified to be representative in this way. The right to participation of the persons protected is a vital component in the development of collective capacity, particularly for workers in the informal economy.

Lastly, when it comes to its application, the principle of participation implies that the representatives of the persons protected must be closely involved in defining national social security plans. The conclusions of the International Labour Conference clearly state that these representatives must be given help to carry out this remit. The public authorities need to adopt an active approach here, ensuring that the representatives receive the training and information they need to play an effective and useful part in defining social security policy and in managing the institutions concerned. The arrangements for providing this help, in which the ILO must also play its part, should be provided for in the framework agreement and defined in more detail in the agreements with the States.

In the field of social security, therefore, democracy can operate in three different ways at the same time: through political representation, for everything relating to the prerogatives of the State; through trade union representation, for everything relating to social protection for those in employment; and through representation of a mutual benefit type for community-based systems of solidarity¹⁶. The principle of participation concerns the last two of these. Experience in the industrialised countries shows that these two forms of representation are not conflicting but complementary. The friendly societies that were formed at the start of the first industrial revolution acted as a crucible for the development of the trade union movement, and the trade unions have, in return, been able to play a major role in establishing modern systems

¹⁶ The EU’s Constitutional Treaty (currently being ratified) clearly distinguishes between these three forms of democracy: see Articles I-46, I-47 et I-48.

of solidarity such as mutual benefit associations or joint social insurance schemes, which do not depend on either the market or the State. The principle of participation thus extends freedom of association as described in general terms in the 1998 Declaration on Fundamental Principles and Rights at Work (Article 2(a)). Freedom of association may be exercised just as well in the context of labour relations (freedom to belong to a trade union) as in that of social security (freedom to belong to a mutual benefit association). Giving the representatives of such associations the right to participate in shaping social policy not only gives this freedom practical meaning, it is also a way to integrate the associations in a coherent national framework and prevent them from becoming too sector-bound. In other words, it is a way of reconciling freedom of association with the principle of solidarity.

The various guiding principles of social security are thus closely linked and must be interpreted in the light of each other. By providing an essential legal basis for extending social security in a global legal order dominated by free competition and individual ownership, they force us to view the universe not just as an area of competition, but also as an area of cooperation. Including them in the framework agreement would provide a common platform which the national agreements would then use as a basis for defining national strategies for extending social security .

3. Defining a national strategy for extending social security

In the light of the principles I have just set out, in particular the principle of participation, the purpose of the national agreements concluded on the basis of the framework agreement would not be to determine the content of the national plans for extending social security, but to define the method to be used to develop these plans in each country, as well as the resources to be allocated for their development and implementation. The framework agreement should therefore include a list of clauses on these methods and resources; the content of the clauses would then be negotiated as part of the national extension agreements.

3.1. Methods

Experience of development policies over the last fifty years shows that mechanically projecting concepts and models from northern countries onto countries in the south is at best doomed to failure, and at worst actually exacerbates the problems that they are supposed to solve. This risk is particularly great in the field of social security, for at least two reasons. First, there is no system in this field that can be presented as a perfect model. In every country where it has developed successfully, social security is constantly evolving with society and has to be perpetually reinvented to cope with changes in demographics, medicine, the economy and lifestyles. Second, social security, more than any other technique, is closely linked to each country's own culture and will only take root if it is drawn from that culture. The problem for countries whose populations face economic and social insecurity is therefore not how to "catch up" with other countries that might be cited as models, but how to find their own path, in other words how to use their own values and knowledge to develop systems of solidarity that are appropriate and consistent with the priorities they have set for themselves. This should be the guiding principle for the whole of the section of the framework agreement on methods, which needs to consider at least four issues: mobilising local knowledge, how to implement the principle of participation, fixing priorities and the development of ad hoc indicators that can measure progress in achieving those priorities.

3.1.1. Mobilising local knowledge is absolutely essential if policies to extend social security, which need to be based on a genuine understanding of the societies concerned, are to be successful. Gaining such an understanding involves both the knowledge which societies have of themselves and bringing out that knowledge. It can only come from the countries themselves, in other words from field research workers who can tap into local knowledge. All too often governments rely, for development purposes, on experts who know nothing of local situations and who merely recommend ideas from elsewhere that are then doomed to failure.

