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Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association

Compendium of rules applicable to the Governing Body of the International Labour Office

International Labour Office, Geneva, 2021

Annex II

Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association

The outline given below of the current procedure for the examination of complaints alleging infringements of trade union rights is based on the provisions adopted by common consent by the Governing Body of the International Labour Office and the Economic and Social Council of the United Nations in January and February 1950, and also on the decisions taken by the Governing Body at its 117th Session (November 1951), 123rd Session (November 1953), 132nd Session (June 1956), 140th Session (November 1958), 144th Session (March 1960), 175th Session (May 1969), 184th Session (November 1971), 202nd Session (March 1977), 209th Session (May–June 1979) and 283rd Session (March 2002) with respect to the internal procedure for the preliminary examination of complaints, and lastly on certain decisions adopted by the Committee on Freedom of Association itself. [1]

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Background

1. In January 1950 the Governing Body, following negotiations with the Economic and Social Council of the United Nations, set up a Fact-Finding and Conciliation Commission on Freedom of Association, composed of

[1] Most of the procedural rules referred to in this annex are contained under the heading "procedural questions" in the following documents: First Committee Report, paras 6–32, in *Sixth Report of the International Labour Organisation to the United Nations* (Geneva: ILO, 1952), Appendix V; the Sixth Report in *Seventh Report of the International Labour Organisation to the United Nations* (Geneva: ILO, 1953), Appendix V, paras 14–21; the Ninth Report in *Eighth Report of the International Labour Organisation to the United Nations* (Geneva: ILO, 1954), Appendix II, paras 2–40; the 29th and 43rd Reports in *Official Bulletin*, Vol. XLIII, 1960, No. 3; the 111th Report, in *Official Bulletin*, Vol. LII, 1969 No. 4, paras 7–20; the 127th Report, in *Official Bulletin*, Vol. LV, 1972, Supplement, paras 9–28; the 164th Report, in *Official Bulletin*, Vol. LX, 1977, No. 2, paras 19–28; the 193rd Report, in *Official Bulletin*, Vol. LXII, 1979, No. 1; and the 327th Report, in *Official Bulletin*, Vol. LXXXV, 2002, paras 17–26.

independent persons, and defined the terms of reference of the Commission and the general lines of its procedure. It also decided to communicate to the Economic and Social Council a certain number of suggestions with a view to formulating a procedure for making the services of the Commission available to the United Nations.

2. The Economic and Social Council, at its Tenth Session, on 17 February 1950, noted the decision of the Governing Body and adopted a resolution in which it formally approved this decision, considering that it corresponded to the intent of the Council's resolution of 2 August 1949 and that it was likely to prove a most effective way of safeguarding trade union rights. It decided to accept, on behalf of the United Nations, the services of the ILO and the Fact-Finding and Conciliation Commission and laid down a procedure, which was supplemented in 1953.

Complaints received by the United Nations

3. All allegations regarding infringements of trade union rights received by the United Nations from governments or trade union or employers' organizations against ILO Member States will be forwarded by the Economic and Social Council to the Governing Body of the International Labour Office, which will consider the question of their referral to the Fact-Finding and Conciliation Commission.

4. Similar allegations received by the United Nations regarding any Member of the United Nations which is not a Member of the ILO will be transmitted to the Commission through the Governing Body of the ILO when the Secretary-General of the United Nations, acting on behalf of the Economic and Social Council, has received the consent of the government concerned, and if the Economic and Social Council considers these allegations suitable for transmission. If the government's consent is not forthcoming, the Economic and Social Council will give consideration to the position created by such refusal, with a view to taking any appropriate alternative action calculated to safeguard the rights relating to freedom of association involved in the case. If the Governing Body has before it allegations regarding infringements of trade union rights that are brought against a Member of the United Nations which is not a Member of the ILO, it will refer such allegations in the first instance to the Economic and Social Council.

Bodies competent to examine complaints

5. In accordance with a decision originally taken by the Governing Body, complaints against Member States of the ILO were submitted in the first instance to the Officers of the Governing Body for preliminary examination. Following discussions at its 116th and 117th Sessions, the Governing Body decided to set up a Committee on Freedom of Association to carry out this preliminary examination.

6. At the present time, therefore, there are three bodies which are competent to hear complaints alleging infringements of trade union rights that are lodged with the ILO, viz. the Committee on Freedom of Association set up by the Governing Body, the Governing Body itself, and the Fact-Finding and Conciliation Commission on Freedom of Association.

Composition and functioning of the Committee on Freedom of Association

7. This body is a Governing Body organ reflecting the ILO's own tripartite character. Since its creation in 1951, it has been composed of nine regular members representing in equal proportion the Government, Employer and Worker groups of the Governing Body; each member participates in a personal capacity. Nine substitute members, also appointed by the Governing Body, were originally called upon to participate in the meetings only if, for one reason or another, regular members were not present, so as to maintain the initial composition.

8. The present practice adopted by the Committee in February 1958 and specified in March 2002 gives substitute members the right to participate in the work of the Committee, whether or not all the regular members are present. They have therefore acquired the status of deputy members and must respect the same rules as regular members.

9. At its most recent examination of the procedure in March 2002, the Committee expressed the hope that, in view of the rule that all the members are appointed in their individual capacity, the nominations of Government members would be made in a personal capacity so as to ensure a relative permanence of government representation.

10. No representative or national of the State against which a complaint has been made, or person occupying an official position in the national organization of employers or workers which has made the

complaint, may participate in the Committee's deliberations or even be present during the hearing of the complaint in question. Similarly, the documents concerning the case are not supplied to them.

11. The Committee always endeavours to reach unanimous decisions.

Mandate and responsibility of the Committee

12. By virtue of its Constitution, the ILO was established in particular to improve working conditions and to promote freedom of association in the various countries. Consequently, the matters dealt with by the Organization in this connection no longer fall within the exclusive sphere of States and the action taken by the Organization for the purpose cannot be considered to be interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it. [2]

13. The function of the International Labour Organization in regard to freedom of association and the protection of the individual is to contribute to the effectiveness of the general principles of freedom of association, as one of the primary safeguards of peace and social justice. [3] Its function is to secure and promote the right of association of workers and employers. It does not level charges at, or condemn, governments. In fulfilling its task the Committee takes the utmost care, through the procedures it has developed over many years, to avoid dealing with matters which do not fall within its specific competence.

14. The mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions. [4]

15. It is within the mandate of the Committee to examine whether, and to what extent, satisfactory evidence is presented to support allegations; this appreciation goes to the merits of the case and cannot support a finding of irreceivability. [5]

[2] *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, 2006, para. 2.

[3] *Digest of decisions,* 2006, para. 1.

[4] *Digest of decisions*, 2006, para. 6.

[5] *Digest of decisions*, 2006, para. 9.

16. With a view to avoiding the possibility of misunderstanding or misinterpretation, the Committee considers it necessary to make it clear that its task is limited to examining the allegations submitted to it. Its function is not to formulate general conclusions concerning the trade union situation in particular countries on the basis of vague general statements, but simply to evaluate specific allegations.

17. The usual practice of the Committee has been not to make any distinction between allegations levelled against governments and those levelled against persons accused of infringing freedom of association, but to consider whether or not, in each particular case, a government has ensured within its territory the free exercise of trade union rights.

18. The Committee (after a preliminary examination, and taking account of any observations made by the governments concerned, if received within a reasonable period of time) reports to the Governing Body that a case does not call for further examination if it finds, for example, that the alleged facts, if proved, would not constitute an infringement of the exercise of trade union rights, or that the allegations made are so purely political in character that it is undesirable to pursue the matter further, or that the allegations made are too vague to permit a consideration of the case on its merits, or that the complainant has not offered sufficient evidence to justify reference of the matter to the Fact-Finding and Conciliation Commission.

19. The Committee may recommend that the Governing Body draw the attention of the governments concerned to the anomalies which it has observed and invite them to take appropriate measures to remedy the situation.

The Committee's competence to examine complaints

20. The Committee has considered that it is not within its competence to reach a decision on violations of ILO Conventions on working conditions since such allegations do not concern freedom of association.

21. The Committee has recalled that questions concerning social security legislation fall outside its competence.

22. The questions raised related to landownership and tenure governed by specific national legislation have nothing to do with the problems of the exercise of trade union rights.

23. It is not within the Committee's terms of reference to give an opinion on the type or characteristics – including the degree of legislative regulation – of the industrial relations system in any particular country. [6]

24. The Committee always takes account of national circumstances, such as the history of labour relations and the social and economic context, but the freedom of association principles apply uniformly and consistently among countries. [7]

25. Where the government concerned considers that the questions raised are purely political in character, the Committee has decided that, even though allegations may be political in origin or present certain political aspects, they should be examined in substance if they raise questions directly concerning the exercise of trade union rights.

26. The question of whether issues raised in a complaint concern penal law or the exercise of trade union rights cannot be decided unilaterally by the government against which a complaint is made. It is for the Committee to rule on the matter after examining all the available information. [8]

27. When it has had to deal with precise and detailed allegations regarding draft legislation, the Committee it has taken the view that the fact that such allegations relate to a text that does not have the force of law should not in itself prevent it from expressing its opinion on the merits of the allegations made. It has considered it desirable that, in such cases, the government and the complainant should be made aware of the Committee's point of view with regard to the proposed bill before it is enacted, since it is open to the government, on whose initiative such a matter depends, to make any amendments thereto.

28 Where national legislation provides for appeal procedures before the courts or independent tribunals, and these procedures have not been used for the matters on which the complaint is based, the Committee takes this into account when examining the complaint.

29. When a case is being examined by an independent national jurisdiction whose procedures offer appropriate guarantees, and the Committee considers that the decision to be taken could provide additional

[6] 287th Report, Case No. 1627, para. 32.

[7] *Digest of decisions*, 2006, para. 10.

[8] 268th Report, Case No. 1500, para. 693.

information, it will suspend its examination of the case for a reasonable time to await this decision, provided that the delay thus encountered does not risk prejudicing the party whose rights have allegedly been infringed.

30. Although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures.

Receivability of complaints

31. Complaints lodged with the ILO, either directly or through the United Nations, must come either from organizations of workers or employers or from governments. Allegations are receivable only if they are submitted by a national organization directly interested in the matter, by international organizations of employers or workers having consultative status with the ILO, or other international organizations of employers or workers where the allegations relate to matters directly affecting their affiliated organizations. Such complaints may be presented whether or not the country concerned has ratified the freedom of association Conventions.

32. The Committee has full freedom to decide whether an organization may be deemed to be an employers' or workers' organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term.

33. The Committee has not regarded any complaint as being irreceivable simply because the government in question had dissolved, or proposed to dissolve, the organization on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.

34. The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorization, to establish organizations of their own choosing.

35. The fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a de facto existence.

36. In cases in which the Committee is called upon to examine complaints presented by an organization concerning which no precise information is available, the Director-General is authorized to request the organization to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organization.

37. The Committee will only take cognizance of complaints presented by persons who, through fear of reprisals, request that their names or the origin of the complaints should not be disclosed, if the Director-General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints.

Repetitive nature of complaints

38. In any case in which a complaint concerns exactly the same infringements as those on which the Committee has already given a decision, the Director-General may, in the first instance, refer the complaint to the Committee, which will decide whether it is appropriate to take action on it.

39. The Committee has taken the view that it could only reopen a case which it had already examined in substance and in which it had submitted final recommendations to the Governing Body if new evidence is adduced and brought to its notice. Similarly, the Committee does not re-examine allegations on which it has already given an opinion: for example, when a complaint refers to a law that it has already examined and, as such, does not contain new elements. [9]

Form of the complaint

40. Complaints must be presented in writing, duly signed by a representative of a body entitled to present them, and they must be as fully supported as possible by evidence of specific infringements of trade union rights.

[9] 297th Report, para. 13.

41. When the Committee receives, either directly or through the United Nations, mere copies of communications sent by organizations to third parties, such communications do not constitute formal complaints and do not call for action on its part.

42. Complaints originating from assemblies or gatherings which are not bodies having a permanent existence or even bodies organized as definite entities and with which it is impossible to correspond, either because they have only a temporary existence or because the complaints do not contain any addresses of the complainants, are not receivable.

Rules concerning relations with complainants

43. Complaints which do not relate to specific infringements of trade union rights are referred by the Director-General to the Committee on Freedom of Association for opinion, and the Committee decides whether or not any action should be taken on them. In cases of this kind, the Director-General is not bound to wait until the Committee meets, but may contact the complainant organization directly to inform it that the Committee's mandate only permits it to deal with questions concerning freedom of association and to ask it to specify, in this connection, the particular points that it wishes to have examined by the Committee.

44. The Director-General, on receiving a new complaint concerning specific cases of infringement of freedom of association, either directly from the complainant organization or through the United Nations, informs the complainant that any information he may wish to furnish in substantiation of the complaint should be communicated to him within a period of one month. In the event that supporting information is sent to the ILO after the expiry of the one month period provided for in the procedures it will be for the Committee to determine whether this information constitutes new evidence which the complainant would not have been in a position to adduce within the appointed period; in the event that the Committee considers that this is not the case, the information in question is regarded as irreceivable. On the other hand, if the complainant does not furnish the necessary information in substantiation of a complaint (where it does not appear to be sufficiently substantiated) within a period of one month from the date of the Director-General's acknowledgement of receipt of the complaint, it is for the Committee to decide whether any further action in the matter is appropriate.

45. In cases in which a considerable number of copies of an identical complaint are received from separate organizations, the Director-General is

not required to request each separate complainant to furnish further information; it is normally sufficient for the Director-General to address the request to the central organization in the country to which the bodies presenting the copies of the identical complaint belong or, where the circumstances make this impracticable, to the authors of the first copy received, it being understood that this does not preclude the Director-General from communicating with more than one of the said bodies if this appears to be warranted by any special circumstances of the particular case. The Director-General will transmit to the government concerned the first copy received, but will also inform the government of the names of the other complainants presenting the copies of the identical complaints.

46. When a complaint has been communicated to the government concerned and the latter has presented its observations thereon, and when the statements contained in the complaint and the government's observations merely cancel one another out but do not contain any valid evidence, thereby making it impossible for the Committee to reach an informed opinion, the Committee is authorized to seek further information in writing from the complainant in regard to questions concerning the terms of the complaint requiring further elucidation. In such cases, it has been understood that, on the one hand, the government concerned, as defendant, would have an opportunity to reply in its turn to any additional comments the complainants may make, and, on the other hand, that this method would not be followed automatically in all cases but only in cases where it appears that such a request to the complainants would be helpful in establishing the facts.

47. Subject to the two conditions mentioned in the preceding paragraph, the Committee may, moreover, inform the complainants, in appropriate cases, of the substance of the government's observations and invite them to submit their comments thereon within a given period of time. In addition, the Director-General may ascertain whether, in the light of the observations sent by the government concerned, further information or comments from the complainants are necessary on matters relating to the complaint and, if so, may write directly to the complainants, in the name of the Committee and without waiting for its next session, requesting the desired information or the comments on the government's observations by a given date, the government's right to reply being respected as is pointed out in the preceding paragraph.

48. In order to keep the complainant regularly informed of the principal stages in the procedure, the complainant is notified, after each session of the Committee, that the complaint has been put before the Committee and, if the Committee has not reached a conclusion appearing in its report, that – as appropriate – examination of the case has been adjourned in the absence of a reply from the government or the Committee has asked the government for certain additional information.

Prescription

49. While no formal rules fixing any particular period of prescription are embodied in the procedure for the examination of complaints, it may be difficult – if not impossible – for a government to reply in detail to allegations regarding matters which occurred a long time ago.

Withdrawal of complaints

50. When the Committee has been confronted with a request submitted to it for the withdrawal of a complaint, it has always considered that the desire expressed by an organization which has submitted a complaint to withdraw this complaint constitutes an element of which full account should be taken, but it is not sufficient in itself for the Committee to automatically cease to proceed further with the case. In such cases, the Committee has decided that it alone is competent to evaluate in full freedom the reasons put forward to explain the withdrawal of a complaint and to endeavour to establish whether these appear to be sufficiently plausible so that it may be concluded that the withdrawal is being made in full independence. In this connection, the Committee has noted that there might be cases in which the withdrawal of a complaint by the organization presenting it was the result not of the fact that the complaint had become without purpose, but of pressure exercised by the government against the complainants, the latter being threatened with an aggravation of the situation if they did not consent to this withdrawal.

Rules for relations with the governments concerned

51. By membership of the International Labour Organization, each Member State is bound to respect a certain number of principles, including

the principles of freedom of association which have become customary rules above the Conventions. [10]

52. If the original complaint or any further information received in response to the acknowledgement of the complaint is sufficiently substantiated, the complaint and any such further information are communicated by the Director-General to the government concerned as quickly as possible; at the same time the government is requested to forward to the Director-General, before a given date, fixed in advance with due regard to the date of the next meeting of the Committee, any observations which it may care to make. When communicating allegations to governments, the Director-General draws their attention to the importance which the Governing Body attaches to receiving the governments' replies within the specified period, in order that the Committee may be in a position to examine cases as soon as possible after the occurrence of the events to which the allegations relate. If the Director-General has any difficulty in deciding whether a particular complaint can be regarded as sufficiently substantiated to justify him in communicating it to the government concerned for its observations, it is open to him to consult the Committee before taking a decision on the matter.

53. In cases in which the allegations concern specific enterprises, or in appropriate cases, the letter by which the allegations are transmitted to the government requests it to obtain the views of all the organizations and institutions concerned so that it can provide a reply to the Committee that is as complete as possible. However, the application of this rule of procedure should not result in practice in delay in having recourse to urgent appeals made to governments, nor in the examination of cases.

54. A distinction is drawn between urgent cases, which are addressed on a priority basis, and less urgent cases. Matters involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization, are treated as cases of urgency. Priority of treatment is also given to cases on which a report has already been submitted to the Governing Body.

[10] Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the situation in Chile, 1975, para. 466.

55. In all cases, if the first reply from the government in question is of too general a character, the Committee requests the Director-General to obtain all necessary additional information from the government, on as many occasions as it judges appropriate.

56. The Director-General is further empowered to ascertain without, however, making any appreciation of the substance of a case, whether the observations of governments on the subject matter of a complaint or governments' replies to requests for further information are sufficient to permit the Committee to examine the complaint and, if not, to write directly to the government concerned, in the name of the Committee, and without waiting for its next session, to inform it that it would be desirable if it were to furnish more precise information on the points raised by the Committee or the complainant.

57. The purpose of the whole procedure set up in the ILO for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance for their own reputation of formulating, so as to allow objective examination, detailed replies to the allegations brought against them. The Committee wishes to stress that, in all the cases presented to it since it was first set up, it has always considered that the replies from governments against whom complaints are made should not be limited to general observations.

58. In cases where governments delay in forwarding their observations on the complaints communicated to them, or the further information requested of them, the Committee mentions these governments in a special introductory paragraph to its reports after the lapse of a reasonable time, which varies according to the degree of urgency of the case and of the questions involved. This paragraph contains an urgent appeal to the governments concerned and, as soon as possible afterwards, special communications are sent to these governments by the Director-General on behalf of the Committee.

59. These governments are warned that at its following session the Committee may submit a report on the substance of the matter, even if the information awaited from the governments in question has still not been received.

60. Cases in respect of which governments continue to fail to cooperate with the Committee, or in which certain difficulties persist, are mentioned in a special paragraph of the introduction to the Committee's report. The governments concerned are then immediately informed that the chairman of the Committee will, on behalf of the Committee, make contact with their representatives attending the session of the Governing Body or the International Labour Conference. The chairman will draw their attention to the particular cases involved and, where appropriate, to the gravity of the difficulties in question, discuss with them the reasons for the delay in transmitting the observations requested by the Committee and examine with them various means of remedying the situation. The chairman then reports to the Committee on the results of such contacts.

61. In appropriate cases, where replies are not forthcoming, ILO external offices may approach governments in order to elicit the information requested of them, either during the examination of the case or in connection with the action to be taken on the Committee's recommendations, approved by the Governing Body. With this end in view the ILO external offices are sent detailed information with regard to complaints concerning their particular area and are requested to approach governments which delay in transmitting their replies, in order to draw their attention to the importance of supplying the observations or information requested of them.

62. In cases where the governments implicated are obviously unwilling to cooperate, the Committee may recommend, as an exceptional measure, that wider publicity be given to the allegations, to the recommendations of the Governing Body and to the negative attitude of the governments concerned.

63. The procedure for the examination of complaints of alleged infringements of the exercise of trade union rights provides for the examination of complaints presented against Member States of the ILO. Evidently, it is possible for the consequences of events which gave rise to the presentation of the initial complaint to continue after the setting up of a new State which has become a Member of the ILO, but if such a case should arise, the complainants would be able to have recourse, in respect of the new State, to the procedure established for the examination of complaints relating to infringements of the exercise of trade union rights.

64. There exists a link of continuity between successive governments of the same State and, while a government cannot be held responsible for

events which took place under a former government, it is clearly responsible for any continuing consequences which these events may have had since its accession to power.

65. Where a change of regime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which the events on which the complaint is based may have had since its accession to power, even though those events took place under its predecessor.

Requests for the postponement of the examination of cases

66. With regard to requests for the postponement of the examination of cases by the complainant organization or the government concerned, the practice followed by the Committee consists of deciding the question in full freedom when the reasons given for the request have been evaluated and taking into account the circumstances of the case. [11]

On-the-spot missions

67. At various stages in the procedure, an ILO representative may be sent to the country concerned, for example in the context of direct contacts, with a view to seeking a solution to the difficulties encountered, either during the examination of the case or at the stage of the action to be taken on the recommendations of the Governing Body. Such contacts, however, can only be established at the invitation of the governments concerned or at least with their consent. In addition, upon the receipt of a complaint containing allegations of a particularly serious nature, and after having received the prior approval of the chairman of the Committee, the Director-General may appoint a representative whose mandate would be to carry out preliminary contacts for the following purposes, viz. to transmit to the competent authorities in the country the concern to which the events described in the complaint have given rise; to explain to these authorities the principles of freedom of association involved; to obtain from the authorities their initial reaction, as well as any comments and information with regard to the matters raised in the complaint; to explain to the authorities the special procedure in cases of alleged infringements of trade union rights and, in particular, the direct contact method which may subsequently be requested

[11] 274th Report, Cases Nos 1455, 1456, 1696 and 1515, para. 10.

by the government in order to facilitate a full appraisal of the situation by the Committee and the Governing Body; to request and encourage the authorities to communicate as soon as possible a detailed reply containing the observations of the government on the complaint. The report of the representative of the Director-General is submitted to the Committee at its next meeting for consideration together with all the other information made available. The ILO representative can be an ILO official or an independent person appointed by the Director-General. It goes without saying, however, that the mission of the ILO representative is above all to ascertain the facts and to seek possible solutions on the spot. The Committee and the Governing Body remain fully competent to appraise the situation at the outcome of these direct contacts.

68. The representative of the Director-General charged with an on-the-spot mission will not be able to perform his task properly and therefore be fully and objectively informed on all aspects of the case if he is not able to meet freely with all the parties involved. [12]

Hearing of the parties

69. The Committee will decide, in the appropriate instances and taking into account all the circumstances of the case, whether it should hear the parties, or one of them, during its sessions so as to obtain more complete information on the matter. It may do this especially: (a) in appropriate cases where the complainants and the governments have submitted contradictory statements on the substance of the matters at issue, and where the Committee might consider it useful for the representatives of the parties to furnish orally more detailed information as requested by the Committee; (b) in cases in which the Committee might consider it useful to have an exchange of views with the governments in question, on the one hand, and with the complainants, on the other, on certain important matters in order to appreciate more fully the factual situation and the eventual developments in the situation which might lead to a solution of the problems involved, and to seek to conciliate on the basis of the principles of freedom of association; (c) in other cases where particular difficulties have arisen in the examination of the questions involved or in the implementation of its recommendations,

[12] 229th Report, Case No. 1097, para. 51.

and where the Committee might consider it appropriate to discuss the matters with the representative of the government concerned.