Poor countries desperately need ways to build up their own expertise, in other words to develop ‘knowledge mechanisms’ to have a proper understanding of the actual situation of the populations concerned. If it is to be relevant, any plan for extending social security has to be based on knowledge of the problems these populations face, how they deal with them, the forms of solidarity they use and how the existing social security systems operate. In many countries undergoing structural adjustment, the social security systems have been weakened, and with them the research capacity. Low levels of public funding and the complete absence of funding for universities mean that researchers are forced to retrain, move abroad or to put up with problems imposed from outside. Because they have not been able, or known how, to mobilise the intellectual capacity of their elite, these countries find themselves in a vicious circle where dependence on foreign expertise only increases their inability to draw on their own culture in order to escape from economic and social insecurity.

The ILO itself, in order to carry out its remit in cooperation with the international economic and financial institutions, needs to be able to rely on a network of research centres that are genuinely knowledgeable about what is happening on the ground, which it would help financially and whose intellectual independence would be guaranteed through accreditation arrangements to be specified in the framework agreement. The accreditation or creation of these research centres on labour and social protection could then be decided at national or regional level in the national agreements on extending social security.

These ‘knowledge mechanisms’ should give priority to *promoting local knowledge* rather than to traditional university research. It is all about tapping into the practical knowledge of people working on the ground. The work of the researchers here is similar to that of social engineers in the primary historical sense of the word “engineer”, in other words minds that can conceptualise the knowledge at work in local practices and do not impose outside ways of thinking on them.

3.1.2. The rules for applying the principle of participation in the development of plans for extending social security will have to be set out in the national agreements. Participation is essential if these plans are to be legitimate and effective, since they need to be the subject of genuine consensus among all the parties involved in implementing them. Participation should extend beyond representatives of the State, the trade unions and workers to include solidarity organisations observing, in the country concerned, the guiding principles of social security set out in the framework agreement.

From this point of view two main categories of solidarity should be distinguished: spontaneous community forms and organised society forms. The first includes all spontaneous forms of mutual aid, which are usually based on family ties, religious or ethnic adherence, or ancestral activities, such as managing common land, shared work or crisis resolution. These forms, which are typical of all societies, have acquired a higher profile because they are the only forms of solidarity that exist in some regions of the world, and they therefore need to be

valued as a precious heritage in terms of social cover. However, they do not, by their very nature, lend themselves to organised representation that can take part in discussions on extension plans.

The organised society forms differ from the spontaneous forms in that they are based on free membership and confer rights on those who belong. They are managed by their members and are non-profit-making. They have a personal or territorial basis, like tontines, or an occupational basis, like cooperatives and mutual benefit associations. They cover various fields ranging from health care to micro-insurance, and they offer many advantages: they have legitimacy, they satisfy new requirements arising from social disintegration that the State does not cover, and they strengthen the individual and collective capacities of their members. Their great plus points are that they are flexible, they cost nothing to manage and they encourage private initiatives. On the other hand they are limited by the fact that they are given little recognition by society or the State, they are not involved in dialogue between the social partners and they are often at a disadvantage in commercial structures. Furthermore, because they are not organised into networks, there is not enough communication between them, and they have a relatively short lifetime, which means they have little impact. They are not an alternative to social security systems as such, but must be seen as complementary to them.

Since these mutual aid organisations observe the guiding principles of social security, their representatives should take part in discussing the national extension plans, and it should be one of the aims of those plans to strengthen and promote such organisations. The schemes should be bolstered by legislation and State guarantees and they should be given greater access to public services. The plans should include bringing all these spontaneous organisations within a national framework, since they will supplement, rather than replace, the open and impersonal schemes that could cover the vast majority of people.

3.1.3. Fixing priorities for extending social security is obviously a sovereign decision for States to take, and the national agreement concluded with the ILO should be confined to determining how the representatives of the persons protected, and where appropriate the enterprises called on to contribute to funding the extension plan, are to be involved in fixing those priorities.

Allowing the States a free hand in this way should enable them to adopt a broad conception of social security which is not restricted to the risks listed in Convention No 102, but encompasses everything that contributes to achieving the aim of economic security set out in the Declaration of Philadelphia (§ II-a). This broad conception is the only way to develop a genuine policy that promotes people's individual and collective capacity, as discussed earlier (§ 2.1 above). It is likely to help to extend the objectives initially set for social security, and in particular will not be confined to merely *protecting* people against risks (the list of which should not be closed), but will also *help* them to exercise certain freedoms, such as the freedom to work, by ensuring that they have access to essential resources or by allowing them access to training schemes. As the Declaration of Philadelphia (§ III-c) and the 2001 new consensus (§ 7) stress, access to vocational training is vitally important if social security is to become an instrument of "sustainable development".