Effect given to the Committee's recommendations

70. In all cases where it suggests that the Governing Body should make recommendations to a government, the Committee adds to its conclusions on such cases a paragraph proposing that the government concerned be invited to state, after a reasonable period has elapsed and taking account of the circumstances of the case, what action it has been able to take on the recommendations made to it.

71. A distinction is made between countries which have ratified one or more Conventions on freedom of association and those which have not.

72. In the first case (ratified Conventions) examination of the action taken on the recommendations of the Governing Body is normally entrusted to the Committee of Experts on the Application of Conventions and Recommendations, whose attention is specifically drawn in the concluding paragraph of the Committee's reports to discrepancies between national laws and practice and the terms of the Conventions, or to the incompatibility of a given situation with the provisions of these instruments. Clearly, this possibility is not such as to hinder the Committee from examining, through the procedure outlined below, the effect given to certain recommendations made by it; this can be of use taking into account the nature or urgency of certain questions.

73. In the second case (non-ratified Conventions), if there is no reply, or if the reply given is partly or entirely unsatisfactory, the matter may be followed up periodically, the Committee instructing the Director-General at suitable intervals, according to the nature of each case, to remind the government concerned of the matter and to request it to supply information as to the action taken on the recommendations approved by the Governing Body. The Committee itself, from time to time, reports on the situation.

74. The Committee may recommend the Governing Body to attempt to secure the consent of the government concerned to the reference of the case to the Fact-Finding and Conciliation Commission. The Committee submits to each session of the Governing Body a progress report on all cases which the Governing Body has determined warrant further examination. In every case in which the government against which the complaint is made has refused to consent to referral to the Fact-Finding and Conciliation

Commission or has not within four months replied to a request for such consent, the Committee may include in its report to the Governing Body recommendations as to the “appropriate alternative action” which, in the opinion of the Committee, the Governing Body might take. In certain cases, the Governing Body itself has discussed the measures to be taken where a government has not consented to a referral to the Fact-Finding and Conciliation Commission.

Document No. 91

Paris Peace Conference, Commission on International Labour Legislation, sitting of 27 February 1919, pp. 377–379

[Unofficial translation]

THE PEACE OF VERSAILLES

PRELIMINARY PEACE CONFERENCE

Commission on International Labour Legislation

Sir Malcolm DELEVINGNE. "I propose a new article, referring to a question of procedure, which would read as follows: All questions and all difficulties arising out of the interpretation of the present Convention and of subsequent Conventions concluded by the High Contracting Parties in pursuance of the present Convention shall be submitted for decision to the above-mentioned Tribunal. The decisions of the International Tribunal in this matter shall not be subject to appeal.

Mr BARNES. As to where this article should be inserted, we could leave it to the Drafting Committee. Will it be after article 28 or 33. The Drafting Committee will see and decide.

The PRESIDENT. Is it really wise to specify that the decisions of the International Tribunal on these matters will not be subject to appeal? What if this International Tribunal gives to an obscure provision a meaning that does not correspond to the one that the authors of the text had in mind?

Mr BARNES. It will be up to the next session of the Conference to reconsider the text.

The PRESIDENT. This is not stated in the current text; it should be expressly stated so as to show that it is not "final" . Generally speaking, I do not like final decision that cannot be appealed; nothing is without appeal, nothing is "final", not even death.

Mr BARNES. When we drafted the sentence, we have probably insufficiently taken into account the differences between various situations. The solution might be that the Conference whose decision has not been interpreted as it believes it should have been, need only put the matter back on the agenda for its next session.

Mr FONTAINE, *Secretary General.* There can be no doubt about the Conference's right to reconsider a text: if a text is obscure, it must be interpreted! If the Conference wanted to say something other than the interpretation generally given to the text or if it changed its mind - because it is not necessarily the same persons that are sitting - it has the right to redraft the text. This is what happens every day in the case of regulations: a law is drafted, and the Court of Cassation is asked to indicate the precise meaning. If the legislator is unhappy, all it has to do is to draft a new law: if a minister is unhappy with the interpretation given to a decree, he issues another. There is no difficulty here. What Mr Gompers is asking for is necessary and there is no need to fear that anyone will oppose it.

Mr Stanislas PATEK. The addition requested by the President is absolutely right; but it must be included in the text, so that the Conference can take up the matter again in another way without being faced with the *res judicata* objection.

Mr FONTAINE, *Secretary General.* We always have the right to draw up a new Convention.

Mr Stanislas PATEK. No! It is essential that the *res judicata* objection cannot be raised.

The PRESIDENT. It is not easy to say that all we have to do is draw up another Convention.

Mr FONTAINE, *Secretary General.* It is not simple, but it is not conceivable that the Conference, without a new Convention, could rule against the interpretation of the International Tribunal, or else the Tribunal should not be tasked with interpretation.

Sir Malcolm DELEVINGNE. In any case, a distinction should be drawn between the Convention currently under discussion and future labour Conventions. As regards the present Convention, which is to form part of the General Covenant of the League of Nations, it does not seem possible to have it interpreted by any tribunal other than the Independent International Tribunal of the League of Nations. Is it right to give the right of interpretation to a session of the Conference rather than to an International Tribunal? The membership of the Conference will be renewed – it will not be the same delegates - will they be better judges of the interpretation of a text than the International Tribunal? This is doubtful.

So I think it is better to keep the text as presented.

Mr JOUHAUX. There are, after all, two points of view in the explanations that have just been exchanged that are not quite similar: as far as the current Convention is concerned, it is much more a legal Convention than a labour Convention, and I understand that it is the tribunal of the League of Nations which interprets, leaving it to the Conference itself to reconsider all or part of this Convention, if it is not interpreted in the sense intended by it.But when it comes to a labour Convention, I do not think that the members of the International Tribunal are more qualified than the delegates of the Labour Conference to interpret it.

Mr BARNES. The Conference does not sit permanently; if there is a difficulty between two sessions, who will judge?

Sir Malcolm DELEVINGNE. Had the Conference remain the same, the simplest solution would be to leave it to interpret its decisions. But in fact we have seen that the composition of the Conference will vary according to the subjects dealt with: one session will discuss an agricultural question, while another session will deal with a mining question. What is the reason for saying that from one session to the next, members of the Conference are the most competent persons to interpret the Convention on this or that subject? Why allow ourselves to be frightened by the idea that a court of law can interpret a labour clause? This is constantly happening in the internal life of nations: more and more labour matters are being decided by professional judges.

Mr JOUHAUX, That is precisely why the question arises.

Mr FONTAINE, *Secretary General.* The interpretation by judges of the judiciary branch is generally favourable to labour issues, while the Conseil d'Etat does not always rule in the same direction.

Mr JOUHAUX. This is a point I dispute.

The PRESIDENT. I would like to associate myself with Mr Jouhaux's view. We know the judges.

We could vote separately on each paragraph and, with regard to paragraph one, I propose that it be worded as follows:
"The following shall be subject to the assessment of the international tribunal mentioned in this Convention and not "mentioned above", as we do not yet know where this additional article *(Accession)* will be inserted.

(Paragraph 1 was subject to a vote and adopted).

Sir Malcolm DELEVINGNE. The British Delegation withdraws the second paragraph after the comments that had just been made, so as not to raise a question that, in its view, did not exist.

(The Commission decided to adjourn and reconvene in the afternoon, 3 p.m.).

The meeting is adjourned at 1pm.

Document No. 92

ILC, 3rd Session, 1921, Report of the Director-General, paras 164–167

SOCIÉTÉ DES NATIONS
LEAGUE OF NATIONS

CONFÉRENCE INTERNATIONALE DU TRAVAIL

INTERNATIONAL LABOUR CONFERENCE

TROISIÈME SESSION — THIRD SESSION

GENÈVE — GENEVA
1921

RAPPORT DU DIRECTEUR
REPORT OF THE DIRECTOR

DEUXIÈME ÉDITION.
SECOND EDITION.

BUREAU INTERNATIONAL DU TRAVAIL
INTERNATIONAL LABOUR OFFICE
GENÈVE — GENEVA
1921

traire à la constitution de l'Organisation internationale du Travail.

En second lieu, de nombreux Etats ont demandé au Bureau des indications sur la portée des diverses dispositions des conventions. Ils l'ont fait en particulier pour les huit heures. Ces demandes ont été nombreuses et nous en avons indiqué plus haut les principales.

163. Si la Grande-Bretagne avait consulté le Bureau sur les deux difficultés qu'elle a soulevées dans sa lettre au sujet des heures supplémentaires et au sujet de la réglementation du travail dans les chemins de fer, peut-être, à la suite de conversations attentives, une solution aurait-elle pu être trouvée.

Le Bureau s'est toujours défendu, au moment même où il donnait son avis officieux sur les interprétations proposées, de donner un avis qui pût être juridiquement invoqué. Le Bureau, comme tel, n'a pas qualité pour donner une interprétation authentique des textes des conventions.

Mais il n'est peut-être pas impossible de trouver dans l'Organisation telle qu'elle existe le moyen de résoudre cette difficulté.

164. Les articles d'une convention sont rédigés avec l'intention d'amener les conditions du travail à un niveau sensiblement équivalent dans les divers pays, tout en tenant compte des situations particulières qui peuvent résulter des différences dans les méthodes de l'organisation industrielle. Il est donc indispensable de découvrir quelque moyen de définir avec un caractère certain d'autorité le degré plus ou moins grand d'élasticité qui peut être laissé à chaque disposition d'une convention. Il convient d'observer qu'une telle définition en ce qui concerne un article donné d'une convention a une portée telle qu'elle ne peut être fixée par un seul pays. La convention considérée dans son ensemble et chacun de ses articles pris isolément font en effet l'objet de négociations à la Conférence internationale du Travail et représentent la somme des efforts de la Conférence. C'est donc l'Organisation internationale du Travail tout entière qui se trouve intéressée dans les interprétations données à l'acte qu'elle a créé et qui peut subir la répercussion de ces interprétations. Les intentions de la Conférence pourraient être entièrement faussées si chaque pays se trouvait obligé d'interpréter pour son propre compte les articles de la convention et pour la raison simplement qu'il n'existerait aucune autorité à laquelle il pourrait demander avis.

165. En l'absence de toute autorité reconnue pour donner de telles interprétations, on comprendrait très bien le raisonnement que peuvent faire des pays importants comme la Grande-Bretagne. Dès l'instant où ils auront ratifié la convention, dès l'instant où ils peuvent être engagés pour dix années à en ob-

their opinion, and such a procedure would be contrary to the constitution of the International Labour Organisation.

In the second place, several States have requested the Office to furnish them with an expression of its opinion as to the meaning of various provisions in the Draft Conventions, especially on the subject of the 8-hour day. Such requests have been frequent ; mention has been made above of the more important of them.

163. If Great Britain had consulted the Office with regard to the two difficulties which it raised in its letter with reference to overtime and the regulation of work on the railways, perhaps careful consideration on both sides might have led to a solution.

The International Labour Office has always taken care, when it gave its private opinion with regard to the interpretation of the Draft Conventions, not to give an opinion which might be regarded as authoritative, because the Office, as such, is not competent authoritatively to interpret the texts of the Draft Conventions. But it may not be impossible to find in the Organisation as at present constituted a means of overcoming this difficulty.

164. It should be remembered that the Articles of a Convention are drafted with the intention, on the one hand, of securing an equivalent standard and on the other of allowing for national differences of industrial organisation and method. It is therefore necessary that there should be some means whereby the elasticity which is properly allowed by any given Article can be authorititively defined. Any such definition of the application which is permissible as regards any given Article cannot, however, be regarded as a question for one country only. The Convention as a whole and each Article of it is negotiated by the International Labour Conference and is the joint product of its effort. The whole of the International Labour Organisation therefore is interested in and may be affected by the interpretations which are given to the instrument which it has created. The intentions of the Conference might be entirely falsified if each country were obliged to interpret the Articles of the Conventions for itself because there was no authority whose advice it could seek.

165. In the absence of any authority recognised for this purpose, it is easy to understand the reasoning of important countries like Great Britain. The moment they ratify the Draft Convention and consequently undertake to apply its provisions for a period of 10 years they become, by

server les clauses, ils sont, en vertu des articles 412 et suivants du Traité de Paix, exposés à toutes réclamations qui pourraient surgir ou d'une organisation ou d'un autre Etat, et qui pourraient entraîner à leur égard l'ouverture des procédures prévues au Traité de Paix.

Force serait donc d'avoir une autorité compétente pour donner une interprétation des conventions et pour garantir ainsi les Etats contractants contre des plaintes arbitraires. Il serait en effet quelque peu scandaleux de voir un Etat où l'application des huit heures serait encore bien incertaine ou incomplète, déposer, pour une raison quelconque, une réclamation contre un Etat, comme la Grande-Bretagne, sous prétexte que telle ou telle clause de la convention est mal observée.

166. La question est délicate. Le Traité de Paix n'a pas prévu explicitement l'institution d'une autorité compétente pour interpréter. On peut suggérer cependant que cette autorité pourrait être le Conseil d'administration du Bureau international du Travail. C'est, en effet, le Conseil d'administration qui est à l'origine de toutes les procédures qui peuvent être ouvertes au sujet de l'application des conventions. C'est lui qui, en vertu de l'article 409, transmet toutes réclamations aux Gouvernements mis en cause. C'est lui qui les invite à faire sur la matière les déclarations qu'il juge convenables. C'est lui qui, en vertu de l'article 410, a le droit de rendre publique la réclamation reçue et la réponse faite. C'est lui qui, s'il le juge à propos, dans le cas d'une plainte d'un Etat contre un Etat, saisit une Commission d'enquête. Et c'est lui encore, en vertu de l'article 420, qui reçoit d'un Gouvernement en faute avis des mesures qui ont été prises pour se conformer, soit aux recommandations d'une Commission d'enquête, soit à une décision de la Cour permanente de justice internationale.

C'est donc à lui que semblerait devoir revenir, en toutes ces matières, le pouvoir de décider si une convention est ou non appliquée. C'est à lui que reviendrait dans tous ces cas, le pouvoir d'interprétation.

Or, ce n'est en aucune manière étendre ce pouvoir, c'est en demander simplement l'application logique et constante, que de saisir le Conseil d'administration des problèmes d'interprétation des conventions avant comme après ratification. C'est lui qui peut, pour ainsi dire, établir à l'avance la jurisprudence. C'est lui qui peut donner ainsi garantie aux Etats.

virtue of Article 412 of the Treaty of Peace and the Articles immediately following, exposed to any complaints which may be made by an organisation or another country and which may necessitate with regard to them the opening of the procedure laid down in the Treaty of Peace for such cases of complaint.

It would therefore be necessary to have an authority competent to give an interpretation of the Draft Conventions and thus to guarantee contracting States against arbitrary complaints. It would indeed be somewhat anomalous if a State in which the 8-hour day was still indefinitely or incompletely applied made a complaint for whatever reason against a country like Great Britain, alleging that any given provision was not being effectively observed.

166. The Treaty of Peace has not dealt with this delicate question by the explicit designation of an authority competent to give interpretations.

It may be suggested that the competent authority in this respect should be the Governing Body of the International Labour Office. It is the Governing Body which sets in motion the procedure which may be resorted to with regard to the application of Draft Conventions. It is the Governing Body which by virtue of Article 409 communicates any complaints which may be made to the Governments concerned, and it is the Governing Body which invites them to make any statement which may be considered desirable with regard to the point at issue. It is the Governing Body which by virtue of Article 410 has the right to publish the complaint received and the reply made thereto. The Governing Body also, if it considers such procedure necessary in the case of a complaint made by one State against another, may apply for the appointment of a Commission of Enquiry, and by virtue of Article 420 it receives from a defaulting Government a statement of the measures which have been taken to comply either with the recommendations of a Commission of Enquiry or a judgment of the Permanent Court of International Justice.

It would seem thus that it is the Governing Body which in all such matters should have the power to decide whether a Draft Convention is being applied or not; and therefore necessarily it would seem to be the Governing Body which should have the power of interpretation.

To bring before the Governing Body the difficulties of interpretation of the Draft Conventions before as well as after ratification would not be in any way extending this power, but simply carrying it to its logical conclusion. It is the Governing Body which can, so to speak, create a body of jurisprudence in advance, and which can thus give a guarantee to the States Members.

167. D'ailleurs, il importe de bien définir et limiter ce que pourrait être une telle intervention du Conseil et comment elle se concilierait avec les droits de la Conférence.

Il ne s'agit nullement, en effet, d'empiéter sur les attributions de la Conférence. C'est une chose que d'amender une convention, acte qui est de la compétence exclusive de la Conférence : c'en est une autre de donner une interprétation autorisée à laquelle le pays intéressé pourra se conformer sans risquer de la voir contester dans la suite. Lorsqu'il est question, soit d'ajouter certaines dispositions à une convention, soit de modifier les dispositions existantes, en vue de répondre à des difficultés soulevées dans un pays, la seule méthode prévue par le Traité est celle d'un appel à la Conférence, et le Bureau a pris le plus grand soin de sauvegarder les droits de la Conférence en cette matière. Il n'a jamais perdu de vue la distinction à faire entre les questions d'interprétation et les questions de modification. Dans les cas, comme celui de la Grande-Bretagne où il a considéré que la difficulté soulevée pourrait être résolue par une interprétation, il a proposé que la question fût examinée en premier lieu par le Conseil d'administration. Mais dans le cas où il a estimé que l'obstacle ne pouvait être surmonté sans une modification de la convention existante, comme celui de la convention sur le travail de nuit des enfants et celui de l'adaptaton à l'Inde de la convention sur l'âge minimum d'admission, il a porté la question devant la Conférence.

Il convient de noter d'ailleurs que les conventions elles-mêmes, dans leurs articles relatifs à la procédure (par exemple l'article 11 de la convention sur l'accouchement) indiquent la distinction qui doit être faite, puisqu'elles exigent que la question de leur revision ou de leur modification soit d'abord examinée par le Conseil d'administration. Ces dispositions signifient implicitement, mais clairement, que c'est au Conseil d'administration qu'il appartient de décider si la difficulté qui a amené un Etat à demander la revision d'une convention est susceptible d'être résolue par une interprétation de la convention, ou exige au contraire une intervention de la Conférence.

168. La Conférence pourra peut-être, au cours de la présente session, envisager, à la lumière de l'expérience acquise, la possibilité de compléter pour l'avenir les dispositions des conventions relatives à la procédure. Il se produira de toute nécessité des cas dans lesquels des modifications de peu d'importance devront être introduites dans une convention. Pour les raisons qui ont été développées dans la lettre au Gouvernement de l'Inde dont le texte figure plus loin, il est pratiquement impossible d'incorporer ces légères modifications dans les conventions séparées. La Conférence pourrait remédier à cette difficulté, en ce qui concerne

167. It is important, however, to lay down precisely what may be the exact scope of such action on the part of the Governing Body, and how it could be reconciled with the powers of the Conference.

The suggestion which is thus made does not trench in any way on the attributes of the Conference. There is a clear distinction between amending a Convention, which is an act which only the Conference itself can perform, and giving an authoritative interpretation which the State concerned can follow without any fear of its being subsequently challenged. Where it is a question, in order to meet the difficulty of a particular State, of either adding to a Convention or altering some of its provisions, the only machinery provided by the Treaty is that of an appeal to the Conference, and the Office has been careful to safeguard the rights of the Conference in this respect and has always kept the distinction between questions of interpretation and questions of amendment clearly in mind. For example, where, as in the case of Great Britain, it has been considered that the difficulty might be solved by an interpretation, it proposed that the case should be dealt with in the first instance by the Governing Body. But, in the case of the night work of young persons and in the case of the minimum age of admission in India, where the difficulty cannot be got over without an amendment, the matter has been brought before the Conference.

The Conventions themselves, in their formal Articles, (for example, Article 11, in the Maternity Convention) indeed indicate the distinction which it seems desirable to make, since they require that the question of their revision or amendment shall first be dealt with by the Governing Body. The implication clearly is that it is for the Governing Body to decide whether the difficulty which has led a State to ask for the revision of the Convention is such as can be met by an interpretation of the Convention or is such as would require the intervention of the Conference.

168. It may be desirable for the Conference to consider, during this Session and in the light of the experience which is now available, some addition to the formal Articles of the Conventions. Cases where minor amendments to a Convention may be required are bound to arise. For reasons which have been set forth in the letter to the Indian Government (see below) it is practically impossible to embody these in separate Conventions. The Conference might, however, meet the difficulty there indicated, as regards future conventions, by providing in the formal Articles for a method of amendment, say, by requiring that

Document No. 93

ILO, Note on the possibility of instituting a special procedure for the interpretation of conventions, 1931

INTERNATIONAL LABOUR OFFICE

STANDING ORDERS COMMITTEE

15 October 1931.

Note on the possibility of instituting a special procedure for the interpretation of conventions.

In 1930, the Committee set up by the Conference to examine the reports submitted under Article 408 of the Treaty of Peace drew attention to a certain number of divergences in the interpretation of Conventions by the different States. The Office, having brought this fact to the notice of the Governing Body, was instructed by the latter to consider how a request for interpretation of a Convention in accordance with Article 423 of the Treaty of Peace could be made to the Permanent Court of International Justice. A report on this subject was submitted by the Office to the Governing Body and discussed at the Fifty-first Session in January 1931.

During the course of the discussion in the Governing Body two questions were raised which, though connected with each other, are nevertheless not identical- the question of the conditions for the application of Article 423 of the Treaty of Versailles and the question of the possible institution of a special procedure for the interpretation of Conventions. Both these points were referred to the Standing Orders Committee. It is proposed in the present note to consider the question of the institution of a procedure for the interpretation of Conventions. The question

of the application of Article 423 is examined in another note.

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The interpretation of the Conventions drawn up by the Conference is an essential element in the working of the International Labour Organisation. It is obvious that divergent or arbitrary interpretations would menace the attainment of those general standards of legislation which the Conventions are intended to promote in the States which ratify them. Part XIII of the Treaty therefore contains a clause which expressly provides a solution of this difficulty; Article 423 lays down that all questions relating to the interpretation of Conventions "shall be referred for decision to the Permanent Court of International Justice".

Thus, the Treaty itself specifies the authority for the settlement of any question concerning the interpretation of Conventions, namely, the Permanent Court of International Justice. On this point then a real constitutional principle exists.

The question of the practical application of this constitutional principle is dealt with in the note on the application of Article 423 which is being submitted to the Standing Orders Committee. In the present note it will be sufficient to point out that up to the present the Court has dealt on five occasions only with questions concerning the International Labour Organisation and that none of the cases which have been submitted to it concerned, at

least directly, the interpretation of Conventions. This does not, however, mean that the competence of the Court with respect to the interpretation of Conventions is purely theoretical and not destined to be exercised in practice. That the Court has not so far had occasion to give any decision bearing directly on the interpretation of Conventions is no doubt due to the fact that circumstances have not, up to the present, necessitated the intervention of the Court. The various organs of the Organisation and the States Members have also perhaps been rather unduly hesitant with regard to the Court and have not taken full advantage of Article 423.

At the same time, even if it be admitted that recourse should be had more frequently to the procedure of appeal to the high authority laid down by Article 423, it is quite obvious that that procedure can only be employed in cases which are really important. The interpretation of Conventions continually raises a number of questions which it would be idle to submit to the Court but which nevertheless require a solution.

Apart from the constitutional procedure laid down in Article 423, circumstances have led to the development of an unofficial procedure. The Office, being frequently asked to explain particular clauses of Conventions, has been led to give opinions on the interpretation of Conventions. The Office has always been careful to accompany these opinions with a reservation specifying that it is not competent to give interpretations and

that the explanations given by it are of an unofficial nature. The letters of the Office which contain an interpretation of Conventions are communicated as soon as possible to the Governing Body and are published in the Official Bulletin. The object of publishing the letters is not only to give information to those concerned with regard to the interpretations which have been given but also to enable these interpretations to be criticised. If the opinion of the Office is not contested it may be presumed to be more or less generally accepted.

Thus, at present there are two possible procedures for the interpretation of Conventions: an official procedure provided by the Treaty, to which recourse has not so far been had, and an unofficial procedure, which has no precise legal value but which is, nevertheless, frequently applied in practice.

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This situation has its advantages and its disadvantages.

It constitutes a system which is in practice very elastic but at the same time does not infringe the constitutional principles of Part XIII. The Director believes that he can claim that the Office has constantly endeavoured to interpret the Conventions in a completely objective manner and he ventures to think that the interpretations given by the Office have been found

useful by governments and by employers' and workers' organisations. Further, the unofficial character of these interpretations has always been carefully pointed out, so as not to prejudice in any way any decisions which may subsequently be given by the Permanent Court of International Justice, which, under the Treaty, is the competent authority in this sphere.

The present system is not, however, without its disadvantages. The first resides in the fact that, as has been said above, the Court has never exercised its competence with respect to the interpretation of International Labour Conventions and interpretations have always been given unofficially. It is desirable that those concerned should not hesitate to consult the Court when the question raised presents a certain importance. The normal and complete working of the present system appears to the Office to require that the competence of the Court with respect to the interpretation of Conventions should not merely be legally established but should actually be exercised.

Even if, however, this were done, the Director would still hesitate to say that the arrangements for the interpretation of Conventions could be regarded as entirely satisfactory. In his opinion it would be desirable that, between the unofficial procedure of consulting the Office and the constitutional procedure of approaching the Permanent Court of International Justice, provision should be made for an intermediate procedure which, while not possessing the supreme authority of the Court, would, nevertheless, give the Members of the Organisation greater guarantees

than are provided by the opinions given by the Office.

In other words, the Office considers that it would be desirable to maintain both the procedure which exists under the Treaty and that which has developed in practice, but to supplement the existing system by the creation of a body intermediate between the Permanent Court of International Justice and the International Labour Office. It remains to be seen how this new body could be set up.

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Various solutions of the problem may be contemplated, whether by the creation of a new body or by the attribution of fresh functions to already existing bodies.

The establishment of a special body for the purpose of giving opinions on the interpretation of Conventions does not appear desirable. It is considered that such an innovation would introduce a further unnecessary complication in the working of the Organisation. Moreover, doubt would probably arise as to the validity of such a step. It must not be forgotten that from the legal point of view the Permanent Court of International Justice is alone competent to give authoritative interpretations of Conventions and that any competence conferred in this respect on other bodies must be of an

creation of a body the sole duty of which would be to give interpretations which are really a matter for the Court would be more difficult to justify.

It therefore seems preferable not to establish a new body but to consider whether, amongst the bodies already existing, there is one which might give unofficial interpretations of Conventions.

The first body which comes to mind in this connection is the Conference. It is the Conference which prepares the Conventions and it may be maintained that the body which adopts the Conventions is better qualified than any other to define their exact meaning. The Office appreciates the force of this argument but considers that it is based on an abstract view of the position. Though the Conference is theoretically one body, in practice it exercises its powers at successive sessions and its composition varies fairly considerably from one session to another, so that the session of the Conference which would be required to interpret a Convention would to a large extent be composed of persons other than those attending the session which prepared the text of the Convention in question. Thus, the argument that the body which adopts a Convention is competent to interpret it, is not of great weight from the practical point of view. From the purely legal point of view the argument appears still more doubtful, since the powers of the Conference have been very clearly defined by Part XIII and it is not possible to deduce from the Treaty any competence on the part of the Conference with respect to the interpret-

ation of Conventions. The Conference has no more power to interpret the text of a Convention than a legislative assembly has to interpret the law. It may also be pointed out that the composition and work of the Conference give it a political character not conducive to that objectivity which ought to characterise the interpretation of a legal text.

For these reasons it appears preferable not to entrust the Conference with the task of interpreting Conventions. In the opinion of the Office, the Governing Body would be better suited than the Conference for this important work. In 1921, the Director suggested to the Governing Body that it should give interpretations of Conventions. In support of the suggestion he pointed out that Part XIII itself gives the Governing Body a certain power to determine the meaning of Conventions. In this connection, it is sufficient to refer to the duties assigned to the Governing Body in the procedure regarding sanctions under Article 409 and subsequent Articles of the Treaty. It may be asked whether, by a logical extension of these provisions, the Governing Body could not be regarded as qualified to give interpretations to which a sufficient degree of authority would attach. Conversely, it has, it is true, been maintained that the members of the Governing Body, whether representing governments or not, are often associated with certain special points of view which might prevent them from displaying the necessary impartiality. But might it not be expected

that, from the very fact that conflicting points of view existed, there would emerge interpretations which would take account of all necessary considerations? This question could be argued at length but for the essential fact that the Governing Body decided not to undertake the duty which the Director suggested it should assume. It would thus serve no purpose to argue the question further, since it has already been settled in the negative, and unless the Governing Body revises its decision it is necessary to find some other authority which could interpret Conventions.

If the interpretation of Conventions is not assumed by the Conference or the Governing Body the choice of a suitable body is necessarily restricted to one of the various committees which participate in the work of the Organisation. Of these committees, which are fairly numerous, one only appears qualified to give an opinion on the interpretation of Conventions, namely, the Committee of Experts for the examination of the reports submitted under Article 408 of the Treaty on the application of Conventions.

This Committee was set up in 1927 to examine the reports submitted by States under Article 408. Its members, who are at present ten in number, are appointed by the Governing Body, which aims at appointing persons of independent standing chosen on account of

experts were carefully defined. With regard to interpretation of Conventions, their duties were stated to be as follows:

> "To examine the annual reports with a view to noting differences in the interpretation of the provisions of Conventions in the several countries which have ratified them, without, however, prejudging in any way the question as to what the right interpretation may be".
>
> (Final Record of the Tenth Session of the Conference, Vol.II, p.261).

So far the Committee has remained within the limits of its original instructions and though it has drawn attention to differences of interpretation it has itself refrained from giving any interpretations. It is, however, obvious that from its very nature the work of the Committee must lead the latter to appreciate the respective value of the interpretations which it encounters in examining the application of the Conventions. It appears almost inevitable that the experts, when confronted with a manifestly arbitrary interpretation, should draw attention to the real meaning of the clauses which seem to them to be wrongly interpreted. The question which arises at present is whether the functions of the Committee in this respect should not be enlarged.

In this connection it may be recalled that during the discussions at the Fifty-first Session of the Governing Body several speakers were in favour of the Committee of Experts being given power to interpret

Committee for the examination of the reports submitted under Article 408 made a definite suggestion that, without prejudice to any decisions which might be given by the Permanent Court of International Justice, recourse should be had to the Committee of Experts in order to settle the differences of interpretation which have in practice arisen. The Committee, referring to a suggestion made by the Conference in 1930, asked that the Governing Body should report to the Conference on the question of the interpretation of Conventions.

The question has thus been formally raised and the Standing Orders Committee and the Governing Body are required to decide their attitude and report to the Conference.

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There are no doubt certain objections to investing the Committee of Experts on the Article 408 reports with power to interpret Conventions.

It may be maintained that interpretation of Conventions by the experts would not be any more authentic than the interpretations already unofficially given by the Office and that the intervention of this new body would simply involve unnecessary duplication.

It may also be said that even though it was specified that the interpretations of the Committee were given without prejudice to the competence of

the Permanent Court of International Justice, this would not preclude the possibility of the findings of the Committee and of the Court conflicting with each other, and that a difference of opinion between these two bodies, despite the provision in the Treaty which empowers the Court to decide without appeal, would create certain difficulties in the application of Conventions.

Finally, it may be argued that the Committee of Experts, at least under present arrangements, meets only once a year for a few days and that it already has too much to do to permit further duties being suitably assigned to it.

The foregoing objections are certainly serious and merit careful consideration. It would appear, however, that steps could be taken to meet them.

In view of Article 423 of the Treaty it is inevitable that any interpretations given by the Committee would be of an unofficial nature; but such interpretations, given by a body of competent individuals of independent standing, would nevertheless undoubtedly be of practical value as emanating from the experts whose duty it is to examine the reports on the application of Conventions. As regards the possibility of a conflict of opinion with the Court, this should be avoided by ensuring that interpretations given by the experts would be of a preliminary character without prejudice to any

decision subsequently given by the Court. Finally, the objection concerning the large amount of work already required of the experts could be overcome by suitable administrative and financial measures.

There are two essential considerations which would justify the Governing Body in investing the Committee of Experts with certain powers regarding the interpretation of Conventions. In the first place, of all the bodies of the International Labour Organisation it is this Committee which appears to present the best guarantees of impartiality. In the second place, the very nature of its work inevitably leads the Committee to examine the exact meaning of the different clauses in the Conventions; and this work is so closely connected with the interpretation to be given to Conventions that it seems natural to entrust the Committee with the solution of such difficulties as arise in this connection.

If it were decided to instruct the Committee of Experts to give opinions on the interpretation of Conventions, certain steps would have to be taken.

In the first place the Governing Body would require to enlarge the present terms of reference of the Committee and to define exactly the new duties to be assigned to it.

In the second place it would be necessary to specify the procedure by which the new powers of the Committee would be exercised; in particular, it would be necessary

to decide whether the unofficial interpretations given by the Office would in all cases be submitted to the Committee for examination and to make suitable provision for reserving the possibility of appeal to the Permanent Court of International Justice.

At the present stage the Director considers it unnecessary to submit detailed proposals on the subject. The Standing Orders Committee must first express its opinion on the principle of the solution suggested and if the Governing Body should eventually decide in favour of this solution, the Office would consider the appropriate means of ensuring its practical application.

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In the light of the foregoing considerations, the Director ventures to suggest that the system at present in force for the interpretation of Conventions may be regarded as satisfactory. Nevertheless it might be improved and it is considered that the institution of a body intermediate between the Office and the Permanent Court, if not absolutely necessary, would at least be decidedly useful. There is, however, one essential constitutional principle which must always be borne in mind, the principle of the competence of the Permanent Court of International Justice, which is derived from the Treaty itself. Provided this principle is not infringed, any solution of the question may be contemplated. The one to which, in the opinion of the Office,

effect could most easily be given, consists in instructing the Committee of Experts on Article 408 to give, where necessary, interpretations of Conventions, while at the same time maintaining unchanged the present procedure of the Office as regards interpretations and not infringing the rights of the Permanent Court of International Justice. To give the Committee these further powers would be a natural extension of those which it at present possesses and would provide members of the Organisation with guarantees which would probably promote ratification of the Conventions.

Document No. 94

ILO, Note on the application of article 423 of the Treaty of Peace (Consultation of the Court), 1931

INTERNATIONAL LABOUR OFFICE

Standing Orders Committee

Geneva, 15 October 1931

Note on the application of article 423 of the Treaty of Peace.

(Consultation of the Court).

During the discussion of the report of the Office on the work of the Committee set up by the Conference to examine the annual reports sent in under Article 408 of the Treaty, the Governing Body, at its Fiftieth Session, held at Brussels in October 1930, was led to consider the question of the application of Article 423 of the Treaty of Peace. The Committee of the Conference had drawn attention to certain divergences in the interpretation of Conventions, and the Office pointed out in that connection that the Permanent Court of International Justice was competent to decide on the interpretation of Conventions under Article 423. It will be remembered that that article runs as follows :—

> "Any question or dispute relating to the interpretation of this Part of the present Treaty (Part XIII) or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice".

At the Fiftieth Session, Mr.Oersted made certain observations concerning the application of Article 423, and on his proposal the Governing Body instructed the Office to submit to the next session a note on the procedure to be followed in order to lay such questions before the Court in accordance with Article 423.

The note in question was submitted to the Fifty-first Session of the Governing Body in January 1931. There was a good deal of discussion on the matter, and two allied

questions were examined ; in addition to the original question of the application of Article 423 there was a discussion on the question of instituting a new procedure for interpreting Conventions. Both questions were referred to the Standing Orders Committee for study. It is thought that although the two questions are obviously connected, they are nevertheless separate problems, and it is therefore thought more convenient to furnish the Standing Orders Committee with two separate notes. The present note deals only with the problem of the application of Article 423. The possibility of instituting a special procedure for the interpretation of Conventions is treated in a separate note.

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The note submitted to the Governing Body in January 1931 dealt fully with the question of the procedure to be followed to bring matters before the Permanent Court of International Justice under Article 423. It will be sufficient to recall briefly the considerations on which no special discussion took place in the Governing Body; those points on which observations were made by members of the Governing Body will be dealt with at greater lenght.

The competence of the Court to interpret international labour Conventions is established by Article 423 in extremely general terms. It can be exercised in the two forms which the activity of the Court may take : either its functions in contested cases or its functions as an advisory body. In the view of the Office, the decision of the Court given under Article 423 is binding on the International Labour Organisation and its Members, whether the question at issue is a contested one or whether an advisory

opinion has been given.

When the Court exercises its functions in contested cases, it gives judgments. In that case its competence ratione materiae is confined to disputes, that is to say, to disputes which have actually come into existence. Its competence ratione personae is limited by Article 34 of the Statute of the Court to States or Members of the League of Nations. Only the latter can be parties before the Court in a contested case, and neither international bodies nor private individuals have the right to be parties. In contested cases the parties submit the dispute to the Court directly, either by special agreement or by unilateral arraignment. The dispute may only be submitted by unilateral arraignment if it refers to a question on which the Court is invested with compulsory jurisdiction. This is the case as regards disputes connected with the working of the International Labour Organisation. The decision of the Court in a contested case relating to a dispute concerning the interpretation of a Labour Convention is, however, preceded by the procedure of complaint laid down by Article 411 and the following articles of the Treaty of Peace.

When the Court exercises its functions as an advisory body it issues advisory opinions. Its competence ratione materiae is unlimited in such cases, since it extends to "any dispute or question referred to it by the Council or by the Assembly" (Article 14 of the Covenant). On the other hand, its competence ratione personae as an advisory body is extremely limited. Article 14 of the Covenant confers the right of asking the Court for advisory opinions on the Council and the Assembly of the League of Nations, to the exclusion of other international bodies and

States. It was this last point which gave rise to discussion at the Fifty-first Session of the Governing Body, and it must be considered in greater detail.

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If it is agreed that the competence of the Court as an advisory body can only be exercised at the request of the Council and the Assembly, it will be seen that the application of Article 423 is in danger of being seriously impeded. Since the procedure in contested cases is expressly reserved to States by the Statute of the Court, and since the advisory procedure may only be set in motion by the Council and the Assembly of the League of Nations, it is clear that the organs of the International Labour Organisation (the Conference and the Governing Body) are deprived of any direct access to the Court. It is difficult to reconcile this with the letter and the spirit of Article 423. If that provision is to be fully effective it would be necessary that the organs of the International Labour Organisation or the Members concerned should be able to lay directly before the Court the question or dispute which the Court has to settle under Article 423, If, however, the right of opening the advisory procedure must necessarily be dependent on a decision of the Council or the Assembly of the League of Nations, it is clear that Article 423 would be liable to lose much of its practical effectiveness.

The International Labour Office has had this point under consideration for some time past, and it also attracted the attention of various members of the Governing Body at the Fifty-first Session. Some of them expressed the view

that the legal force of Article 423 of the Treaty of Peace was not less than that of Article 14 of the Covenant, and that it was hardly admissible that a barrier should be set up between the International Labour Organisation and its natural judicial authority.

Regarding the matter from this point of view, Mr.Oersted proposed that the following question should be laid before the Court through the Council of the League of Nations :

> "Should it not be recognised that the International Labour Organisation has the right to lay directly before the Permanent Court of International Justice, in accordance with the principles of Article 423 of the Treaty of Versailles, any question or dispute relating to the interpretation of Part XIII of the said Treaty and of international labour Conventions ?"

Mr. de Michelis went somewhat further than Mr.Oersted and suggested that the Governing Body should approach the Court directly in order to find out whether it would declare that a request for an opinion put forward under Article 423 was in order, though it had not been transmitted by the Council of the League of Nations.

The Governing Body took the view that the question required further study, and simply decided that it should be referred to the Standing Orders Committee. It is therefore now before that Committee.

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Mr.Oersted's proposal, both in the form in which he submitted it and in that suggested by Mr.de Michelis, has the advantage of framing clearly and unequivocally a question which is of great importance for the Organisation.

Unfortunately, that question would appear to be already answered in the negative from the point of view of positive law.

It may first of all be pointed out that Mr.de Michelis' suggestion could not well be accepted. If the Governing Body sent a request directly to the Court it might appear lacking in courtesy to the Council of the League of Nations. In addition, the Office is convinced that the Court would at once declare it out of order. The method proposed by Mr.Oersted, on the other hand, is perfectly possible, and the Court would certainly not refuse to reply to the question; but, as has already been pointed out, it appears certain that its reply would be in the negative.

In the note which was submitted to the Fifty-first Session of the Governing Body the Office expressed the view that the right to ask the Court for an advisory opinion belongs solely to the Council and the Assembly of the League of Nations. The reason why no special arguments were put forward in support of this opinion is that it did not appear open to question. The Office still takes the same view, and the reasons why it does so are briefly explained below.

The first and most important argument results from the actual text of Article 14 of the Covenant of the League of Nations. That article, after providing for the institution of the Permanent Court of International Justice declares that "the Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly". It might no doubt be maintained that the fact that Article 14 of the Covenant empowers the

Court to give advisory opinions to the Council or the Assembly does not necessarily imply that it is not competent to give similar opinions to other bodies, more particularly when such bodies can point to a provision of the Treaty, such as Article 423, as entitling them to lay a question before the Court. From the point of view of abstract logic such an argument has a certain force. It is, however, opposed to the method of strict interpretation which has always prevailed in determining the jurisdiction of the Court. The jurisdiction of the Court cannot be presumed; it must result from some definite clause. But Article 14 of the Covenant, which constitutes the source, and the sole source, of advisory jurisdiction, only provides for the exercise of that jurisdiction on the instance of the Council and the Assembly. Thus, if the clause is interpreted strictly, it appears impossible not to conclude a contrario that no one except the Council and the Assembly is entitled to ask the Court for an opinion. It is useless to allege in this connection that Article 423 and Article 14 of the Treaty of Peace possess equal legal force. The terms of Article 14 are so clear that it is not possible to bring forward Article 423 in opposition to them, since Article 423 contains no express provision on this point.

The question was in any case quite definitely settled in 1920, when the First Assembly of the League of Nations drew up the Statute of the Court. At that time the International Labour Office suggested that a clause should be introduced in the Statute providing that the Court might give opinions not only to the Council and the Assembly, but also to the Governing Body of the International Labour Office and the General Labour Conference. That proposal was not accepted, as the competent sub-committee considered that "such

provisions would involve a considerable extension of the duties of the members of the Court and might lead to consequences difficult to calculate in advance" (Report of Mr.Hagerup - Documents concerning the adoption of the Statute of the Court, p.211).

The Court itself in its Rules confirmed the principle that its jurisdiction ratione personae as an advisory body was limited to the Council and the Assembly. Article 72 of its Rules, which deals with the laying before the Court of requests for advisory opinions, provides that "questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request signed either by the President of the Assembly or the President of the Council of the League of Nations or by the Secretary-General of the League under instructions from the Assembly or the Council". It will be seen that this provision excludes the possibility of a request for an opinion which does not emanate from the Council or the Assembly.

It should further be noted that the first annual report of the Court, established by the Registry , definitely states that the only two bodies which are empowered to submit to the Court a request for an advisory opinion are the Council and the Assembly (p.146).

When it is remembered that this solution is accepted from the theorical point of view by all the authorities, and has been confirmed by all the precedents which have been created up to the present - in particular, in connection with the five advisory opinions given by the Court concerning the working of the International Labour Organisation - it is impossible not to conclude that the question is quite definitely settled.

It may be stated that from the point of view of positive law the Council and the Assembly of the League of

Nations are alone entitled to ask the Court for an advisory opinion. Thus the question which Mr.Oersted propos to lay before the Court would undoubtedly receive a negativ reply, and consequently would not effectively assist in securing fuller application of Article 423 of the Treaty of Peace.

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Although Mr.Oersted's proposal does not appear calculated to remove the difficulty at present under discus sion, it would nevertheless seem to indicate the direction in which a solution should be sought.

What is the nature of the question at issue ? It may perhaps be expressed as follows. On the one hand, Article 423 instructs the Court to decide on questions relating to the working of the International Labour Organisation. In most cases its powers in this respect are exercised by means of the advisory procedure. On the other hand, the right of opening the advisory procedure is reserved to the Council and the Assembly of the League of Nations by Articl 14 of the Covenant and is thus withheld from the organs of the International Labour Organisation.

At first sight there would thus appear to be a contradiction between Article 14 and Article 423. It is, however, impossible to admit that these two provisions, which appear in the same Treaties, cannot be reconciled. The Treaty displays in this respect a lack of co-ordination rather than an actual contradiction. In order, however, to remedy the regrettable legal omission which results, it would be necessary to reconcile Articles 14 and 423 of the Treaty by a combined interpretation which would respect the both. An attempt is made below to show what such an interpretation might be.

Under Article 14 the Council and the Assembly of the League of Nations are the bodies which may ask the Court for an advisory opinion. Under Article 423 the Court has to decide on any question or dispute relating to the working of the International Labour Organisation. Surely it may be concluded from these two clauses taken together that while the organs of the International Labour Organisation are obliged under Article 14 to approach the Court through the Council or the Assembly, the latter are in their turn bound under Article 423 not to place any obstacle in the way of the exercise of the jurisdiction of the Court, but to transmit to the Court any request for an opinion based on Article 423. In other words, the application of the general principle laid down by Article 423 cannot depend on the decision taken in each special case by the Council or the Assembly, and those bodies are not entitled to oppose the transmission of a request for an opinion put forward under Article 423.

The above is the combined interpretation which the Office would wish to have accepted in order to remedy the existing lack of co-ordination between the provisions of Articles 14 and 423 of the Treaty of Peace. This interpretation was put forward by the Office in a memorandum which was sent on 7 March 1929 to the Committee of Jurists set up to consider the revision of the Statute of the Court. It may be desirable to reproduce the principal passages of that memorandum below :

> "Both from the practical and from the theoretical point of view it is difficult to admit that the fundamental provisions of Article 423 are exposed to the danger of remaining a dead letter, and that the organs and the Members of the International Labour Organisation may be refused access to the legal authority provided by the Treaties.
>
> This danger would become particularly serious if it were admitted in a general way that the Council

or the Assembly could not ask the Court for an advisory opinion except by a unanimous decision. The International Labour Office cannot presume to settle the delicate question whether unanimity is a necessary condition in order to enable the Council or the Assembly to request the Court for an advisory opinion. It must, however, point out that if that question were answered in the affirmative in all cases, the result would be to confer on each member of the Council an individual and absolute right of veto enabling him to prevent the application of a definite provision of Part XIII of the Treaty of Versailles."