Allowing scope to broaden objectives is essential if we are to improve the lot of workers in the informal economy, whose situation does not fit in with the concept of work that prevailed when Convention No 102 was adopted. Improving the lot of such workers is a priority for the decent work agenda, which means that we need to think of social security in terms of how

they actually live their lives, as identified in the field studies referred to in § 3.1.1 and described by their representatives.

3.1.4. The method for developing indicators that can evaluate the real effects of policies for extending social security is the fourth methodological element that must be dealt with in the national extension agreements. Since these agreements create an ‘obligation of means’ rather than to achieve results, it is essential that the parties involved can evaluate the results of their efforts and take account of the outcome when deciding whether to pursue the same line or to change direction. An analysis of the indicators already used by some international organisations (such as the EU in the open method of coordination, the OECD on education policy and the UN in its Millennium Objectives) shows that they can be conceived in two very different ways.

The first *conception*, which is *causalist and instrumental*, assumes that it is possible to measure results that are supposed to be the direct effects of a given decision. This is the conception behind the benchmarking methods used in business management, and the New Public Management school has been prominent in calling for it to be transferred to public policies. However, it cannot be transferred automatically, since the indicators are designed by businesses to measure performance for competitive purposes. Any measure will be deemed to be good provided that it increases performance at the same cost. It is therefore less about evaluating (in the sense of referring to values) than measuring, in this case. If it is easy for a firm to agree on targets (profit, growth, cost-cutting, share value, productivity, etc.) and how they are to be quantified, this is a very difficult thing to do for public policies, whose aims are many and contradictory. The same problem may be identified and resolved in several different ways depending on the country, and the web of interactions that leads from quantitative performance to the identification of good practice can often not be untangled. There is then a risk that indicators will be used to discover ways of improving the score in terms of statistical benchmarking, rather than the actual performance. Relevant indicators can perhaps be identified without debate within a firm, but the broadest and most detailed possible political and social debate appears necessary (if at all possible) in order to reach agreement or at least a minimum compromise on the values and standards underlying public decisions.

When applied to public policies, this instrumental conception of indicators encourages States to pursue a policy that improves their score, regardless of the actual situation of the people for whom the policies are intended. The active employment policy indicators used for the unemployed are an example here. The stated aim of these policies is to get people onto the labour market, which is a good idea in itself. The problem is that the performance of the agencies involved or of the policies is evaluated according to the rate of return to employment. This encourages States to regard any sort of work as a proper job that counts towards improving the statistical indicator. What we then see is an improvement in statistical performance that is completely divorced from genuine, high-quality and lasting integration into employment, which has not actually improved at all and may even be deteriorating. A gap gradually opens up between political claims (based on figures such as the increase in the employment rate and the reduction in the unemployment rate) and the actual situation in which people find themselves.

The open method of coordination (OMC) used in the EU’s employment policies provides a number of examples of the hidden normative effect of these sorts of indicators, which serve as a vehicle for social policies that have not been chosen through proper democratic debate. These examples deserve closer consideration, not because of any europeocentrism that is no

longer relevant these days anyway, but because, as has already been noted, European law is the only 'laboratory' where the problems presented by promoting common social standards in a transnational area can be observed full-scale. The emphasis which the OMC indicators place on improving the rate of return to employment at any given moment suggests that the impact of increasingly insecure employment on the labour market is regarded as negligible. Based on the concept of employability rather than individual capacity, these indicators also fail to take account of the vulnerability of workers who face a high risk of losing their jobs. They are not concerned with what becomes of workers who return to employment, or with the quality of the jobs they find. They are only concerned with people once they have arrived on the labour market, and they ignore everything else earlier on in the process that could prevent unemployment.

However, indicators can be put to good use if they are not excluded from democratic debate because of the supposed neutrality of statistics as a technique, and if full account is taken of their normative dimension. This then leads to the adoption of an *ethical conception* of indicators, which notes their normative dimension and allows full scope for the idea of evaluation, in other words it refers all measures to the values that those measures are intended to help to implement. The objective which the Declaration of Philadelphia sets for States is not to achieve quantifiable scores, but to implement the fundamental rights and principles that it sets out. The purpose of indicators must then no longer be to measure performance using universal and abstract criteria (such as rate of affiliation, rate of ratification, employment rate, rate of trade union membership, etc.), but to evaluate the implementation and learning process which shapes the results of a public policy designed to achieve those fundamental rights and principles. The results cannot then be evaluated in isolation from the progress made in developing the knowledge and capacity of everyone involved in this implementation process (individuals, administrations, organisations) to act and to take initiatives.