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"In the opinion of the International Labour Office the proper solution for the problem of co-ordinating Article 14 and 423 of the Treaty of Versailles is to be found in a combined interpretation of the two provisions. According to such a combined interpretation it is for the Council or the Assembly, in accordance with Article 14 of the Covenant, to lay before the Court all requests for advisory opinions concerning the interpretation of Part XIII of the Treaty of Versailles and the interpretation of international labour Conventions. Nevertheless such requests for advisory opinions, made by the appropriate organs of the International Labour Organisation or by the States which are Members of that Organisation, find their true legal justification not in any specific decision of the Council or the Assembly but in a general provision in the Treaties. The authority for the reference of such requests for advisory opinions to the Court is to be found in Article 423 of the Treaty of Versailles, and not in any action taken by the Assembly or the Council on its own initiative. The real fact is that, if the Council or the Assembly is requested to ask the Court for an opinion on a labour question under Article 423, they are not free to accept or refuse such a request but are legally bound to comply therewith. The Council and the Assembly are not called upon to takeany "decision" in the strict sense of the term. They are called upon to discharge a constitutional function with which they have been invested by the Treaties and which does not even appear to be of a nature to require a formal vote."

As was pointed out in the note which the Office submitted to the Fifty-first Session of the Governing Body, the memorandum of the Office proposed in conclusion that the Committee of Jurists should suggest that the Council of the League of Nations should consult the Permanent Court of International Justice on this point. The matter is one for the Court to decide in accordance with Article 423 itself. The Court alone possesses the necessary authority and competence to give an unquestionably valid interpretation of Articles 14 and 423 of the Treaty of Peace.

The Committee of Jurists to which the memorandum of 7 March 1929 was sent was preoccupied with important political problems, and did not feel able to accept the suggestion of the Office. But the Governing Body itself is, as a matter of fact, the proper body to take the initiative in asking for a consultation of the Court in order to settle once and for all the serious constitutional problem outlined above. In the event of the Standing Orders Committee deciding to recommend that procedure to the Governing Body, the Office ventures to suggest the following text which, in its opinion, would correctly set forth the question to be laid before the Court:

> "Are the Council or the Assembly of the League of Nations bound, on receipt of a request that the Permanent Court of International Justice should be asked for an advisory opinion concerning the interpretation of Part XIII of the Treaty of Versailles and the Conventions concluded under that Part of the Treaty, to transmit the Articles in question to the Court under Article 420 of the Treaty of Versailles?"

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This is the view which the Office takes of this problem. It should be added, however, that the question with which this note deals directly concerns the League of Nations, since it bears upon the character of the rights of the Council and the Assembly as regards the application of Article 423. The Office, therefore, considered it necessary to keep the Secretary-General of the League of Nations informed. Unfortunately the work of the Twelfth Assembly has up to the present prevented the Office from considering

the question in detail with the Secretary-General, which it considers it important to do. The Office, therefore, reserves to itself the right to inform the Standing Orders Committee when it meets of the result of the interviews which it may have had on the subject with the proper officials of the League of Nations.

24 September 1931.

Document No. 95

Minutes of the 57th Session of the Governing Body, April 1932, Report of the Standing Orders Committee, pp. 151–153

PROCÈS-VERBAUX

DE LA

57ME SESSION

DU

CONSEIL D'ADMINISTRATION

DU

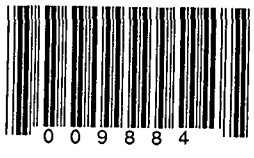
BUREAU INTERNATIONAL DU TRAVAIL

GENÈVE — AVRIL 1932

MINUTES

OF THE

57TH SESSION



OF

THE GOVERNING BODY

OF

THE INTERNATIONAL LABOUR OFFICE

GENEVA — APRIL 1932

APPENDIX IV.

FOURTH ITEM ON THE AGENDA.

REPORT OF THE STANDING ORDERS COMMITTEE SUBMITTED BY SIR ATUL CHATTERJEE.

The Standing Orders Committee held its first sitting on 1 April 1932. The following questions were on the agenda:

1. Draft amendments to Article 393 of the Treaty of Versailles and Articles 3 and 21 of the Standing Orders of the Conference submitted by the Italian Government.
2. Procedure to be adopted as regards draft resolutions submitted to the Conference.
3. Consultation of Governments with a view to the drawing up of ten-yearly reports (resolution submitted to the Conference by Mr. Hammarskjöld).
4. Procedure to be followed for the application of Article 423 of the Treaty of Peace (Interpretation of Conventions):

   (*a*) Procedure to be followed for the consultation of the Permanent Court of International Justice;
   (*b*) Possibility of instituting a special procedure for the interpretation of Conventions.

5. Establishment of a procedure for the amendment of Conventions.
6. (Possible item.) Use of non-official languages at the Conference (proposal of the Spanish Government representative).

Consultation of Governments with a view to the drawing up of ten-yearly reports (resolution submitted to the Conference by Mr. Hammarskjöld).

At its Fifty-fifth Session, the Governing Body referred to the Standing Orders Committee for consideration the following resolution submitted by Mr. Hammarskjöld, Swedish Government Delegate, which had been adopted by the Conference at its Fifteenth Session:

> " Whereas the report of the Governing Body of the International Labour Office, for which provision is made in Article 7*a* of the Standing Orders of the Governing Body, cannot give all the necessary and desired information unless the Governments have an opportunity of expressing their opinion with regard to the revision of the Convention concerned;
>
> " The Conference requests the Governing Body to instruct the International Labour Office, before preparing the said report, to ask the Governments to inform it, after consultation with the employers' and workers' organisations concerned, of their opinion concerning the revision of the Convention in question. "

In the discussion which took place in the Committee, it was pointed out by the author of the resolution and those members who were in agreement with the proposal, that in order to obtain the maximum number of ratifications, it was obviously desirable to consult all the Governments of the States Members so that they could have an opportunity of expressing their opinion as regards revision and of explaining any difficulties which had prevented them from ratifying the Conventions. That was the only procedure by which the Governing Body could be put in possession of the full facts which were obviously required before it took a decision for or against revision.

Other members of the Committee, however, felt that no useful purpose would be served by consulting all the Governments since they were already requested each year to state what difficulties they had encountered in ratifying Conventions; it therefore seemed unnecessary specifically to invite them to express their opinion as regards revision. If it had been proposed to ask Governments what difficulties had arisen and whether, if those difficulties were removed, they would be prepared to ratify, the proposal would have effected some tangible result; as it was, however, there would be no guarantee that the Governments so consulted would proceed to ratify and the fact of their being consulted would merely give them an opportunity of putting forward various objections to account for the reason why they had not ratified Conventions which, in fact, they had never had any intention of ratifying.

It was then suggested that satisfaction might be given to all concerned if it were decided that the reports which the Office was called upon to prepare when the question of the revision of

Conventions had to be considered were communicated for their observations to all Members of the Organisation. It was also suggested that, if that proposal were adopted, it would be well to give Governments, especially those of the oversea countries, ample time to consider those reports and that the Governing Body should consider those reports after a lapse of three months instead of two months after the date of their distribution.

The author of the resolution accepted this suggestion and the Committee unanimously decided, in order to give effect thereto, to recommend the Governing Body to make the following amendments in its Standing Orders:

Amendments to Article 7a of the Standing Orders of the Governing Body.

1. Add to the first paragraph the following sentence:

" The report of the Office shall be communicated for their observations to all Members of the Organisation. "

2. Substitute for second sentence of paragraph 3 a second sub-paragraph worded as follows:

" This consideration shall not take place until after three months from the date of the circulation to Governments and to the members of the Governing Body of the Office report referred to in paragraph 1. "

Procedure to be followed for the application of Article 423 of the Treaty of Peace (Interpretation of Conventions).

(a) *Procedure to be followed for the consultation of the Permanent Court of International Justice.*

For some time past, the Governing Body has had under consideration the question of the application of Article 423 of the Treaty of Peace and of the procedure to be followed in order to lay questions or disputes relating to the interpretation of Part XIII of the Treaty or of International Labour Conventions before the Permanent Court of International Justice. It accordingly requested its Standing Orders Committee to consider the question.

The Office gave its most careful consideration to the problem, and in a note which it submitted on the subject reviewed the various suggestions which had been made for obtaining a ruling from the Court as to the rights which the International Labour Organisation enjoyed in the matter. The conclusion at which the Office arrived was that any request for a consultation of the Court must be conveyed to the Court through the medium of the Council or the Assembly of the League of Nations, but that those bodies were bound to transmit any such request to the Court under Article 423 of the Treaty of Versailles.

The Office felt that it was for the Governing Body to take the initiative in asking for a consultation of the Court to decide once and for all this important constitutional problem. Before, however, advising the Governing Body to do so, the Office thought it well to consult the Secretariat in the matter, since the question was one in which the procedure of the Council and the Assembly was involved. It had however been represented on behalf of the Secretariat of the League that certain special difficulties made it undesirable to raise the question at the present moment.

The Committee considered the Office note and expressed itself in entire agreement with its conclusions, but in view of the difficulties mentioned by the Secretariat, agreed that it would be wise to defer the question and therefore, whilst maintaining its point of view on the constitutional question, decided to recommend the Governing Body to await a more opportune moment in which to seek a ruling of the Court.

(b) *Possibility of instituting a special procedure for the interpretation of Conventions.*

In 1930, the Committee set up by the Conference to examine the reports submitted under Article 408 of the Treaty of Peace drew attention to a certain number of divergences in the interpretation of Conventions by the different States. After discussing the question, the Governing Body decided to request its Standing Orders Committee to consider the question of the possible institution of a procedure for the interpretation of Conventions.

The Office, in the note which it submitted on the subject, pointed out that in addition to the constitutional procedure of consultation of the Permanent Court of International Justice provided for under Article 423 of the Treaty of Peace, an unofficial procedure had developed. This consisted in the Office being requested by Governments to give its opinion on the interpretation of Conventions. The Office had always been careful to accompany the opinions which it gave in such cases by a reservation specifying that it was not competent to give interpretations and that the explanations which it furnished were of an unofficial nature. Moreover, the letters by which the Office replied to such requests were always communicated as soon as possible to the Governing Body and published in the Official Bulletin.

On being instructed to consider the question in all its aspects, the Office had felt that it might be desirable that, between the unofficial procedure of consulting the Office and the constitutional procedure of approaching the Permanent Court, provision should be made for an intermediate procedure which, whilst not possessing the supreme authority of the Court, would, nevertheless, give Members of the Organisation greater guarantees than were provided by the opinions given

by the Office. After reviewing the various organs to which this task might be entrusted, the Office had come to the conclusion that the most suitable body might be the Committee of Experts for the examination of the reports submitted under Article 408 of the Treaty.

During the discussion of this proposal which took place in the Committee, it was pointed out that no further guarantees would really be afforded to States by calling upon the Committee of Experts to give interpretations, since the only organ provided for by theTreaty of Peace to interpret Conventions was the Permanent Court of International Justice. Furthermore, the Committee of Experts was appointed by the Governing Body, which had to approve that Committee's reports, so that in point of fact any interpretations given by the Committee would have to be approved by the Governing Body itself. But the latter had already decided that it was not prepared to give interpretations to Conventions, so that difficulties would arise when the reports of the Committee of Experts were submitted to the Governing Body for approval.

It was also suggested that it would be undesirable to give judicial powers to a body which had been set up merely to examine the annual reports, and that the additional duty of giving interpretations might, therefore, entail the necessity of modifying its constitution which, in view of the excellence of the work that it performed, would be most undesirable.

In view of the above considerations, the Committee came to the unanimous conclusion that it was undesirable to make any change in the present procedure as regards the interpretation of Conventions.

Procedure to be adopted as regards draft resolutions submitted to the Conference.

At its Fifty-sixth Session, the Governing Body decided to refer to the Standing Orders Committee the question of the procedure to be followed for the adoption of resolutions at the Conference and the possibility of introducing improvements. In the note which the Office prepared for the Governing Body at its Fifty-sixth Session and which was also submitted to the Standing Orders Committee, it was suggested that it would be well to provide for the institution of a special Committee, called the Committee on Resolutions, the function of which would be to make a preliminary study of resolutions which did not relate to items on the agenda. The Office made suggestions as to the composition of the Committee and as to the method which it should adopt in considering resolutions. It also submitted a draft amendment for insertion in the Standing Orders of the Conference to provide for the setting up of the Committee on Resolutions.

During the discussion which took place on this proposal, some members stated that it was desirable that, in future, resolutions should be more carefully considered before they were adopted by the Conference and that a formal vote should be taken on each several resolution rather than that such resolutions should merely be adopted, as in the past, without any serious discussion.

On the other hand it was argued that the adoption of the proposal to set up a " Resolutions " Committee might have the effect of giving unnecessary importance to resolutions most of which had no connection with items on the agenda of the Conference. Delegates had no previous knowledge of the resolutions which were to be submitted and thus had no opportunity of obtaining instructions in regard to them from the Governments or organisations which they represented. In this connection, a suggestion was made to the effect that movers of resolutions might be required to submit such resolutions considerably longer in advance than the seven days at present provided in the Standing Orders and that, on the demand of a sufficient proportion of delegates at the Conference, a resolution submitted at one session of the Conference should not be voted upon until the following session.

It was, however, pointed out that it would be difficult, if not impossible, to extend the time-limit of seven days previous to the Conference within which resolutions had to be deposited, since delegates were frequently only appointed immediately before the opening of the Conference,and even the delay at present provided for sometimes gave rise to difficulties. As regards the suggestion that resolutions submitted should only be considered at the following session of the Conference, it was observed that delegates varied from session to session and were frequently appointed by different professional organisations. It might, therefore, not always be possible for a delegate who had submitted a resolution to find a suitable substitute who would be both competent and willing to support a resolution so presented at a previous session.

The Committee came to the conclusion that no useful purpose would be served by continuing the discussion since the question was one with which the Conference alone was competent to deal.

It therefore decided to recommend the Governing Body to transmit to the Conference the Office proposal together with an account of the discussion which had taken place in the Committee and to suggest that the Conference should refer the whole question to its Committee on Standing Orders for consideration.

Institution of a procedure of amendment of Conventions.

In view of the delicate and complicated nature of this problem, the Committee decided to adjourn it until its October Session, thereby giving the Office time to prepare a carefully considered note on the various aspects of the question.

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GB.256/SC/2/2, Article 37, paragraph 2, of the Constitution and the interpretation of international labour conventions, May 1993

INTERNATIONAL LABOUR OFFICE
BUREAU INTERNATIONAL DU TRAVAIL
OFICINA INTERNACIONAL DEL TRABAJO

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GOVERNING BODY
CONSEIL D'ADMINISTRATION
CONSEJO DE ADMINISTRACION

Geneva,
May 1993

COMMITTEE ON STANDING ORDERS AND THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

COMMISSION DU RÈGLEMENT ET DE L'APPLICATION DES CONVENTIONS ET RECOMMANDATIONS

COMISION DE REGLAMENTO Y DE APLICACION DE CONVENIOS Y RECOMENDACIONES

Second item on the agenda

ARTICLE 37, PARAGRAPH 2, OF THE CONSTITUTION AND THE INTERPRETATION OF INTERNATIONAL LABOUR CONVENTIONS

Introduction

1. The question has arisen, during discussions in the Committee on the Application of Standards at recent sessions of the International Labour Conference on the appropriate role of the Committee of Experts on the Application of Conventions and Recommendations in matters of interpretation, of whether it would be useful to give consideration to article 37.2 of the Constitution of the ILO with a view to its application.

2. In view of the implications of this question for the ILO's standard-setting activities as a whole, including its supervisory machinery, it seems necessary, before resuming discussions in the Conference Committee, to examine it at greater length in the Governing Body's Committee on Standing Orders and the Application of Conventions and Recommendations, which is not subject to the same time constraints as the Conference Committee.

3. This paper is therefore intended to provide the main background material. This study is divided into three parts. The first recalls the origins and purposes of article 37.2, the second examines how problems of interpretation have been dealt with so far and the limits that they face, while the third examines whether and to what extent the appointment of the tribunal provided for in article 37.2 could offer a useful addition to existing machinery, and if so, how to go about its institution and operation.

I. ORIGINS AND SCOPE OF ARTICLE 37.2 OF THE ILO CONSTITUTION

4. Article 37 of the ILO Constitution reads as follows:

> 1. Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.
>
> 2. Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgement or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organization and any observations which they may make thereon shall be brought before the Conference.

5. This provision was introduced into the Constitution in 1946[1] on a proposal by the Committee on Constitutional Questions set up by the Governing Body on 13 May 1944.[2] In view of the transfer to the International Court of Justice of the jurisdiction conferred by the ILO Constitution on the Permanent Court of International Justice, the Committee considered in 1945[3] that it would in any case be desirable to grant to the Governing Body the discretionary power to institute a tribunal for the rapid settlement of all questions or disputes concerning the interpretation of a Convention. It was stressed in a significant note that whereas the interpretation of the Constitution was solely a matter for the International Court of Justice, this was not the case regarding questions of the interpretation of Conventions, for the points to be settled were "often so detailed that it was not worth while placing them before the principal judicial authority", and other considerations of a practical nature were in a similar vein.

6. This point of view was shared by the Conference Delegation on Constitutional Questions of 1946. Introducing the question, its Chairman again drew attention to the fact that the procedure of referral to the new International Court of Justice had not yet been finalized, and that doing so could prove a very slow process. Article 37(2), as it was submitted to the Delegation, provided for a second, more expeditious procedure, and that "moreover, the United Nations Charter provided that the International Court of Justice should be the principal judicial organ, but that specialized agencies might entrust the solution of their differences to other tribunals. This provided a useful flexibility."[4]

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[1] International Labour Conference, 29th Session (1946), Record of Proceedings, p. 378.

[2] Governing Body, 93rd Session (May 1944), Minutes, pp. 18-19.

[3] Report IV, Part 1, International Labour Conference, 27th Session (1945), Relationship of the ILO to other international bodies, p. 105.

[4] Minutes of the 21st Sitting of the Conference Delegation on Constitutional Questions, 5 February 1946, Official Bulletin, Vol. XXVII, No. 3, 15 Dec. 1946, p. 729.

7. The minutes of subsequent proceedings in the Conference Delegation on Constitutional Questions clearly bring out that the need for a system of disputes settlement independent of recourse to the International Court of Justice was recognized by the entire delegation. In particular, the Employers, represented by Mr. Waline, after expressing a certain degree of reticence, finally supported this view.[5]

8. Nearly half a century later, it is remarkable to note that no use has been made either of the machinery for referral to the International Court of Justice, thought too complicated, or of the alternative solution of instituting a tribunal. The time has therefore certainly come to consider whether this possibility is not in reality superfluous, in view of the other means available to deal with difficulties of interpretation or whether, on the contrary, recent reflections on the question tend to confirm its present-day relevance.

II. EXISTING INTERPRETATION MACHINERY AND ITS LIMITATIONS

1. Within the Organization

9. When the Conference Committee on Constitutional Questions in 1945 thought it useful to update and to supplement the formal procedure for the interpretation of Conventions, experience of difficulties in this area was relatively small. In fact, only one question regarding the interpretation of a Convention had seemed sufficiently serious to merit referral to the Permanent Court of International Justice in 1932. This concerned whether the Night Work (Women) Convention, 1919 (No. 4) applied "in the industrial undertakings covered by the said Convention, to women who hold positions of supervision or management and are not ordinarily engaged in manual work".

10. Since then the number of Conventions has increased more than fivefold, but such a situation has not recurred.[6] This is probably due to the machinery that has developed in parallel to fill the gaps and which to a certain extent makes it possible to settle day-to-day difficulties without having to go through the complex procedure of requesting an advisory opinion of the Court. This machinery brings into play three complementary bodies: the Office, the Committee of Experts, and the Conference itself, mainly through its Committee on the Application of Standards. To assess the value of the system as a whole, we shall now examine the specific nature of the contribution made by these three bodies, and by Commissions of Inquiry, to the interpretation process and its limitations.

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[5] Minutes of the 29th Meeting of the Conference Delegation on Constitutional Questions, 13 February 1946, Official Bulletin, Vol. XXVII, No. 3, 15 Dec. 1946, p. 770.

[6] See Stephen M. Schwebel: "Was the capacity to request an advisory opinion wider in the Permanent Court of International Justice than it is in the International Court of Justice?", in British Year Book of International Law, 1991, Vol. LXII, p. 77 and ff.

Interpretations by the International Labour Office

11. This method of interpretation is practically as old as the Organization itself. This is no surprise, as article 10 of the Constitution states that the functions of the Office include "the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour ...".

12. In 1921, when there were scarcely more than ten Conventions, the Governing Body considered the specific contribution that the Office could make in this connection. The paper presented by the Office to introduce the question stated the following:

> It is therefore of interest to note the procedure which has been followed by other Members of the Organization when difficulties of interpretation have arisen. They have displayed a solicitude to ensure that their interpretations should be in accord with the general opinion of the Organization and they have made a practice of communicating their difficulties to the International Labour Office and asking for its opinion. The Office has always pointed out that, although no special authority is conferred upon it by the Treaty to give interpretations of the provisions of draft Conventions, nevertheless, it considers that it is fulfilling the function for which it was intended in endeavouring, by supplying them with as complete information as possible as to what would appear to have been the intentions of the Commission or the Conference which elaborated the Convention, to secure that the decision which they take should be in accord with the interpretation which would seem to have been generally given. In this way the Office believes that it is performing a useful function by securing in as large a measure as possible that the interpretations given by the Members of the Organization should be uniform. Where consultations of this kind have taken place, the point of difficulty raised and reply of the Office have been published in the Official Bulletin for the information of all Members of the Organization. The interpretation which would appear to be indicated by the information which the Office has been able to supply has in no case been contested by the Member of the Organization concerned, and no objection has been raised by any Member of the Organization to whom it has been communicated through the medium of the Official Bulletin.
>
> ... the Office has been able to point out that the information supplied by it and the conclusion to which it appeared to lead had been accepted by the Member in question and had given rise to no objection after publication in the Official Bulletin.[7]

13. The question was taken up again by the Governing Body during the period 1930-32. In a new document, the Office noted that "What is really wanted is some procedure intermediary between this purely administrative consultation of the Office and the solemn procedure of securing an advisory opinion from the Court".[8] The question was referred to the Committee on Standing Orders and the Application of Conventions and Recommendations, which had before it an Office paper reviewing the various bodies on which such duties might be conferred, and concluding that the most appropriate would perhaps be the Committee of Experts on the Application of Conventions and Recommendations, which, it will be recalled, had begun to operate in 1927.

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[7] Governing Body, 9th Session (October 1921), Minutes, pp. 365-366.

[8] Governing Body, 51st Session (January 1931), Minutes, p. 121.

However, after discussing this proposal, the Committee on Standing Orders and the Application of Conventions and Recommendations unanimously concluded that it was not desirable to make any change in the procedure currently followed for the interpretation of Conventions.[9] In its view, the act of placing such matters before the Committee of Experts did not in fact confer any additional authority on Office interpretations, except in so far as the Governing Body approved them, which it did not feel entitled to do. This conclusion was unanimously endorsed by the Governing Body.

14. This practice continued unopposed until 1982. At the 220th Session (May-June 1982) of the Governing Body, the representative of the Government of Italy (the late Professor Malintoppi) raised a number of new questions concerning this practice, surrounding in particular the relation between such interpretations and the functions of the Committee of Experts. The Office replied to this request by a paper submitted for information (GB.221/19/1).

15. The question resurfaced at the 224th Session (October-November 1983) of the Governing Body. On that occasion it was asked whether it was appropriate for the Governing Body to have before it memoranda prepared by the Office in reply to requests for clarification. Following this discussion, the practice of submitting memoranda on interpretations to the Governing Body was discontinued, but the publication of such documents in the Official Bulletin was however maintained on account of the obvious need to maintain transparency and to inform all member States that may have encountered similar difficulties.

16. These Office interpretations, which would be better termed "clarifications", began to be contested long before those of the Committee of Experts. However, such contestations have had the merit of showing that the Office's role in this respect is both irreplaceable and relatively limited.

17. It is irreplaceable because governments are not themselves really equipped to do the necessary research into the preparatory work (or in some cases into other instruments adopted by the Conference) in order to verify the exact meaning of a provision, particularly in view of the need to take account of two different language versions that are equally valid. By contrast, the Office has technical means, linguistic capacity and some degree of practice in the techniques of interpretation that enable it to provide all the elements necessary for considered replies that are fully corroborated and which States frequently need to draw on when they are considering ratifying a new Convention. It should be stressed that, while in some cases the interpretation itself gives rise to a new request for clarification, in most cases it suffices to settle the difficulties encountered.

18. The limit of such opinions derives however from the fact that legally they have no more authority than that conferred upon them by the thoroughness of the research and analyses on which they are based. They do not bind either those to whom they are addressed or any third parties. In this respect the Office takes great care to stress in each of its opinions that the Constitution gives it no particular authority to provide such interpretations, and that only the International Court of Justice has such authority. For this reason such interpretations cannot in principle be invoked against the bodies responsible for supervising the application of standards, and in particular the Committee of Experts and Commissions of Inquiry, even though the latter cannot set them aside or ignore them without accounting for their reasons for doing so.

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[9] Governing Body, 57th Session (April 1932), Minutes, p. 345.

Conference Committee on the Application of Standards and the Conference

19. The Committee on the Application of Standards is by virtue of its composition essentially a political body, and it is probably justifiable to question whether it really has a place in the formal process for the interpretation of international labour Conventions. Both experience and legal analysis show however that it in fact does have such a place.

20. By virtue of the mandate conferred on it by article 7, paragraph 1(a) of the Conference Standing Orders, the Committee on the Application of Standards is in fact called upon to consider "the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections".

21. As will be seen in the case of the Committee of Experts on the Application of Conventions and Recommendations, in practical terms a measure of interpretation is inherent to the supervisory process.

22. As far as matters of principle are concerned, the intervention of a body with a political composition is not necessarily incompatible with the function of interpretation. "Authentic" interpretations, that is, interpretations given by parties to a treaty or by the body that is the author of a treaty, are one possible method of interpretation in international law. It is in fact only logical to consider that the parties to, or the body that has produced, a treaty are in the best position to determine its meaning. The minutes of the Commission on International Labour Legislation concerning what was to become the text of article 37.1 show moreover that this idea was not unknown to some of the authors of Part XIII of the Treaty of Versailles. According to Arthur Fontaine, "there can be no doubt concerning the right of the Conference to recall a text ... where the Conference meant something other than the interpretation generally given ... it has the right to recast the text". Further on, Léon Jouhaux strongly contests the idea "that members of the international tribunal [the future Permanent Court of International Justice] are more qualified than Conference delegates to interpret it".[10] In short, the advantage of an authentic interpretation by the Conference, through its Committee on the Application of Standards, is in fact that it is provided in the framework of an open discussion, in which interested parties have an opportunity to put their case. The persons taking part are precisely those with whom the standards originated and thus in the best position to appreciate the implications of any change of context for their contents.

23. However, this idea faces two limitations in practice. First, one could question whether there is legal continuity between the body adopting the text and that determining its meaning. In the case of the Conference, there is a principle that no Conference can bind another, but practice is different. The tripartite composition of the Conference, the very nature of its standard-setting activities and the relatively small change in the membership of delegations guarantee an incontestable and systematically maintained continuity, which is expressed in particular through the concepts and expressions used. The second limitation is perhaps more obvious, and is that this manner of interpretation may in a large number of cases constitute what one writer has vividly termed a "clandestine modification of

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[10] La paix de Versailles, Législation internationale du Travail, Paris, Les Editions internationales, 1932, pp. 377, 378 (French only).

meaning".[11] This risk is obviously a serious one in the ILO system, which has an extremely rigorous procedure for the revision of international labour Conventions and Recommendations.

24. For this reason, as had already been suggested by Arthur Fontaine (when he spoke about recasting the text "where the Conference meant something different than the interpretation generally given"), an interpretation by the Conference, if it is to be perfectly legitimate, should logically be recast - that is, through a revision; such a revision can be undertaken either spontaneously in the case of a difficulty encountered in application, or with the aim of reversing case-law with which one disagrees. However, it should be recognized that the existing procedure for revision was designed with a view to the global adaptation of a Convention to needs or to new realities, and that it probably does not readily lend itself to the solution of a more or less specific difficulty of interpretation or to filling gaps in the text.[12] It is therefore legitimate to consider whether there is not scope for an intermediate solution that would enable the Conference to settle difficulties or controversies by means of a simplified procedure, but still in the form of an item on the agenda, so as to maintain the guarantees of proper preparation and "adversarial" discussion between the various interested parties. Naturally, in so far as they are regarded as amendments, decisions by the Conference could only bind Members that have ratified the Convention if they ratify the decisions.

Committee of Experts on the Application of Conventions and Recommendations

25. As stated above, it is the role of the Committee of Experts in matters of interpretation that has given rise to the debate on article 37.2 in the Conference Committee on the Application of Standards. In order to shed some light on this debate, the mandate of the Committee of Experts should be recalled before we examine the nature and possible limits of contributions that it can make in matters of interpretation in terms of its mandate.

26. According to the provisions adopted by the Governing Body and the Conference in 1926, "The functions of the Committee would be entirely technical and in no sense judicial".[13] Its role was to be essentially to analyse the information supplied by governments and to indicate the cases in which it was not adequate. It is of interest, however, that the note prepared by the Office concerning the composition and functions of the Committee of Experts states in this respect that:

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[11] Michel Virally: Preface to "De l'Interprétation authentique des Traités", in Le Droit International en Devenir, PUF, 1990, p. 119 and ff.

[12] To some extent this is confirmed by the largely inconclusive experience concerning the Special Youth Schemes Recommendation, 1970 (No. 136), which was intended in part to fill the gaps in existing texts on forced labour.

[13] International Labour Conference, 8th Session, Geneva, 1926, Final Record, Appendix V, p. 400.

(b) Its examination will certainly reveal cases in which different interpretations of the provisions of Conventions appear to be adopted in different countries. The Committee should call attention to such cases.[14]

By comparison with this original mandate, it is clear that the Committee has taken on a more independent role regarding interpretation, as it also has in other fields, without raising objections of principle. This enlarged role is in fact a response to the inherent needs of its work and to the conditions in which it is called upon to examine a constantly increasing number of reports concerning Conventions that are also growing in number. The Committee has in fact accounted for its behaviour in this respect in a number of reports over the years, and particularly in those for 1977, 1980, 1989 and 1990, in which it makes a number of observations based on common sense. It has noted in particular that supervision has always entailed some measure of interpretation, and that, where States do not agree, the Constitution provides for machinery specifically to put an end to debate. If States or the parties concerned prefer not to avail themselves of such machinery, that is their right; but they cannot refuse to take the action that follows from their contestation without jeopardizing legal certainty. For this reason, in so far as the views it has expressed on the meaning of the provisions of a Convention or its legal scope have not been contradicted by the International Court of Justice, they "are to be considered as valid and generally recognized".[15]

27. However, as the Committee itself stated in 1991,[16] the Committee is not a tribunal, and the views it expresses are not judgements. In other words, this means more specifically that its procedure does not involve adversarial proceedings and that its conclusions have no legally binding force. The two most significant differences are as follows.

28. The first concerns its procedure. The Committee of Experts only makes indirect observations, subject to the very strict limitations on the time and resources available to it to perform a task of considerable scope. As it has stressed on several occasions, it brings to this task the guarantees of full independence, objectivity and impartiality that are inherent to its composition. In making its observations, it leaves very large scope for dialogue with governments and with the Conference Committee on the Application of Standards; but by the nature of things matters are not submitted to it publicly as an arbiter of the various interpretations that are possible through adversarial proceedings. It arrives at its own opinions, and may be called upon to justify them subsequently.

29. The second concerns the compulsory and enforceable nature of its opinions. While interpretations by the Committee of Experts can in the long term acquire a truly binding force, in so far as States ultimately accept them tacitly, it is also clear that, as far as the Constitution is concerned, there is only one way of forcing recalcitrant States to accept them: a Conference

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[14] International Labour Conference, 8th Session, Geneva, 1926, Final Record, Appendix V, p. 401.

[15] Report III (Part 4A), International Labour Conference, 77th Session (1990), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7, p. 8.

[16] Report III (Part 4A), International Labour Conference, 78th Session (1991), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 11, p. 8.

delegate, another Member or the Governing Body must be prepared to invoke the complaints procedure provided for in article 26 and, where possible, to pursue it to the end, that is, as a last resort, to bring the matter before the International Court of Justice. This illustrates somewhat the difficulty raised by Professor A. Manin concerning the refusal by a government to give effect to the conclusions of a Commission of Inquiry but without deciding to refer the matter to the International Court of Justice in the different but more clearly delineated context of the constitutional complaints procedure:

> Failure by a State that had the possibility to do so to lay a matter before the Court cannot have the effect of making the recommendations obligatory where they were not themselves ab initio of a compulsory nature.[17]

Some degree of legal uncertainty, which is rightly a cause for concern to the Committee of Experts, seems inevitable in a system in which a party which does not wish to accept a decision can only be declared legally at fault where another party (a Conference delegate, a member of the Governing Body or the Governing Body itself) is prepared openly to invoke the Constitution and, possibly, resort to legal proceedings. However, in practice it is quite difficult for a government to claim alone to be right, and this element of political and psychological pressure places the relative importance of these uncertainties in their proper context.

Commissions of Inquiry

30. Commissions of Inquiry are only discussed briefly here in order to stress the intermediate and relatively specific position that they occupy with regard to interpretation. By contrast with the Committee of Experts, such commissions are provided for in the Constitution, where considerable importance is attached to them. However, there is nothing in the provisions of the Consitution that gives them a mandate to interpret Conventions any more than the Committee of Experts. Rather, article 28 of the Constitution assigns responsibility to them to establish "a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint ...".

31. Nevertheless, some degree of interpretation is inherent to the work of inquiry, as in the case of the Committee of Experts. This measure of interpretation has become particularly obvious in recent cases, and in particular during examination of the representation submitted against the Federal Republic of Germany in 1984. It will be recalled in particular that the discussion between the majority of the Commission of Inquiry and the

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17 A. Manin: "La Commission d'enquête de l'OIT instituée pour examiner l'observation de la Convention No. 111 par la République fédérale d'Allemagne: De nouveaux enseignements?", Annuaire français de Droit international, 1988, p. 379. However, it should be noted that, in the case of a Commission of Inquiry, the Constitution makes it possible to consider that the recalcitrant government cannot elude the Commission's recommendations by simply contesting them without going to the Court. As stated by Professor Manin, the recommendations may be regarded as becoming compulsory as soon as the Governing Body has tacitly accepted them, regardless of the objections of the government concerned.

dissenting member turned on such notions as that of jus cogens, which, at least initially, seems fairly remote from the notion of inquiry.

32. Leaving aside the questions that this can raise in relation to the terms of the Constitution, such an enlargement of mandate obviously encounters limitations by virtue of the very nature of a Commission of Inquiry. By definition, a Commission of Inquiry is an ad hoc body with an ad hoc composition. By contrast with opinions provided by the Office and with the observations of the Committee of Experts, based on a debate between the "parties" concerned, the interpretation that a Commission of Inquiry can give during an inquiry, if it is well founded, necessarily depends on the circumstances of the case in question and on the individuals comprising the Commission: even though it is not necessarily supposed to be valid erga omnes, in order to have the required force an interpretation must be capable of going beyond the circumstances of the case in question and the idiosyncrasies of those responsible for it.

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33. The above analysis shows that the ILO's established internal procedures include interpretation machinery of a rare degree of diversity and richness. However, it also shows that, while the different types of machinery complement one another in that each has some feature that is lacking in the others, none of them meets all the conditions necessary to enable it to provide a definitive settlement of controversies concerning the meaning to be given to the provisions of a Convention. Office interpretations are limited by the lack of a constitutional basis and the fact that they are not of an adversarial character, enabling interested parties to put their case; the Conference Committee, which offers the possibility of open debate, to some degree of an adversarial nature, is not legally in a position to "decide" on questions of interpretation; the Committee of Experts, which has the advantage of its expertise and independence, has no constitutional mandate and does not offer a procedure of an adversarial nature; Commissions of Inquiry offer the same guarantees of independence and objectivity as the Committee of Experts, plus an adversarial procedure, but have neither a mandate nor the necessary continuity to take decisions of general applicability. This does not mean that the system is incomplete, as it provides for the settlement of such questions by the International Court of Justice. Nevertheless, the fact remains that the Organization has not had recourse to this provision, and we shall now examine what may be the reason for this.

2. Outside the ILO

International Court of Justice

34. Paragraph 37.1 of the Constitution has given rise to a fairly large volume of literature. It raises almost as many questions as it does terms, especially if one considers a number of discrepancies between the two different language versions. One of the most vexing questions is whether it involves the jurisdiction of the International Court of Justice to decide disputes or its advisory jurisdiction. Only States may be parties in cases before the Court under article 34 of its Statute, and according to article 59 the decision it hands down is only binding on parties to the case in question. According to article 37, paragraph 1 of the ILO Constitution, at least in its English version, however, the intention is indeed to grant the

Court competence to take a "decision" (English version), and not to give an advisory opinion (as might be suggested by the French version, which refers to "appréciation"). This raises the question of hierarchy as between the Statute of the Court and the Constitution, that is, of whether the provisions of the Constitution could prevail over the provisions of the Statute of the Court as regards the referral of matters to it and the effects erga omnes of the decision taken under article 37.

35. Whereas in the case of the Permanent Court of International Justice this question could, for historical reasons,[18] be open to some discussion, this is not the case where article 103 of the Charter is concerned.[19] Naturally, despite this one can imagine solutions that would reconcile the demands of the two texts on the lines that some volunteer might be found among States to bring a dispute before the Court, but the other party to the dispute would still have to be identified (perhaps the Organization itself?).

36. It seems clear, nevertheless, that the most natural solution for bringing a matter of interpretation before the International Court of Justice is by means of the advisory procedure open to the Organization as a specialized agency duly authorized by the General Assembly in accordance with article 96 of the Charter and article 65 of the Statute of the Court. The Governing Body was delegated power to request an advisory opinion by the Conference in 1949.

37. The fact that, by definition, such an opinion is not of a binding nature and cannot therefore put an end to a dispute is not in this respect decisive in that an advisory opinion is intended to state the law with the weight of its authority. According to the very terms of article 37.2 (in particular in so far as it is specified that the tribunal would itself be bound by "any applicable judgement or advisory opinion of the International Court of Justice") the parties would have to agree to be bound by the Court's opinion. Rather, the real problem is therefore ultimately whether this procedure can take sufficient account of the specific nature of ILO Conventions[20] and of that of the Organization in general.

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[18] See G. Fischer, 1946: "Rapports entre l'Organisation internationale du Travail et la Cour permanente de Justice internationale: Contribution a l'étude du problème de la séparation des pouvoirs dans le domaine international", Paris, Editions A. Pedone.

[19] ibid., p. 45.

[20] The major problem is probably that international labour Conventions cannot be regarded as simply so many separate treaties. By comparison with the aims that surrounded their origins, and more particular subsequent practice, international labour standards have retained or taken on certain features that in some respects assimilate them even more to a real body of international legislation. This assimilation derives chiefly from the continuity of their approach and structure, which, setting aside the formal discontinuity of the body responsible for adopting international labour Conventions, pervades the design and content of international labour standards. A good reflection of this is the "concept" of an International Labour Code, which has sometimes been used, as, in the words of Mr. Valticos, "the instruments that comprise it, although formally distinct, are logically integrated in a coherent whole". (N. Valticos: Droit international du travail, p. 133 - French only; see also Jenks: "The Corpus Juris of Social Justice", 2nd ed., pp. 102-103; and J.-J. Oeschlin: "Le Code international du Travail", in Revue française des Affaires sociales, Apr.-June 1969, p. 55.

38. This raises three issues:

(a) the possible degree of specialization in approaching labour problems;

(b) the access of the social partners to the interpretation procedure;

(c) how to take into consideration the intention of the parties in the framework of the methods and principles of intepretation.

(a) The possibility of adapting the composition of the Court to take account of the specificity of international Conventions

39. The Court is composed of persons chosen for their eminence in international law, but who are not necessarily familiar with the labour questions dealt with by the ILO. One may naturally consider that this is a good thing,[21] but it is a fact that, from the outset, this "generalized" composition was a matter of concern to the ILO, and in particular when the Statute of the Permanent Court of International Justice was being prepared. The ILO approached the Committee of Jurists to whom this task was assigned in order to ensure that, in matters concerning labour, the Court would be composed in such a way as to offer not only guarantees of impartiality, but also of technical competence (see Official Bulletin, Vol. II, No. 14, 8 December 1920, pp. 1-10).[22]

40. The Office proposals were not followed, but nevertheless article 26 of the Statute of the Court provided the possibility of forming a special chamber composed of five judges. It was also provided that the judges would be assisted by four technical assessors chosen from a special list composed in equal numbers of individuals nominated by the members of the League of Nations and by the Governing Body of the ILO.[23]

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[21] As E. Lauterpacht has observed, with some irony (Aspects of the Administration of International Justice, p. 17, University of Cambridge, 1991), "the argument is occasionally advanced that technical cases require technically qualified judges. By implication, the suggestion is made that the judges of the ICJ do not possess the necessary level of technical (i.e. non-legal) qualification. The validity - or at any rate the universal validity - of this proposition may be questioned. First, one must ask - how technical can an international issue be? Presumably the determination of a boundary line, whether on land or at sea, is not too technical because many such cases have been decided by the ICJ".

[22] As a result, the Court was to include not only specialists in international law, but also specialists in labour legislation and social issues, and the Office proposed therefore that a special section should be established within the Court competent for matters concerning labour and the ILO.

[23] However, the scope of these provisions was limited by the fact that, in the case of the procedure for an advisory opinion, only the Court in plenary sitting could issue rulings, and the assessors were excluded from the summary procedure and the advisory procedure (G. Fischer, op. cit., p. 292).

41. For the most part, this system is reflected in the Statute of the International Court of Justice. Article 26 of the Statute provides in its first paragraph for the possibility of forming "one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications". There is one difference, however: there is no longer any specific reference to the formation of a special chamber for labour questions, but this does not necessarily mean a real difference in practice.[24] Of greater significance is probably the fact that, as in the case of the Permanent Court of International Justice, the Court issues advisory opinions only in its plenary composition. In so far as requests for interpretation would in fact be treated in the framework of the advisory procedure, as described above, the International Court of Justice would not therefore offer the possibility of any more specialized form of composition. As stated above, this limitation is not necessarily a major inconvenience, but indirectly underscores the importance of the following question.

(b) The access of the social partners to the interpretation procedure

42. Here it is a matter of determining whether the social partners can be accorded some place in the interpretation procedure that would correspond to their role in the adoption process. In the case of an advisory opinion, States allowed to appear before the Court receive notice of requests and may submit written or oral statements. Article 66 of the Statute of the Court states that such notice may be addressed to any "international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question ...". This provision reproduces without change the contents of article 73 of the Revised Rules of

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[24] As a matter of historical curiosity, it can be noted that article 37 of the Statute of the Court states that "Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanant Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice". It may be asked whether this provision could have been invoked, in the case of a matter concerning an international labour Convention, to form the special chamber provided for in the Statute of the Permanent Court. The report (Report IV, 1, to the 27th Session (1945) of the International Labour Conference, "Relationship of the ILO to other international bodies") states (p. 13) that "its more general provisions [of the new Statute] permitting the appointment of special chambers and authorizing public international organizations to present information to the Court will give the ILO a status before the new Court no less favourable than that which it enjoyed before the Permanent Court of International Justice". This position is fully in line with the letter that the Acting Director had addressed to all governments of ILO member States to emphasize "the importance which the Governing Body of the International Labour Office attaches to the maintenance of arrangements at least equivalent to the provisions of the Statute of the Permanent Court as at present in force, which give the International Labour Office the right of furnishing the Court with all relevant information in labour cases and which permit international organizations, including the international organizations of employers and of trade unions which play so important a role in the International Labour Organization, to submit written and oral statements to the Court" (Official Bulletin, Vol. XXVI, No. 2, 1 Dec. 1944, p. 194).

Court of the Permanent Court of International Justice, and it is interesting to note that, in the case of the Permanent Court, it enabled international employers' and workers' organizations to be consulted and heard directly. It is unclear whether, in the current context of the Statute of the International Court of Justice (an integral part of the United Nations Charter) the term "international organization" could continue to be given such a wide interpretation. If not, the practice could nevertheless be invoked, in a case involving an advisory opinion, whereby the executive head of the organization in question can communicate with his own statement the statements of the parties directly concerned by the outcome of the debate, as in the case of article XII of the Statute of the ILO Administrative Tribunal for the benefit of unsuccessful complainants.

(c) The importance attached to the intention of parties in the methods and principles of interpretation

43. One feature of international labour Conventions is naturally that they are not adopted in the framework of diplomatic conferences, but through tripartite committees, and that their contents are the fruit of direct and sometimes laborious negotiations between the social partners, the outcome of which in most cases does not lend itself to "improvement" by the Drafting Committee. This then raises the problem, in the principles of interpretation, of the relative importance of the text and of the intention of the parties concerned.

44. In this connection it should be recalled that, according to the Vienna Convention on the Law of Treaties, adopted in Vienna on 23 May 1969 and which entered into force on 27 January 1980, the starting-point for the interpretation of a treaty is the text itself considered in its context and in the light of its aims and purposes. Thus, the intention of the parties is placed in a subsidiary position, and according to article 31 (to which the Employer members of the Conference referred in the Conference Committee on the Application of Standards in 1990),[25] one should only revert to the preparatory work where an analysis of the text alone might produce a result that is unclear or absurd. Naturally, it is possible to refer to the preparatory work even where the text is clear in order to confirm the interpretation, but where the preparatory work detracts from the clear meaning of the text, the tribunal has no basis on which to pursue the real intention of the parties.

45. This system of interpretation meets the need for legal certainty as well as the desire to limit the discretion open to judges. It has given rise to some measure of criticism to the extent that it deviates from a traditional principle of international law and leaves little scope for the parties' intentions[26] and it is legitimate to ask whether in the case of the ILO it is entirely in conformity with the role and intention of the social partners in the adoption of international Conventions. Without entering into the complexity of the subject, two observations can be made in this connection.

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[25] International Labour Conference, 77th Session (1990), Record of Proceedings, para. 24, p. 27/6.

[26] See for example the view of another specialist in K. Vandevelde: "Treaty Interpretation from the Negotiator's Perspective", Vanderbilt, Journal of Transnational Law, 1988, p. 282 and ff.

46. First, the Vienna Convention on the Law of Treaties, largely at the instigation of representatives of the ILO, states in article 5 that:

> The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

This provision could therefore, if necessary, be invoked to emphasize the importance of the preparatory work in the practice of the Organization.

47. Secondly, in the Organization's practice the preparatory work, which is of very great importance as far as the various phases through which the text prepared by the Office passes are concerned, is much less so when it comes to interpreting amendments adopted in meetings at the Conference owing to the discontinuation of detailed minutes of committees' proceedings and due to the fact, recalled above, that in many cases the decisive negotiations take place outside the sittings themselves.

48. In the light of these two brief considerations, there is probably good reason to consider that it is even more important, in order to ensure that the specificity of the Organization and of international labour Conventions is taken adequately into account at the Court, to ensure appropriate access for the social partners to enable them to assert their interests and intentions, than to be concerned with the methods and principles of interpretation that may be applied at the Court. As we have seen, the Court does not offer this possibility directly. On this subject, the tribunal provided for in article 37.2 could offer a clear advantage in that the Governing Body would be entirely free to decide on the conditions of its functioning, although its formation raises other questions, as we shall see.