The implementation of fundamental rights and principles is always an individual process that mobilises each country's resources and own culture, and that can therefore only be evaluated by indicators which take full account of that individuality. The ethical conception of indicators takes account of the wide range of approaches taken by national institutions and, even better, uses them as a resource and a basis for making progress, for it is highly unlikely that anything will be achieved unless those involved take the initiative independently. Setting this initiative in motion should be the premise for any action which aims to achieve all of its objectives. Rather than importing ready-made routines from outside, countries need to learn for themselves (through reflexivity) how to develop independently towards greater achievement. The ILO should see itself as one of several members involved in this learning process and process of implementing fundamental standards. Constructing and using indicators forms part of this process and should be designed in such a way as to promote it.

It is therefore this ethical conception of indicators that should be used to evaluate the actual effects of national strategies for extending social security. It takes account of the normative dimension of such indicators and makes their development subject to a discursive process involving those concerned by the evaluation. The framework agreement should therefore not set out whole lists of indicators that have been developed *ex ante* and which are supposed to be universally valid. Instead, the framework agreement should make provision for the extension policies to be evaluated, and should make the development and application of the indicators used for that evaluation subject to the principle of participation. The arrangements for this participation and the procedure for developing the indicators should be spelled out in the national extension agreements, taking account of the specific situation of the country

concerned. The development of the indicators would itself form an integral part of the implementation of these national agreements. Far from marginalising the role of statisticians, this method would enable them to be fully involved in the process of self-knowledge undertaken by each signatory country.

3.2. Resources

One of the innovative aspects of the contractual approach described here is that it involves the States in a genuinely reciprocal exchange instead of asking them to accept new constraints without anything in return. The credibility of this approach therefore depends on the scale of the resources allocated to the extension plans that the States would undertake to implement. The resources fall into two categories, each raising different issues.

The first category, which should definitely be included in the national agreements, concerns what is usually called technical assistance. This assistance should, however, be seen in the light of what was said earlier about the need to mobilise local knowledge and the involvement of those concerned in defining monitoring methods. In other words, technical assistance should be taken here mainly to mean not the local application of techniques from outside, but funding for mechanisms to adapt these techniques to the needs identified through mobilising local knowledge. The agreements should therefore make provision for a partnership in the creation and operation of the knowledge mechanisms referred to in § 3.1.2. and in the development and implementation of the national plans for extending social security.

The second category of resources relates to the operation of the social security systems. According to the principle of solidarity, such funding should mainly be provided through contributions or taxation by those concerned by their operation, in other words the persons protected and their employers. However, account needs to be taken of the special situation of workers in the informal economy. Their low pay and insecure incomes, together with the frequent lack of an identifiable employer, make it difficult for them to belong in any lasting way to financially viable solidarity schemes. This problem, encountered by the first friendly societies at the onset of industrialisation, can only be resolved by securing their solidarity schemes with public financial guarantees, provided that the schemes observe the rules of good management. However, this solution could prove inadequate in certain countries where the informal economy is rampant, given the poor state of public finances, weak government or corrupt government agents. Our working group therefore envisaged setting up an international social fund here, which could provide a second-tier guarantee and mobilise help from the international financial organisations (particularly the World Bank) and from multinational firms that are concerned about their social responsibilities and interested in seeing countries expand economically because of the development prospects that this provides.

It is one of the benefits of the contractual approach recommended by our working party that it involves public and private partners who can cooperate with the ILO and the States in a joint effort to implement the fundamental rights and principles affirmed long ago by the Declaration of Philadelphia and the Universal Declaration of Human Rights, but which are still a dead letter for most of the world's population.

Alain Supiot

30 January 2005

ANNEX

List of experts who took part in the working party¹⁷

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Mr Bob Hepple, Professor of Employment Law, United Kingdom (I)

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Mr Rachid Meknassi, Professor of Employment and Social Security Law, Morocco (I and II)

Mr Ravindra Naidoo, Director of the National Labour and Economic Development Institute, South Africa (II)

Mr Jean-Jacques Oechslin, Honorary President of the International Organisation of Employers, France (I and II)

Mr Robert Salais, Researcher in labour and production planning, France (II)

Mrs Amsatou Sidibé, Professor of Employment and Social Security Law, Senegal (I and II)

¹⁷ The figures in brackets (I and II) indicate the stages in which the expert in question was involved.

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