III. CONDITIONS FOR THE CREATION AND METHODS OF FUNCTIONING OF A TRIBUNAL

49. The above analysis probably improves understanding of the significance and justification for the concerns that surrounded the inclusion of article 37.2 in the Constitution of the ILO. The creation of a tribunal, which is permitted by this provision, would have the main advantage of improving legal certainty by comparison with the internal interpretation machinery, which is not intended or does not make it possible to provide a definitive settlement of disagreements in this respect, and it has the advantage over the International Court of Justice that it is capable of taking account of the specificity of the Organization and of its structure.

50. The question therefore arises of whether such advantages are sufficient to justify the formation of this tribunal. To answer this question, one first has to place on the balance the number of cases in which serious difficulties have arisen so far. This is no easy task, as the difficulties have not always left any visible trace and the extent to which they raise legal issues is a matter of opinion. One is therefore limited to giving a number of illustrations based on the more recent or clearer cases. In addition to the GCHQ (General Communications Headquarters), concerning which the Committee of Experts itself raised the possibility of referral to the Court (and perhaps Norway's disagreement with observations of the Committee of Experts, also concerning Convention No. 87) mention can also be made of -

- the applicability of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), to temporary work agencies;

- the application of the Abolition of Forced Labour Convention, 1957 (No. 105), to work in prisons;

- the effect of the resolution (No. 8) adopted by the Conference in 1921 on the application of non-maritime Conventions to seafarers, as mentioned in the observation by the Committee of Experts concerning Ireland;

- the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to prohibitions on employment (the case of the Federal Republic of Germany);

- the complaint submitted by Mr. von Holten concerning the possible extra-territorial implications of respect for freedom of association and collective bargaining, which by its nature and subject goes beyond the specific mandate of the Commission of Inquiry as set out in Part II;

- to these "disputes" may possibly be added a number of specific "questions" raised by member States when they consider ratifying Conventions, and to which the Office does not always succeed in providing a categorical reply on the basis of the text or the preparatory work.

51. On the other side of the balance, one must consider the difficulties inherent in the formation of a tribunal, and as a result the modalities and the cost involved.

52. In this respect, article 37.2 of the Constitution is limited to stating that it is for the Governing Body, subject to the approval of the Conference, to make proposals for the appointment of a tribunal and that the settlement of the difficulties referred to it must be expeditious. By contrast, it is silent on the composition of the tribunal, of the right to bring cases before it and the applicable procedure. Without in any way wishing to prejudge a matter of principle, the following is an attempt to sketch out some possible solutions concerning these questions. In the light of the observations in Part I, the search for such solutions will be guided by a fundamental concern to supplement, and in no way to weaken, the existing supervisory machinery, which has proven its value, in particular the Committee of Experts.

(a) Composition

53. It seems clear that the tribunal envisaged in article 37.2 should be a permanent tribunal. This seems all the more necessary, in view of the terms of article 37.2, in that the Constitution requires, as we have just recalled, "expeditious determination", which presupposes the more or less immediate availability of the judges. A third consideration emerging from the considerations in Part II runs on similar lines: unlike the composition of commissions of inquiry, that of the tribunal should be as constant as possible to ensure the necessary continuity in methods of interpretation and case-law. However, at the same time it is difficult to foresee the volume of requests that the tribunal, once established, would have to cope with, and it would therefore be unrealistic to appoint permanent judges before this matter was clear. The wisest solution would therefore be initially to appoint only a certain number of titular judges, with a list of deputies who could be called upon where the titular members were unavailable. Consideration might also be given to whether, in order to ensure the necessary continuity, it would not be

desirable for the Governing Body to appoint the president of the tribunal in advance, or in any case for the president to be appointed by the members of the tribunal for a fairly lengthy period.

(b) Number of judges

54. In view of these constraints, particularly as regards the time-frame and of course considerations of economy, the number of judges necessary for the tribunal to be able to sit should be limited to the smallest odd number necessary to achieve a majority, that is, three. In order to ensure that three judges were always rapidly available, it would probably be necessary to draft a list of at least six members, including a president and vice-president.

(c) Selection of judges

55. Consideration can also perhaps legitimately be given to whether the tribunal should not have a tripartite composition, as it might be called on to offer an interpretation in order to fill the gaps, or to compensate for the difficulties resulting from a tripartite discussion at the Conference. However, it would seem more in line with the highly technical nature of its vocation, subject to the need for appropriate consultations to ensure that the judges enjoy the confidence of all three groups, for proposals for nominations to be made by the Director-General to the Governing Body and to the Conference strictly on the basis of the personal qualities and professional competence of candidates. As in the case of the Committee of Experts and the ILO Administrative Tribunal, it would be necessary at the same time to ensure an adequate balance in terms of the representation of different legal systems and in terms of geographical distribution.

56. Naturally, exercising the duties of a judge could in no way be compatible with holding office as a member of the Committee of Experts, as the tribunal would be called upon to rule on questions raised by the latter under conditions that are discussed below. For similar reasons, and in view of the subsidiarity foreseen in article 37.2, acting as a judge would also be incompatible with holding office as a judge of the International Court of Justice. By contrast, it would be highly desirable to associate the Committee of Experts in the advance selection of candidates, as its members are particularly well-placed to assess the qualities required and, if necessary, to propose names.

(d) Right to bring cases before the tribunal

57. As has been seen, the Constitution itself provides a reply to the basic question that can arise in this respect. While it says nothing concerning the body that is competent to refer cases to the International Court of Justice - because at the time it was impossible to foresee the conditions that would govern access to the Court - it in fact states that it is for the Governing Body alone to refer matters to the tribunal.

58. This implies that the decision to refer a matter to the tribunal would be taken by the Governing Body like all its other decisions, that is, in the framework of an item on its agenda or of a report by the Director-General and, if there is no consensus, by majority vote. However, this obviously does not exhaust the list of problems to be resolved.

59. One question that must be asked is how and by whom the matter may be placed on the Governing Body's agenda. As stated above, article 37.2 presupposes that there is a contestation, or at least a serious question, that has arisen concerning the interpretation to be given to a Convention, and the required intervention of the Governing Body guarantees that this will in fact be the case. Efforts might then be limited to establishing rules governing the receivability of requests, which would confine to a Member or a Conference delegate or a member of the Governing Body itself the possibility of making such a request, requiring in addition that he should state the purpose of raising such a question and should prove that he has a genuine interest in obtaining a reply.

60. With this in mind, it would certainly be desirable to specify in addition that the Governing Body would automatically refer to the tribunal questions that the Committee of Experts wished to see settled. This would in fact offer the advantage of enabling the Committee to obtain a definitive ruling on a persistent contestation to which its observations might give rise, or to obtain directly the definitive settlement of a question of interpretation concerning which it itself had doubts.

(e) Procedure

61. As Part II of this document shows, the chief advantage that might come from the establishment of a tribunal on matters of interpretation would be that it would offer the possibility of an open procedure of an adversarial nature. This idea, however, needs to be spelled out, as it is far from easy to identify the "parties" to an interpretation procedure. Obviously, for example, where there is a contestation concerning an observation by the Committee of Experts, or where the Committee of Experts chooses to refer a question to the tribunal, it could not strictly speaking be considered a party to the procedure. Similarly, where a matter is submitted to the Governing Body by a State or by one of its members and it considers that a question of interpretation is in fact involved, it could not thereby be regarded as a party to a dispute. Rather, it would therefore be necessary to enable all those with a legitimate interest in the question to present their point of view if they wished. This would have to be the case in particular for duly authorized representatives of the non-governmental groups who had an interest of principle in giving their opinion on the meaning of provisions adopted on a tripartite basis at the Conference, and to whom the tribunal would offer an opportunity to do so on a relatively equal footing.

62. Moreover, it would probably be normal and also desirable, in view of the role that the Constitution and practice accord to the Office in the matter, for the Director-General to be invited, as in the case of requests for opinions, to supply the tribunal with an analysis of the facts and of the preparatory work that could shed light on the meaning of the provision in question. This leaves the tribunal only the task of setting out in its internal rules the modalities governing access for persons whose legitimate interests are likely to be affected by the tribunal's reply.

(f) Cost

63. If the tribunal was called upon to function in the conditions described above, that is with a small composition, its costs could not be very high, to judge from the example of the Administrative Tribunal. It would be necessary also to take account of the fact that the existence of the Tribunal would perhaps make it possible to refer to it, at lesser cost, questions which hitherto may, for want of any better solution, be presented in the form of a

complaint and which, where they are referred to a Commission of Inquiry, entail a fairly heavy additional burden on the budget.

IV. CONCLUSIONS

64. For nearly 50 years, the Organization has managed without the tribunal provided for in article 37.2 of its Constitution, and in view of the considerations set out above, it would probably be rash to conclude that it could not continue to do so in the future. From a strictly legal point of view, in its present form the system in fact does not have any lacunas, as it already provides for a system for the judicial settlement of difficulties of interpretation. As has been seen, uncertainties of interpretation result in reality from the obstacles, or perhaps even the inhibitions, that are inherent in the conditions governing access to the International Court of Justice. In so far as these conditions are not going to be modified, further uncertainties can be expected. Ultimately, it is a question of determining what price is attached to achieving greater legal certainty through possibly facilitating access to legal procedures. It has certainly been useful for this question to be raised at a time when several other adjustments to the ILO's standard-setting activities are under study, and this paper has endeavoured to provide the necessary background for a detailed examination. Naturally, however, the answer is a matter ultimately for the Governing Body and the Conference, and for them alone.

Geneva, 10 May 1993.

Document No. 97

ILO, Non-paper on interpretation of international labour Conventions, 2010

Interpretation of international labour Conventions: Non-paper prepared by the International Labour Standards Department in consultation with the Office of the Legal Adviser for the consultation process launched by the Governing Body at its 306th Session (November 2009)

CONTENTS

Introduction

1. At its 306th Session (November 2009), the Governing Body asked the Office to start consultations on the issue of the interpretation of international labour Conventions.[1] The purpose of this paper is to facilitate these consultations by providing information, particularly on the issues that the Employers' and Workers' groups have indicated that they wish to discuss.[2] Based on a detailed overview of the interpretation of international labour Conventions, the present paper highlights elements that could pave the way for further discussions, if consensus emerges to that end. The term 'interpretation' is used in the present paper in its common usage as referring to the process whereby the meaning of a text is examined and ascertained.

Why is the issue being examined now?

2. The question of the interpretation of international labour Conventions has been raised during the discussions by the Governing Body of improvements in the ILO's standards-related activities, with a view to enhancing the impact of the ILO standards system. Two important stages in this discussion were the adoption by the Governing Body of the standards strategy in November 2005 and of an interim plan of action for the implementation of the standards strategy in November 2007. In line with the ILO Declaration on Social Justice for a Fair Globalization of 2008 (the "Social Justice Declaration"), the objective of the strategy and the interim plan of action is two-fold: (1) to enhance the internal coherence of the standards system by reviewing each of its core components while at the same time building on their links; and (2) to enhance the role of the standards system in the achievement of the ILO's objectives. The interpretation of international labour Conventions affects the standards system as a whole, even though it relates primarily to the supervisory system. Examination of this question could therefore highlight ways of strengthening the adoption and application of Conventions, thereby contributing to strengthening the impact of the system as a whole. Ultimately, given the fact that standards relate to all strategic objectives and are a means to achieve them, the examination of this question might also contribute to enhancing the efforts of the Organization and its Members to achieve the ILO's constitutional objectives.

3. In this context, the Office first proposed that the issue of the interpretation of international labour Conventions should be examined at the 298th Session (March 2007) of the Governing Body,[3] under the second component of the standards strategy, namely increasing the coherence, integration and efficacy of the supervisory system. Following the discussion of the Office's two studies on the links between the supervisory procedures,[4] the Governing Body asked the Office in November 2008 to complete these studies by examining the question of the interpretation of international labour Conventions.

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[1] GB. 306/10/2 (Rev.), para. 44(a).

[2] At the instigation of the Office, the Committee of Experts on the Application of Conventions and Recommendations held a special sitting on the issue of interpretation during its 80th Session (November –December 2009). The views expressed by its members on that occasion have been taken into account in the drafting of the present paper.

[3] GB:298/LILS/4, para.53.

[4] GB.301/LILS/6 (Rev.), paras. 39-79, GB.301/11, paras. 42-84, GB.303/LILS/4/2 and GB.303/12, paras. 100-111.

Organization of the paper

4. After outlining the historical and legal framework of the issue, the paper describes the internal machinery through which, in practice, interpretation matters have been addressed since the establishment of the ILO. The paper then describes relevant external developments affecting international labour standards which might also be considered in examining further ways to strengthen the internal machinery for the interpretation of Conventions.

1. Historical overview

5. Since 1919, the standards-related machinery set forth in the ILO Constitution, alongside the procedures applicable to the adoption and application of standards, has included a mechanism for the interpretation of Conventions. However, in practice, this mechanism has only been implemented once in 1932.[5] This may appear somewhat paradoxical, as the importance for the Organization as a whole of the interpretation of Conventions has been acknowledged since the very inception of the ILO.[6] Issues relating to interpretation have come to be addressed in practice through the supervisory system and by the Office in the discharge of its functions. The history of the question of the interpretation of Conventions therefore coincides to a large extent with the history of the supervisory system and the Office's role in assisting member States to give effect to their standards-related obligations.

[5] Advisory Opinion of the Permanent Court of International Justice on the Night Work (Women) Convention, 1919 (No. 4).

[6] See for example, ILC, 3rd Session, 1921, Report of the Director, paras. 164-167.

Text Box No. 1

1919	Treaty of Versailles, Part XIII, creation of the International Labour Organisation: the Permanent Court of International Justice (PCIJ) is designated as the competent body to interpret Conventions under article 423 (current article 37.1 of the ILO Constitution)
1926	Establishment of the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards by the International Labour Conference
1930-32	General discussions in the Governing Body on the role of the Office in matters of interpretation, the procedure to be followed to implement article 423 of the Treaty of Versailles and the possibility of entrusting the mandate to interpret Conventions to the Committee of Experts
1932 (November)	Advisory Opinion of the Permanent Court of International Justice (PCIJ) on the Night Work (Women) Convention, 1919 (No. 4)
1934	Adoption of the Night Work (Women) Convention (Revised), 1934 (No. 41) by the International Labour Conference, as a result of the Advisory Opinion
1945	Transfer to the International Court of Justice (ICJ) of the jurisdiction conferred by article 37.1 of the ILO Constitution on the PCIJ
1946	Insertion of article 37.2 into the ILO Constitution upon the proposal of the Conference Delegation on Constitutional Questions to provide for a second more expeditious procedure to deal with the interpretation of Conventions independent of recourse to the ICJ
1950-51	Establishment of the special procedure for the examination of allegations concerning infringements of trade union rights and of the Committee on Freedom of Association
1961	Establishment of the first Commission of Inquiry
1982-83	Discussions in the Governing Body on the role of the Office in matters of interpretation
1990s	Discussions in the Conference Committee on the Application of Standards concerning the role of the Committee of Experts in matters of interpretation
1993	Last Governing Body discussion on the interpretation of international labour Conventions and the question of the implementation of article 37.2 of the Constitution (GB. 256/SC/2/2).

6. As shown in the brief chronology in text box 1, the question of interpretation was first examined extensively between 1930 and 1932. The second substantial examination took place in the 1990s. The latter had its origins in a debate in the Conference Committee on the Application of Standards following a statement by the Committee of Experts concerning its role in matters of interpretation and the legal effect of its comments.[7] This led to the comprehensive examination of the question of the interpretation of international labour Conventions and of the appointment of a tribunal provided for under article 37.2 of the Constitution in a paper prepared by the Office, which was submitted to the Governing Body for discussion in 1993. However, the paper did not give rise to detailed discussion in the Governing Body, and it was generally felt that the creation of a tribunal under article 37.2 required further consideration.[8] The Conference Committee on the Application of Standards also adopted a cautious attitude when the paper was made available to it. In particular, some of its members were concerned at the possible impact of an article 37.2 tribunal on the credibility and authority of the ILO supervisory bodies.[9]

7. Between 1994 and 2002, the question of the interpretation of international labour Conventions was raised incidentally by members of the Governing Body on a number of occasions, without giving rise to any specific action. In 2001, comments were made on the need for an intermediate mechanism (between the role currently played by the Office and referral to the International Court of Justice (ICJ)) in order to "provide an interpretation that governments could rely on when deciding on ratification."[10] As a result, in February 2002, the Office suggested that the existing practice should be examined, but differences re-emerged on the need to proceed with the discussion and there was no consensus on taking the matter further.[11]

8. In March 2007, when the Office first proposed to study the issue of the interpretation of Conventions,[12] some Governing Body members indicated that "consideration should perhaps be given to the establishment of another independent mechanism (such as an international labour court or tribunal) which, among other things, could be made responsible for the formal interpretation of Conventions".[13] In March 2008, several members of the Governing Body confirmed that the issue should be re-visited, and some explicitly invited the Office to undertake a more detailed study "in order to reach a decision on the implementation of article 37.2 of the ILO Constitution".[14] In November 2008 and March 2009, general comments were made on the contents and scope of the

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[7] See sections 3.1.1.2 and 3.1.1.3 below.
[8] GB.256/11/22, paras. 10-15, and GB.256/PV (Rev.) pp. VI/3 and VI/4.
[9] ILC, 80th Session, 1993, *Record of Proceedings*, Report of the Committee on the Application of Standards, p.25/5, para.24.
[10] GB. 280/12/1 (280th Session, March 2001), para. 43 (comments by IMEC).
[11] See GB.283/PV, p. V/7, VI/2 and VI/4. See also the Office document submitted to the 283rd Session, GB. 283/4, para. 43.
[12] GB. 298/LILS/4, para. 53.
[13] GB. 298/9(Rev.), para. 69 (comments by the Worker members).
[14] GB.301/11(Rev.), para. 63 (comments by IMEC). See also other comments calling for the issue of interpretation to be re-examined: para. 48 (comments by the Worker members), para. 58 (comments by the Employer members) and para. 70 (comments by the representative of the Government of France).

study.[15] The discussion in November 2009 confirmed that there was a consensus to re-examine the issue of the interpretation of international labour Conventions with a view to enhancing the impact of the standards system.[16]

2. Legal framework for the interpretation of ILO Conventions

9. Article 37 of the ILO Constitution provides that:

> 1. Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.
> 2. Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgement or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organisation and any observations which they may make thereon shall be brought before the Conference."

10. This provision is discussed briefly below in relation to the objective of interpretation, the competent body as well as the rules and means of interpretation.

2.1 The specificity of international labour Conventions as international treaties

11. International labour Conventions are international treaties. However, they may be distinguished from other international treaties in view of the two unique features of the ILO, as highlighted in the Social Justice Declaration: the central role of standards in achieving the Organization's constitutional objectives; and the ILO's tripartite structure and functioning. It is helpful to bear in mind some special features of international labour Conventions, as they might be relevant to their interpretation.[17]

12. First, the provisions of international labour standards are inseparable from the applicable substantive and procedural provisions of the Constitution. This

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[15] GB.303/12: para. 106 (comments by the Employer Vice-Chairperson); para. 108 (comments by the representative of the Government of the United Republic of Tanzania); GB. 304/9/2: para. 10 (comments by the Employer Vice-Chairperson); para. 34 (comments by the representative of the Government of Lebanon).

[16] GB.306/10/2 (Rev.): para. 4 (comments by the Worker Vice-Chairperson); paras. 14-15 (comments by the Employer Vice-Chairperson); para. 22(comments by the representative of the Government of Canada on behalf of the IMEC group); para. 28 (comments by the representative of the Government of Brazil); para. 29 (comments by the representative of the Government of France); para. 34 (comments by the representative of the Government of the Bolivarian Republic of Venezuela); para. 36 (comments by the representative of the Government of Bangladesh); para. 37 (comments by the representative of the Government of Australia).

[17] The Office has clarified its view of the special features of ILO Conventions on a number of occasions. See, in particular: International Court of Justice, Information Furnished by the International Labour Office in Pursuance of Article 34 of the Statute of the Court, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Memorandum by the International Labour Office on the Practice of Reservations to Multilateral Conventions. *ILO, Official Bulletin,* Vol.XXXIV, 1951, pp.274-312; United Nations Conference on the Law of Treaties, Vienna, Austria, First Session, 26 March-24 May 1968, 7th meeting of the Committee of the Whole, Document A/CONF.39/C.1/SR.7, Statement by Mr. JENKS (Observer for the International Labour Organisation), paras. 2-19.

naturally has an impact on the interpretation of Conventions.[18] For example, any limitation on the scope of an international labour Convention with regard to the workers covered by it must be derived from the Convention itself or from the Constitution.[19]

13. Second, in pursuit of constitutional objectives, Conventions are designed to favour the establishment of uniform conditions among member States, except in situations in which they specifically provide for flexibility in their application through devices intended to take into account the diverse cultural and historical backgrounds, legal systems, and levels of economic development of countries. The Committee of Experts has emphasized that this has to be reflected in their application and interpretation.[20]

14. Third, there is a continuity in the approach and structure of international labour Conventions which pervades their design and content.[21] The interpretation of one Convention may therefore have repercussions on other Conventions that adopt the same concept or the same approach. [22]

15. Fourth, standards-related activities involve tripartite participation from the inception of the standard-setting process to supervision of the application of international labour standards.[23] The role of the social partners in the process of their preparation and adoption is particular in comparison with the negotiation of any other international treaty in diplomatic conferences. Thus, in the same way as Governments, Employers' and Workers' delegates can propose amendments to

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[18] The ratification of Conventions involves not only the acceptance of the obligations explicitly stipulated in them, but also the acceptance of the procedures relating to their application and interpretation provided for in the Constitution. For example, in order to determine the extent of the State's obligations deriving from ratification, the first Commission of Inquiry considered " the meaning and extent of the constitutional obligation of Members of the Organisation to take such action as may be necessary to make effective the provisions of Conventions which they have ratified (article 19 (5) (*d*) and article 26 (1))"; Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105), *Official Bulletin*, Vol. XLV, No.2, April 1962, pp. 230-31, para. 716.

[19] This point can be seen in relation to the interpretation of Article 3 of the Night Work (Women) Convention, 1919 (No. 4), which was considered in 1932 by the Permanent Court of International Justice (PCIJ). The Court ruled that "the limits of the sphere of the Labour Organization are not fixed with precision or rigidity in Part XIII [of the Treaty of Versailles] (...).The text, therefore, of Part XIII does not support the view that it is workers doing manual work - to the exclusion of other categories of workers - with whom the International Labour Organization was to concern itself."; see Permanent Court of International Justice, Series A./B., Fascicule No.50, Interpretation of the Convention of 1919 concerning the Employment of Women during the Night, Advisory Opinion of November 15th, 1932, Leyden, A.W. Sijthoff's Publishing Company, 1933. pp. 14 and 16.

[20] See para. 33 below.

[21] GB.256/SC/2/2, note No.20. For instance, ILO Conventions have a common set of standard final clauses based on the provisions of the Final Articles Revision Convention, 1961 (No. 116).

[22]See the statement made by the ILO representative before the PCIJ in 1932:"A mechanical uniformity of interpretation is neither necessary nor desirable, but the opinions of the Court carry such weight that the decision given in this particular case is certain to have a very definite influence upon the interpretation of all international Labour conventions", Statement by Mr. Phelan (representing the International Labour Organisation), Permanent Court of International Justice. Series C. Pleadings, Oral Statements and Documents. XXVIth Session-1932, No. 60. Interpretation of the Convention of 1919 concerning the Employment of Women during the Night. Advisory Opinion of November 15th, 1932, (Series A./B., Fascicule No.50). Leyden: A.W. Sijthoff's Publishing Company, 1933, p. 214.

[23] For more details on the involvement of tripartite constituents in the supervision of standards, see GB. 301/LILS/6(Rev.), para. 58.

the texts under discussion and they have an equal vote to Government delegates when standards are adopted by the International Labour Conference. With regard to matters relating to interpretation, this means that the history of their negotiation carries an important weight, particularly as the preparatory work is duly recorded in the official documents of the Conference.[24] The role played by tripartism in the negotiation, adoption and application of international labour Conventions is therefore an important factor that has to be taken into account in their interpretation.

16. In short, international labour Conventions are not merely treaties concluded between States parties. They are moulded by tripartism and entwined with the commitments undertaken by member States when they become members of the International Labour Organization. The interpretation of both Conventions and the Constitution is vested in one body under article 37.1 of the Constitution: the International Court of Justice (ICJ).

2.2 Authoritative means of interpretation under the ILO Constitution

17. Neither of the two authoritative mechanisms provided for under article 37, which are not mutually exclusive, have been used since 1946, when the reference to the ICJ was inserted in succession to the PCIJ and when the possibility of creating a special tribunal was added to article 37. The supervisory bodies and the Office have in practice become the mechanisms through which issues relating to interpretation have been addressed. In such cases, interpretations are subject to the methods of work and procedures of the supervisory bodies and the internal rules of the Office.

The International Court of Justice

18. If the ILO itself were to seek an interpretative ruling from the ICJ under the provisions of article 37.1, it would need to do so under the Court's advisory jurisdiction.[25] In 1949, the Governing Body was granted authority by the International Labour Conference to request advisory opinions.[26] The Governing Body has considered submitting to the ICJ the related question of whether any interpretation sought in the form of an advisory opinion under article 37.1 of the Constitution could be recognized as binding for all Members.[27]

19. With regard to the procedure under article 37.1, the 1993 study points out that the following three issues should be taken into account:[28]

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[24] The 1993 study, however, points out that, while this is true with regard to the various phases through which the text prepared by the Office passes, it "is much less so when it comes to interpreting amendments adopted in meetings at the Conference owing to the discontinuation of detailed minutes of committees' proceedings and due to the fact (...) that in many cases the decisive negotiations take place outside the sitting themselves", GB.256/SC/2/2, para. 47.

[25] The competence of the ICJ to give such opinions is provided for in Article 96 of the United Nations Charter, in combination with Article 65 of the Statute of the ICJ and Article IX of the UN-ILO Relationship Agreement of 1946.

[26] Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions, adopted by the Conference at its 32nd Session on 8 June 1949; see also GB.256/SC/2/2, para. 36.

[27] GB.298/5/2, para. 5

[28] GB.256/SC/2/2, paras. 38-47. These issues arose to a lesser extent in the case of the PCIJ.

1) the possibility of adapting the composition of the Court to take account of the special features of international labour Conventions: under Article 26 of the ICJ Statute, the Court can form "one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases ..."; nonetheless, the Court issues advisory opinions only in its plenary composition;
2) the access of the social partners to the interpretation procedure: under Article 66 of the ICJ Statute, the Court can address a notice to any "international organization considered by the Court (...) as likely to be able to furnish information on the question....". ; however it is unclear whether these organizations could comprise international employers' and workers' organizations; it may be that the views of the social partners would have to be communicated to the Court directly ("amicus curiae") or indirectly accompanying other statements; and
3) the methods and principles of interpretation that would be applied by the Court in interpreting international labour Conventions and which would best take into account their specificity.

2.3 The question of the rules and means of interpretation to be used for international labour Conventions

20. As regards the interpretation of international labour Conventions, the question arises as to whether the general customary rules of international public law, especially those codified in the Vienna Convention on the Law of Treaties, 1969 (the Vienna Convention),[29] meet entirely the special features of international labour Conventions, and in particular the role of the social partners in the adoption process.

21. As recalled by the 1993 study,[30] the Vienna Convention, in Articles 31 to 33, sets out the general rule and supplementary means of interpretation. The starting point for the interpretation of a treaty is the text itself considered in its context and in the light of its aims and purposes. The intention of the parties is subordinate to the text itself and, in accordance with Article 32, reference should only be made to the preparatory work where analysis of the text alone might produce a result that is unclear or absurd.

22. On the other hand, Article 5 of the Vienna Convention, which was included at the instigation of the ILO, provides that it "applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules[31] of the organization."

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[29] The Vienna Convention codifies the basic rules for the interpretation of treaties, which have been widely recognized as customary law. There are many other rules that were not codified, such as the principle of effectiveness.

[30] GB.256/SC/2/2, para. 44

[31] The records of the United Nations Conference on the Law of Treaties (*op.cit.)* show that "rules" was to be construed as covering written rules and the established practices of international organizations. See summary records of the plenary meetings of the Committee of the Whole, Statement made by the Special Rapporteur during the tenth meeting - 3 April 1968, para. 40 and the statement made by the Chairman of the Drafting Committee, during the twenty-eight meeting – 18 April 1968, paras.14-15.

23. As recalled by Mr. Jenks (Observer for the International Labour Organisation) in 1968 during the United Nations Conference on the Law of Treaties, in a number of respects international labour Conventions are governed by specific rules whether they are written (Constitution or Standing Orders of the Conference) or unwritten. Mention should be made in this respect of the inadmissibility of reservations to ILO Conventions, which is not set out in written rules, but is a consistent practice of the Organization. The inadmissibility of reservations is embedded in the specificity of ILO Conventions, particularly in light of the elements presented above. [32]

24. Article 37 of the ILO Constitution does not refer to rules of interpretation that are to be followed by either the ICJ or a tribunal when interpreting ILO Conventions. Mr. Jenks indicated to the United Nations Conference on the Law of Treaties that "ILO practice on the interpretation had involved greater recourse to preparatory work than was envisaged" in the draft Convention.[33] The supervisory bodies have developed interpretative practices under which the preparatory work, but also the comments of the (other) supervisory bodies, and particularly the Committee of Experts in its general surveys, play a significant role.[34] On the other hand, none of these bodies has the formal mandate to issue authoritative interpretations. When the Conference Committee discussed the practice of the Committee of Experts, there was a clear divergence of views between its members as to the rules governing the interpretation of Conventions. [35]

25. In the work leading up to the adoption of the Vienna Convention, the International Law Commission indicated that treaty interpretation is "to some extent an art, not an exact science".[36] As emphasized in the 1993 study, the question of the determination of the rules governing the interpretation of Conventions is complex. The rules of interpretation could therefore more appropriately be settled by a body with the formal mandate to interpret Conventions under an adequate procedure allowing all the interested parties to present their respective positions on the question. The competent body would thus have to set out clearly the rules followed and their rationale.

26. An illustration of this approach can be found in the 1932 advisory opinion of the PCIJ on the interpretation of Article 3 of the Night Work (Women) Convention, 1919 (No. 4), the only authoritative interpretation of a Convention existing to date. The question referred to the Court was whether the Convention applies to women who hold positions of supervision or management and are not ordinarily engaged in manual work. The ILO representative underlined in his statement to the Court that there was a divergence between a strict literal interpretation of the

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[32] See the memorandum submitted by the International Labour Office to the International Court of Justice on the Reservations to the Convention on the prevention and punishment of the crime of genocide, 1951, op. cit.; see also "Réserves et conventions internationales du travail", by Guido Raimondi, in *Les normes internationales du travail: Une patrimoine pour l'avenir: Mélanges en l'honneur de Nicolas Valticos*, ILO, 2004, pp.527-539.

[33] United Nations Conference on the Law of Treaties, Vienna Austra, First Session, 26 March-24 May 1968, 7th meeting of the Committee of Whole, Document A/CONF.39/C.1/SR.7, para.12.

[34] See paras 48-52below.

[35] See para 52 below.

[36] See Report of the International Law Commission covering the work of its sixteenth session, (11 May-24 Juy 1964), Doc. A/5809, ILCYb.1964, II, 173, a 175, quoted in Isabelle Van Damme, *Treaty interpretation by the WTO appellate body*, International Economic Law Series, Oxford University Press, 2009, p. 42.

text and an interpretation which relied on the intention of the authors of the Convention. The Court started with the actual text, indicating that the wording of the provision "considered by itself gives rise to no difficulty: it is general in its terms and free from ambiguity or obscurity. It prohibits the employment during the night in industrial establishments of women without distinction of age."[37] With reference to the arguments presented during its proceedings in favour of an interpretation restricting the application of the Convention to women engaged in manual work, the Court added that "it is necessary to find some valid ground for interpreting the provision otherwise than in accordance with the natural sense of the words".[38] In so doing, it used other means of interpretation, such as the ILO Constitution, its own advisory opinions concerning the interpretation of the ILO Constitution and the preparatory work leading to the adoption of the Convention. It concluded that an examination of the preparatory work also confirmed the textual interpretation and "that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words".[39]

3. Practice relating to the interpretation of ILO Conventions: Competent bodies and practices related to interpretation

27. ILO practice with regard to the interpretation of international labour Conventions involves all of the supervisory bodies and the Office. However, none of these bodies has been entrusted with the authority to interpret ILO Conventions.

3.1 The role of the supervisory bodies

28. Interpretation and supervision of application are two distinct processes, even though they are closely connected. As indicated above, interpretation is the process whereby the meaning of a text is determined. Moreover, the process of the interpretation of international labour Conventions may have to respond to specific needs; for example, in addition to the requirement of legal certainty, there may be a need for an open procedure in which all the parties concerned can express their views. Application can be defined as the process "of determining the consequences which, according to the text, should follow in a given situation".[40] Under their respective terms of reference, the ILO supervisory bodies examine the measures taken by member States to give effect[41] to the Conventions that they have ratified or their failure to secure the effective observance of these Conventions. Their primary function therefore relates to the supervision of application. The supervision of application may have its own requirements, such as a pragmatic and flexible approach, which has been highlighted in two Office studies on the links between the supervisory procedures.[42] As noted above, the ILO Constitution distinguishes between supervision of application and interpretation and entrusts these functions to two different mechanisms.

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[37] See Permanent Court of International Justice, Series A./B, Fascicule No.50 , op.cit. p. 12.
[38] *Ibid.*, p. 12.
[39] *Ibid.*, p. 19.
[40] See *International Labor Conventions, their interpretation and revision*, Conley Hall Dillon, University of North Carolina Press, 1942, p.121, note No.4.
[41] See article 22 of the Constitution and see also GB.301/LILS/6(Rev.), para. 55, table providing a schematic overview of the main features differentiating the various supervisory procedures.
[42] GB.301/LILS/6 (Rev.), paras. 39-79; GB.301/11, paras. 42-84; GB.303/LILS/4/2; and GB.303/12, paras. 100-111.

29. On the other hand, interpretation precedes application: before effect can be given to a text, its meaning has to be clear and, in the absence of clarity, its meaning may have to be determined. Application necessarily involves some degree of interpretation. Under the current functioning of the supervisory system, all the supervisory bodies have to deal with legal questions and are thus led, in many cases, to determine the meaning of the terms of a Convention. The work of the Committee of Experts and of Commissions of Inquiry involves a greater degree of interpretative work than that of tripartite supervisory bodies. This difference is inherent in the composition, methods of work and procedure of the Committee of Experts and of Commissions of Inquiry. In the case of the Committee of Experts, its role in this respect is further enhanced by the fact that it is a standing body which meets regularly.

30. As the interpretation of international labour Conventions has to a large extent been carried out by the supervisory bodies, the process has reflected the manner in which the supervisory system operates. Three main aspects, highlighted in the two studies mentioned above, influence the manner in which the supervisory bodies address issues relating to interpretation: (1) the variety of supervisory procedures, which complement one another; (2) the freedom of choice exercised by constituents in respect both of the issues they bring before the supervisory procedures and the procedures that they use, and in particular the fact that the examination of a legal issue under one procedure does not constitute an impediment to the initiation of another procedure on the same issue; and (3) the fact that the effective observance of international labour standards, being the common purpose of all the supervisory procedures, has given rise to the need to ensure coordination between the work of the supervisory bodies. It follows that the interpretation of Conventions, when addressed by the supervisory system, reflects the distinctive features of each procedure, as well as their interactions.

3.1.1 The regular supervisory procedure

3.1.1.1 The Conference Committee on the Application of Standards

31. The 1993 study emphasized that the Conference Committee has a role to play in matters of interpretation, as "authentic interpretations", or the "interpretations given by parties to a treaty or by the body that is the author of a treaty, are one possible method of interpretation in international law".[43] Moreover, the procedure of the Conference Committee offers a significant advantage, involving as it does "an open discussion, in which interested parties have an opportunity to put their case. The persons taking part are precisely those with whom the standards originated and thus in the best position to appreciate the implications of any change of context for their contents".[44] This procedural advantage is counter-balanced by the risk that the positions taken by the Conference Committee with regard to the meaning of particular provisions may in fact entail a modification of the text adopted by the Conference. The 1993 study concluded that "an interpretation by the Conference, if it is to be perfectly legitimate, should logically be recast - that is, through a revision...". The study added that "such a revision can be undertaken either spontaneously in the case of a difficulty encountered in

[43] GB.256/SC/2/2, para. 22.
[44] *Ibid.* para. 22.

application, or with the aim of reversing case-law with which one disagrees."[45] The existing procedure for revision, however, was not designed to deal with specific difficulties of interpretation, but to adapt a Convention to new needs or realities. The study therefore raised the question of the need for a possible "intermediate solution that would enable the Conference to settle difficulties or controversies by means of simplified procedure (...)".[46]

32. In general, the role of the Conference Committee in matters of interpretation cannot be considered in isolation from that of the Committee of Experts. Its contribution consists mainly of commenting on the opinions expressed by the Committee of Experts, particularly in the context of its general surveys. The Conference Committee has acknowledged on many occasions that, due to the number of cases to be examined and the time available, it needs to have the benefit of the comments of the Committee of Experts before expressing its own views.

3.1.1.2 The Committee of Experts on the Application of Conventions and Recommendations

33. The Committee of Experts has often reiterated that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the ICJ by article 37 of the Constitution.[47] In qualifying its function, the Committee has indicated that its task "is essentially specific and pragmatic, and is carried out in the context of an ongoing dialogue with governments".[48] Two fundamental principles underlying its work have an important bearing on its role in matters of interpretation: (1) its tradition of independence, objectivity and impartiality, and (2) its function of determining whether the requirements of a Convention are being met; these requirements remain constant and uniform whatever the economic and social conditions of a given country, subject only to any derogations that are expressly permitted by the Convention itself.[49]

34. In recalling that its terms of reference do not include the interpretation of Conventions, the Committee has indicated at the same time that, "in order to carry out its function of evaluating the implementation of Conventions, the Committee has to consider and express its views on the meaning of certain provisions of Conventions".[50] The Committee has gradually taken on a more independent and broader role regarding interpretation as a result of the growing number of Conventions and ratifications.[51] In addition, since 1950, the Committee of Experts

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[45] *Ibid.* para. 24.
[46] *Ibid.*
[47] ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para.21. There is an evolution between the two reports: in 1977, the Committee indicated that it is not required to give interpretations, whereas in 1987 it specified that it is not required to give "definitive" interpretations.
[48] ILC,78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 13
[49] ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 31; ILC, 73rd Session,1987, Report III (Part 4A), para. 20.
[50] ILC, 63rd Session, 1977, Report III (Part 4A), *op.cit.*, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), *op.cit.*, para. 21.
[51] GB.256 /SC/2/2, para. 26.

has undertaken general surveys that afford an opportunity to clarify the meaning of provisions of Conventions and to provide more detailed explanations than in individual comments.

35. The Committee has placed its role in matters of interpretation within the overall context of the functioning of the ILO standards system, having regard to the need for legal certainty. In so doing, it has raised the question of the legal effect of its comments: "in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. (...) The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation".[52] This view generated intense discussions in the Conference Committee in the 1990s.[53] This led the Committee of Experts to specify that it does not regard its views as having the same authority as the decisions of a judicial body.[54] The Committee explained that, in making its earlier statement, its intention was to point out that member States should not contest its views on the application of a provision of a ratified Convention and at the same time refrain from using the procedure set out in article 37 of the Constitution to obtain a definitive interpretation of the Convention in question. The Committee of Experts emphasized that the result "would be legal uncertainty as to the meaning and scope of the provisions concerned as long as the question is not settled by a decision of the International Court of Justice; such a situation would be prejudicial to the certainty of law required for the proper functioning of the standard-setting system of the ILO."[55]

36. In addition to the question of the legal effect of its comments, an important procedural issue arises in relation to the role of the Committee of Experts in matters of interpretation, as "by the nature of things matters are not submitted to it publicly as an arbiter of the various interpretations that are possible through adversarial proceedings."[56]

37. To complete this overview, mention should be made of two occasions on which the Committee of Experts explicitly raised the possibility of submitting legal questions to the International Court of Justice: (1) the case of the application by the United Kingdom of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); and (2) the case of the application by the Federal Republic of Germany of the Discrimination (Employment and Occupation) Convention, 1958 (No.111). These are cases of exceptionally long-standing divergences between the governments concerned and the supervisory bodies on legal questions arising out of the implementation of ratified Conventions.

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[52] ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7.
[53] See para. 40 below.
[54] ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 11.See also para. 12.
[55] *Ibid.* para. 11. See also para.12
[56] GB.256 /SC/2/2, para.28.

Text Box No. 2

Application by the United Kingdom of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The legal issue at stake, raised by the Government, concerned the question of the relationship between the obligations under Conventions No. 87 and the Labour Relations (Public Service) Convention, 1978 (No. 151), which had both been ratified by the United Kingdom. The case was first brought before the Committee on Freedom of Association, which stated that, contrary to the Government's contention, "the exclusion of certain categories of workers in Conventions Nos. 98 and 151 cannot be interpreted as affecting or minimising in any way the basic right to organise of all workers guaranteed by Convention No.87. Nothing in either Convention No. 98 or Convention No.151 indicates an intention to limit the scope of Convention No. 87. On the contrary, both the terms of these Conventions and the preparatory work leading to the adoption of Convention No.98 show a contrary intention."[57] The Committee on Freedom of Association referred the legislative aspects of the case to the Committee of Experts. During its first examination, the Committee of Experts chose not to enter into the substance of the legal question. It took the view that it raised "complex legal issues which go beyond the specific matters raised under Convention No.87 (...); these issues involve difficulties in respect of which the International Court of Justice might more appropriately be requested to provide an opinion under the relevant provisions of the ILO Constitution". The conclusion was not reached without any difficulties, because the observation in which it is set out mentioned that three experts "reserved their positions as regards a possible request being made to the International Court of Justice for an opinion, and as regards the legal questions which such a request might raise". [58]

It should be noted that the reference to the ICJ was made with a view to the settlement of a legal question rather than a dispute, even though in subsequent comments the Committee of Experts rejected the Government's argument. The Government did not take any initiative to have the case referred to the ICJ. During the individual examination of the case by the Conference Committee in 1985, the Government representative stated that the "fact that the Committee of Experts discussed the possibility of referring the interpretation of the Conventions to the International Court of Justice showed that, in its view, the arguments advanced by his Government were serious and substantial and merited further detailed consideration before a definitive view could be reached".[59] The Government maintained its legal contention over a period of 14 years. When it discussed the case,[60] the Conference Committee as a whole did not take a view on the legal question as such, but some of its members mentioned the possible referral of the question to the ICJ.

[57] Committee on Freedom of Association, 234th Report, Case No.1261, para. 364.
[58] ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, Part Two: Observations concerning particular countries, Observation regarding the application of Convention No. 87 by the United Kingdom, paras. 6 and 8.
[59] ILC, 71st Session, 1985, *Provisional Record* No. 30, Report of the Committee on the Application of Standards, Examination of individual cases, p. 30/5.
[60] Committee on the Application of Standards, Examination of individual case concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 by the United Kingdom (ratification: 1949), 1985, idem 1987 and 1989.

Text Box No. 3

Application by the Federal Republic of Germany of the Discrimination (Employment and Occupation) Convention, 1958 (No.111)

In this case, reference was made to the ICJ's role in matters of supervision (article 29 of the Constitution) rather than in matters of interpretation (article 37.1 of the Constitution). In practice, it makes no difference when there are divergences as to the meaning of certain provisions of Conventions that could potentially be referred to the Court.

The case concerned allegations that the law and practice in the Federal Republic of Germany regarding the duty of faithfulness to the free democratic constitutional order imposed on officials in the public service was contrary to the Discrimination (Employment and Occupation) Convention, 1958 (No.111). All the supervisory bodies examined the case, including a Commission of Inquiry established under article 26 of the Constitution. The Commission of Inquiry was explicitly called upon by the Government to examine questions of interpretation of specific provisions of the Convention. The Government did not accept the conclusions of the Commission of Inquiry (or indeed of any of the supervisory bodies). At the same time, it explicitly indicated that it did not want to use the possibility under article 29 of the Constitution to resort to the ICJ. Rather, it would continue to report on the relevant questions under the regular supervisory procedure. When faced with this situation in the follow-up of the recommendations made by the Commission of Inquiry, the Committee of Experts stated that the "ILO Constitution does not make the results of an inquiry subject to the consent of the State concerned. The Government's position therefore does not affect the validity of the conclusions of the Commission of Inquiry. The ILO Constitution provides an opportunity for an appeal to the International Court of Justice (...), but the Government chose not to avail itself of that possibility".[61] When it discussed the case in 1988, the Conference Committee as a whole expressed regret at the position taken by the Government in relation to the report of the Commission of Inquiry.[62]

3.1.1.3The issue of interpretation and the relationship between the Conference Committee and the Committee of Experts

38. In examining the respective roles of the Committee of Experts and the Conference Committee on the Application of Standards, it is necessary to address the specific interaction between these two bodies, which is the core feature of the regular supervisory procedure, in view of its importance in the contribution that they make to the interpretation of Conventions.

39. When the two Committees were created in 1926, emphasis was placed on the informative nature of the regular supervisory procedure in comparison to the other supervisory procedures for the examination of representations and complaints. Neither of the Committees could therefore be considered either as a court or a Commission of Inquiry. In their early years, the regular supervisory bodies both undertook the successive examination of the reports submitted by governments and adopted a cautious attitude to matters of interpretation. Both Committees confined themselves to drawing the attention of the Conference and the Governing Body to cases in which there was a divergence of interpretation between member

[61] ILC, 75th Session, 1988, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, Part Two: Observations concerning particular countries, Observation regarding the application of Convention No. 111 by the Federal Republic of Germany, para. 7(a).

[62] ILC, 75th Session, 1988, Committee on the Application of Standards, Examination of individual case concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Federal Republic of Germany (ratification: 1961).

States. The Conference Committee emphasized in 1933 that this situation was not entirely satisfactory when faced with persistent divergences.[63]

40. This duplication of examination has progressively been replaced by complementarity between the work of the two Committees, under the effect of the increase in their workload and the differences in their composition and methods of work. In the 1990s, when discussing the question of the legal effects of the comments of the Committee of Experts, the Conference Committee comprehensively debated the consequences of this complementarity with regard to the question of their respective roles in matters of interpretation.[64] Two different views emerged. One was that the Conference Committee contributed to the interpretation of Conventions through its own independent role and mandate, while the second was that the Conference Committee did not engage in independent legal analysis, in contrast with the Committee of Experts, which offered the stability and impartiality indispensable for the interpretation of Conventions. Proponents of the first view emphasized that the Conference Committee was not bound by the comments of the Committee of Experts, even though its opinions carry considerable weight. Proponents of the second view contended that, while the views of neither committee had force of law, the comments of the Committee of Experts were generally accepted because of its composition and methods of work. They further noted that any disagreement as to the views expressed by the Committee of Experts on matters of interpretation should be brought before the ICJ, and that it was not for the Conference Committee to question the legal views of the Committee of Experts.

41. Overall, there was general recognition that dialogue and cooperation between the two committees and the absence of hierarchy between them were key elements, including in matters of interpretation.

3.1.2 The special supervisory procedures

3.1.2.1 Commissions of Inquiry appointed by the Governing Body to examine complaints under article 26 of the Constitution

42. Commissions of Inquiry are the only supervisory bodies of which explicitly mention is made in the ILO Constitution. Their composition is similar to that of the Committee of Experts, although the procedure applicable for the examination of complaints under article 26 of the Constitution is of a judicial nature and the proceedings before Commissions of Inquiry are of an adversarial nature. Commissions of Inquiry can therefore make an important contribution to the interpretation of Conventions. In practice, they tend to rely on the indications provided by the Committee of Experts in its general surveys, as well as on the comments of the Committee on Freedom of Association. However, as emphasized in the 1993 study,[65] there is one limitation to their role: Commissions of Inquiry

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[63] ILC, 17th Session, 1933, *Record of Proceedings*, Report of the Committee of Experts on Article 408 of the Treaty of Versailles, Appendix V, para. III, p. 520.

[64] ILC, 76th Session, 1989, General Report of the Conference Committee on the Application of Conventions and Recommendations, paras. 12-23; ILC, 77th Session, 1990, General Report of the Conference Committee on the Application of Conventions and Recommendations, paras. 20-35; ILC, 78th Session, 1991, General Report of the Conference Committee on the Application of Conventions and Recommendations, paras. 13-39.

[65] GB.256/SC/2/2, para. 32.

are ad hoc bodies with an ad hoc composition. Their determination of the meaning of a provision of a Convention necessarily depends on the circumstances of the case and the individuals comprising the Commission.

3.1.2.2 Tripartite committees of the Governing Body appointed to examine representations under article 24 of the Constitution

43. As shown by the two examples set out below, these tripartite supervisory bodies also contribute to the interpretation of Conventions, although in so doing they rely to a certain extent on the work of the Committee of Experts. They offer an advantage in matters of interpretation, as their procedure allows the two parties to present their points of view and to furnish further information at the request of the tripartite committee. Nevertheless, there are limitations to their role in this regard in practice. First, they are ad hoc committees and their members do not necessarily have a legal background. In addition, as they are convened during Governing Body sessions, when their members also have other responsibilities, their discussions take place under significant material constraints. Moreover, the reports of tripartite committees are submitted for approval to the Governing Body, which has traditionally held that it is not entitled to approve interpretations.[66] In practice, however, the Governing Body approves the reports of tripartite committees without modification, as for example in the case of the reports of the Committee on Freedom of Association. The comments made by members of the Governing Body on such reports are recorded in confidential minutes.

[66] *Ibid.*, para. 13.

Text Box No. 4

Representation submitted under article 24 of the ILO Constitution concerning the application by the Netherlands of the Equality of Treatment (Social Security) Convention, 1962 (No. 118)[67]

The representation was lodged following the termination of the payment of a supplementary benefit established under the national legislation, to recipients of the Netherlands permanent disability benefit residing in Turkey. An earlier decision by the highest court of the Netherlands in social security matters (the Central Court of Appeal) had determined that the Government was in breach of the Convention, and in particular Articles 3(1) and 5(1). Just before the representation was lodged, the Government had communicated a statement to the Office on the scope of its obligations under the Convention in relation to the same supplementary benefit. Noting that the Committee of Experts was due to examine the legal implications of the Government's statement, the Governing Body decided to defer its decision to establish a tripartite committee in order to have at its disposal the technical analysis of the Committee of Experts. The Committee of Experts considered the Government's statement, which it deemed valid.

The technical analysis of the Committee of Experts and the information obtained through the report under article 22 provided the necessary legal basis for consideration of the matter by the tripartite committee that was eventually established by the Governing Body.[68] The tripartite committee found that the Netherlands was in full compliance with Article 3(1). With regard to the application of Article 5(1), the committee noted the specificity of the Dutch social security system, which combines traditional branches of social insurance covering particular risks with the universal scheme guaranteeing minimum family income to all residents, irrespective of the risk suffered. A number of social provisions, including the supplementary benefit, ensure a guaranteed minimum level of income. The tripartite committee concluded that the purpose, structure and specific features of the supplementary scheme make it distinct from the traditional branches of social security. This led the tripartite committee to find that the supplementary benefit does not fall within the scope of the branches of social security to which Article 5(1) applies and that the supplementary benefit as a whole falls outside the scope of the Convention. The tripartite committee accordingly followed the "restrictive interpretation" of the scope of the invalidity benefit given by the Committee of Experts, as opposed to the "inclusive interpretation" adopted by the Central Court of Appeal. In so doing, the tripartite committee recalled that it is primarily for to the member State concerned to judge whether or not its national law and practice are or can be compatible with the provisions of the international labour Convention in question, subject to the ILO supervisory proceedings.[69] The tripartite committee concluded that the Government was not in breach of the Convention, as the supplementary benefit falls outside the scope of application of the Convention.

[67] GB.298/15/7. Further details of this case can be found in the Appendix to GB.303/LILS/4/2, Case study No. 7: Social security (Netherlands).

[68] In December 2004, the Government deposited an instrument of denunciation in relation to the Convention, which took effect in December 2005. Nevertheless, the tripartite committee continued its consideration of the representation, limiting its examination to the period prior to the denunciation taking effect, which it determined that it was still competent to consider.

[69] GB.298/15/7, paras. 45-46.

Text Box No. 5

Representation submitted under article 24 of the ILO Constitution concerning the application by France of Conventions Nos 87, 98, 111 and 158[70]

The representation was submitted following the adoption of national legislation including an ordinance relating to the contract for new employment for enterprises with fewer than 20 employees (hereinafter the CNE). The main issue at stake was to determine whether the CNE, which allowed employers a two-year period in which they could terminate the employment of their employees without providing a reason, infringed Article 4 of Convention No. 158, under which employment shall not be terminated unless there is a valid reason for such termination. More specifically, the tripartite committee set up by the Governing Body had to determine whether a period of probation or a qualifying period of two years, during which employed persons may be excluded from the provisions of the Conventions, was "reasonable" in accordance with Article 2(2)(b) of the Convention. The tripartite committee held that this question was to be determined "by each country for which the Convention is in force, having due regard to the object of the Convention, which is to protect all employees in all branches of economic activity against unjustified dismissal."[71] On the basis of national case law, the tripartite committee held that the qualifying period for employment in France normally does not exceed six months. It therefore concluded that two years could not be considered a reasonable qualifying period of employment on the basis of Article 2.2(b) of the Convention, and that the absence of a valid reason for the termination of employment was contrary to Article 4 which, according to the Committee of Experts, is the "cornerstone" of the Convention.

In following up the recommendations of the tripartite committee, the Committee of Experts confirmed the finding of the tripartite committee that there was insufficient basis for considering the period of consolidation of employment as a "qualifying period of employment" of "reasonable duration", within the meaning of Article 2, paragraph 2(b), of Convention No. 158, and that the CNE significantly departed from the requirements of Article 4 of the Convention, which is "the cornerstone of the Convention's provisions". In 2008, the Committee of Experts noted with satisfaction in an observation the information provided by the Government concerning the measures adopted to take into account the recommendations of the tripartite Committee.[72]

[70] GB.300/20/6. In accordance with article 3 (2) of the Standing Orders, the allegations concerning Conventions Nos. 87 and 98 were referred to the Committee on Freedom of Association. The CFA noted in its 348th Report (November 2007) that the CGT-FO had withdrawn its complaint following the cancellation of the Ordinance in question finding in favour of the union. The CFA noted this information with satisfaction and decided to withdraw the complaint.

[71] GB.300/20/6, para. 68.

[72] Including the judgment of 1 July 2008 (No. 1210) of the Social Chamber of the Court of Cassation, which found that the CNE is contrary to Convention No. 158 and that an employee cannot be dismissed without a valid reason.

3.1.2.3 The Committee on Freedom of Association of the Governing Body

44. Like the ad hoc committees set up under Article 24 of the Constitution, the Committee on Freedom of Association has a tripartite composition which evidently has an impact on its conclusions and recommendations. In addition, it brings with it a long and vast experience in elaborating freedom of association principles which, while they are indeed relevant to the understanding of the meaning of the relevant Conventions, are not limited to those Conventions given the Committee's responsibility for reviewing the application of those principles even in the absence of ratification.

45. The nature of the Committee's work is distinguished by the fact that it is a complaints-based mechanism and thus called upon to draw conclusions in respect of concrete cases. In the case of ratification of freedom of association Conventions, the Committee often draws upon those conventions relevant to the specific case and also refers to determinations that may have already been made by the Committee of Experts. The Committee also often refers the legislative aspects of a case following its initial analysis to the Committee of Experts for further follow-up within the framework of the latter Committee's role of supervising the application of ratified Conventions. It is evident that this analysis has an impact on the understanding of the meaning of relevant standards in concrete cases.

46. The Committee's role however goes beyond, and is different from, the mere question of the application of Conventions. On the basis of the complaints brought before it, the Committee, during its deliberations and on the basis of tripartite consensus, has an additional role of facilitating resolution on the basis of the principles that it has elaborated over nearly 60 years. Often the Committee does not indicate the precise steps to be taken, but recommends the Government and the social partners to review the situation in the light of the general principles set out in its conclusions in order to find mutually acceptable solutions.

47. The diversity of the over 2,750 cases received by the Committee therefore results in reflections and conclusions relating to the nature of freedom of association in a broader manner than the other supervisory mechanisms are called upon to undertake. In many ways, this quasi-facilitator role is a reflection of the initial intention in the creation of the Fact-finding and Conciliation Commission on Freedom of Association whose role has been largely filled since its creation by the Committee on Freedom of Association. In the light of the above considerations, it is clear that the Committee has a limited role in interpreting Conventions as such, but rather serves as the authoritative international voice in establishing the basic principles of freedom of association and assisting countries in putting in place more harmonious labour relations systems based thereon.

3.1.3 The interpretative practice of the supervisory bodies

48. Given its central role in clarifying the meaning of Conventions, the practice followed by the Committee of Experts in relation to matters of interpretation is addressed briefly below. While the practice of the other supervisory bodies

generally follows the same pattern, they rely greatly on the views of the Committee of Experts, of which they make systematic use.[73]

49. However, when considering the practice of the Committee of Experts in this respect, it should be borne in mind both that it does not have the formal mandate to interpret international labour Conventions and that its views on the meaning of Conventions are not the result of an open and adversarial procedure, during which all the interested parties can express their views on the methods of interpretation that are most relevant to the question under consideration.

50. The Committee of Experts has indicated that it "bears in mind constantly all the different methods of interpreting treaties".[74] During the 96th Session (2007) of the Conference, in reply to comments made on the General Survey concerning the Forced Labour Conventions, the Chairperson of the Committee of Experts indicated that "in interpreting Conventions, their terms and purposes had to be taken into consideration, as they were living instruments which had not to be interpreted solely in the context of the prevailing conditions which existed at the time of their adoption." [75]

51. A cursory examination of the reports of the Committee of Experts confirms the flexible approach adopted in this respect, which is neither exceptional nor surprising under international law. As is the case in any interpretative process, the Committee of Experts starts with the actual terms of the text in their context and in light of the purpose of the Convention, paying due regard to the two authentic language versions of the Convention. It may consider the preparatory work, either because it contains an explicit clarification of the meaning of a particular concept or confirms the meaning determined by the Committee. To a lesser extent, the Committee of Experts has taken into account the opinions given by the Office in reply to requests by constituents for clarifications either during the process leading to the adoption of the Convention or thereafter. The conclusions of other supervisory bodies have generally been referred to by the Committee of Experts in support of its own conclusions. There has only been one instance in which the Committee of Experts has referred to the Vienna Convention on the Law of Treaties, 1969. This concerned the determination of the meaning of the concept of "substantial equivalence" used in the Merchant Shipping (Minimum Standards) Convention, 1976 (No.147).

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[73] This is mostly the case for tripartite committees and Commissions of Inquiry (although, as indicated earlier, the situation is different for the Conference Committee and the Committee on Freedom of Association).

[74] ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 13.

[75] ILC, 96th Session, 2007, *Provisional Record* No. 22 (Part One), Report of the Committee on the Application of Standards, para. 133.

Text Box No. 6

Reference by the Committee of Experts to the Vienna Convention on the Law of Treaties, 1969

On one specific occasion, the Committee of Experts referred to the Vienna Convention on the Law of Treaties. In its 1990 General Survey on Labour Standards on Merchant Ships, the Committee provided a clarification with regard to the notion of "substantial equivalence" as used in the Merchant Shipping (Minimum Standards) Convention, 1976 (No.147). Before determining the meaning of the notion, the Committee of Experts made its standard statement that definitive authority to interpret Conventions is vested with the ICJ under article 37 of the Constitution. However, it stated that in order to carry out its function of determining whether the requirements of Conventions are being observed, it had "to consider and express its views on the content and meaning of their provisions and determine their legal scope where appropriate".[76] The Committee in this instance referred to the preparatory work of other international labour standards in which the notion of substantial equivalence first surfaced, as well as the preparatory work of Convention No. 147, including the views expressed by the Legal Adviser at the time of adoption of the Convention and information contained in Government reports submitted under articles 19 and 22 of the ILO Constitution. In order to clarify the meaning of substantial equivalence, it also stated that "it does also seem desirable as a matter of principle and in the spirit of Article 31(1) of the Vienna Convention to refer to the 'ordinary meaning' of the words in their context and in the light of the object and purpose of Convention No. 147".[77] It should be noted in this respect that the notion of "substantial equivalence" is defined in Article VI, paragraph 4, of the Maritime Labour Convention, 2006.

[76] ILC, 77th Session, 1990, Report III Part 4B, Report of the Committee of Experts on the Application of Conventions and Recommendations, General Survey on Labour Standards on Merchant Ships, Chapter II, para. 65

[77] *Ibid.* para. 71.

52. In the Conference Committee's discussions on the interpretative practice followed by the Committee of Experts, different views emerged. Some members took the view that the Committee of Experts had to apply the Vienna Convention, rather than referring to the similarity of views expressed in this respect by the various supervisory bodies. They recalled that, under the Vienna Convention, the wording of a provision of international law determines its meaning, unless the parties to the treaty decided otherwise, and that the preparatory work is of secondary importance. They added that the ILO has not established its own rules for the interpretation of its Conventions. Other members questioned the use of the Vienna Convention, emphasizing that international labour Conventions are international treaties drafted and supervised in a tripartite context. They expressed the view that the practices developed by the supervisory bodies should prevail, and especially the constructive dialogue that had developed between them. Other members emphasized that it is important to introduce an inter-temporal element in the interpretation of Conventions. Certain Conventions, by reason of their importance, have to be treated as living documents, with interpretation reflecting changing realities or taking into account subsequent practices.[78]

3.2 The role of the Office

53. Almost since the creation of the International Labour Organization, the Office has provided opinions in response to requests for clarification by constituents concerning the meaning of certain provisions of Conventions.[79] Despite being non-authoritative, the Office's opinions or clarifications serve an important, if limited, role in the standards system. The Office usually has the advantage of the technical means, the linguistic capacity and a measure of practice in interpretation that allows it to provide well-researched and considered replies to requests for clarification from Members. This service is particularly important for Members when they are contemplating the ratification of a Convention.

54. The approach used by the Office to provide opinions is set out in an internal circular: Circular No. 40, Series A, dated 15 September 1987, on the Procedure concerning the requests for interpretations of Conventions and Recommendations.[80]

55. The Circular states that the reply from the Office should as a rule comprise the general reservation that the opinion of the International Labour Office is provided "subject to the usual reservation that the Constitution of the International Labour Organisation confers no special competence upon the International Labour Office to give an authentic interpretation of the provisions of Conventions adopted by the International Labour Conference".[81] In addition, in practice, the opinions issued by the Office contain another standard reservation that they are also provided based on the explicit understanding that any decision on the conformity of national legislation and practice with a particular Convention must rest, in the first

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[78] ILC, 77th Session, 1990, *Record of Proceedings*, General Report of the Conference Committee on the Application of Standards, paras. 24-77.
[79] GB. 256/SC/2/2, paras. 11 to 18.
[80] This circular was preceded by two others; Director-General's Instruction No. 337 of 11 January 1968 and Director-General's Instruction No. 45 of 23 December 1952. The main evolution relates to the difference in the form of the reply, i.e. formal and informal opinions.
[81] *Ibid.* para. 10

instance, with the Government of the country concerned subject, in the case of the ratification of the Convention, to the comments made by the supervisory bodies. In this manner, the Office has been careful not to prejudice any subsequent decisions by the ICJ or conclusions of the supervisory bodies.

56. In determining the meaning of the provisions of Conventions, the Office has regard to the same elements as the supervisory bodies. It takes the actual terms of the text as a point of departure. In addition, the circular indicates that account shall be taken of:
"(a) the preparatory work which preceded the adoption of the Convention or Recommendation in question, in particular the various reports submitted to the International Labour Conference (...) and the minutes of the discussion;
(b) the extent to which law and practice in countries other than the one making the request may assist in clarifying the problems at issue;
(c) any earlier interpretations and any comments of a supervisory body;
(d) any other relevant technical information and technical considerations."[82]

57. Under the terms of the circular, some of the Office's opinions are described as "formal or official" opinions. They are submitted to the Governing Body and published in the Official Bulletin, either upon specific request or when the issue raised is likely to be of general interest, unless it is explicitly indicated that the guidance provided should be unofficial.[83] A total of 147 formal or official opinions have been published since 1921. Of these, 72 per cent have been provided when the ratification of the Convention in question was being considered. The proportion of requests made prior to ratification and those concerning Conventions that have already been ratified has varied over time. Between 1988 and 2002, only three opinions were submitted to the Governing Body and published in the Official Bulletin, all of which addressed requests made prior to ratification. Since 2002, no opinions have been submitted to the Governing Body or published in the Official Bulletin.[84]

58. In comparison, there has been an increase in the number of unpublished opinions provided by the Office since the mid-1980s. They now constitute a substantial component of the technical assistance provided by the Office in relation to standards. They are provided in response to requests made mainly by governments, but also by employers' and workers' organizations. The vast majority of the requests made by governments concern questions arising at the pre-ratification stage. Most relate to the more technical Conventions. The corresponding clarifications are communicated directly to the requesting party and are not made available in any other way. Their increase does not seem to relate to the nature of the issues raised, but may be attributable to the increasingly informal and frequent exchanges between the Office and constituents. These clarifications

[82] ILO Circular No. 40, Procedure concerning the requests for interpretations of Conventions and Recommendations, 15 September 1987, para. 7.
[83] In most cases, formal or official opinions have been confined to requests submitted by governments.
[84] The 1993 study explains that the practice of submitting opinions to the Governing Body was discontinued in view of the questions raised by its members on the appropriateness of such submission (GB.256/SC/2/2, para.15). The absence of publication appears to be due to the fact that governments have not specifically requested official opinions since 2002 and that the Office has not considered that the issues raised are of general interest.

are difficult to quantify or categorize, as requests are received through various channels and various Office units, both at Headquarters and in the field.

59. The practice of the provision of opinions by the Office, as well as its legal authority and the method of distribution of the opinions have been discussed in the Governing Body.[85] As pointed out earlier, the real value of the Office's role is to provide technical assistance to member States based on thorough research and analysis of the matter in question.

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60. The 1993 study concluded that "the ILO's established internal procedures include interpretation machinery of a rare degree of diversity and richness."[86] This internal interpretation machinery has acquired importance over the years and can be said to have become indispensable, because it operates mainly through the highly developed ILO supervisory system. It has the advantage of relying on a pragmatic and flexible approach closely related to the regular supervision of the application of international labour standards. It also relies on coordination between all the bodies involved. On the other hand, none of the internal bodies "meets all the conditions necessary to enable it to provide a definitive settlement of controversies concerning the meaning to be given to the provisions of a Convention".[87]

4. Developments relating to the use of international labour standards outside the ILO and possible implications on their interpretation

61. The increasing use of international labour standards outside the ILO is a development that may have an impact on the standards system. Two types of such usage are reviewed briefly below as they illustrate that the question of the interpretation of international labour Conventions may also have a dimension outside the ILO.

4.1. Use of international labour standards in domestic courts

62. The role of national courts in applying and interpreting national laws that give effect to international labour standards is an important means of enforcing ILO standards.[88] In recent years, the ILO has increased its efforts to help national courts make greater use of international labour standards and the comments of the ILO supervisory bodies. Training programmes on international labour standards for judges, lawyers and legal practitioners are conducted by the International Training Centre (ITC) in Turin.

63. A broad variety of jurisdictions are called upon to settle disputes involving labour-related questions at the national level and can therefore make use of ILO standards

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[85] GB.224/PV(Rev.), pp.IV/8-9. The 1993 paper analyses three main aspects of this practice: its justification, legal effect and the applicable arrangements. GB.256/SC/2/2, paras. 11- 18.

[86] GB.256/SC/2/2, para. 33.

[87] *Ibid.*

[88] For example, Article 22 report forms request member States to state whether courts of law or other tribunals have handed down decisions involving questions of principle relating to the application of ratified Conventions.

where appropriate. As illustrated by the compendium of court decisions[89] published by the ITC in collaboration with the Standards Department, the judicial use of international labour standards appears to be increasing both in monist and dualist legal systems.[90] Both in cases where courts use international labour standards to directly settle a dispute and as a guide for interpreting domestic provisions, the judicial application of the international labour standards often involves an interpretation of their provisions.[91] The issue of correctly defining the meaning and scope of these standards is of particular relevance where a contradiction is deemed to exist between national provisions and the content of international labour Conventions. In this respect, a tendency to refer to the ILO supervisory bodies comments has been noted. The Committee of Experts' general surveys and the *Digest of decisions and principles of the Freedom of Association Committee* appear to be used with more frequency by domestic courts.[92] Experiences at the regional level also provide examples of mechanisms aimed at enhancing the impact of international law at the national level.[93]

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[89] *Use of international law by domestic courts, compendium of court decisions,* International Training Centre, August 2009, December 2007, see: http://training.itcilo.org/ils/CD_Use_Int_Law_web/additional/english/default.htm.. See also: "The use of international labour law in domestic courts: Theory, recent jurisprudence and practical implications", by C. Thomas, M. Oelz and X. Beaudonnet, in *Les normes internationales du travail: Un patrimoine pour l'avenir: Mélanges en l'honneur de Nicolas Valticos*, op.cit., pp. 268-283; See also International labour standards: Recent developments in complementarity between the international and national supervisory systems, by Eric Gravel and Quentin Delpech, International Labour Review, 2008, Vol. 147 No. 4, pp. 403-415.

[90] In monist legal systems, ratified international treaties form directly part of the domestic legal order. They can thus be directly applied by the courts when the content of their provisions is clear and precise enough to settle the dispute. In dualist legal systems, the national and legal orders are separated. Accordingly, "status incorporation" may be required for international treaties to be part of domestic law. However, such a separation does not impede the courts from dualist countries to use international treaties for interpretative purposes.

[91] For an illustration concerning specifically the judicial use of ILO Convention N° 169, see *Aplicación del Convenio núm. 169 de la OIT por tribunales nacionales e internacionales en América Latina*, ILO, Geneva, 2009.

[92] It may noted that the significance of the use of ILO Conventions in national courts for the question of the interpretation of Conventions was addressed in an innovative manner in a 1944 Memorandum attached to a communication from the Acting ILO Director-General to all member States. The purpose of this correspondence was to raise issues pertaining to the uncertainties surrounding the continuity of the Permanent Court of International Justice in post-war judicial arrangements. The Memorandum refers to the determination of questions by municipal courts involving the interpretation of Conventions. Underlining the need to preserve the "measure of uniformity" in the national legislations achieved by Conventions, the memorandum states that "there would appear to be substantial advantages in a procedure whereby a municipal court called upon to give a decision involving the interpretation of an international labour Convention could submit the international questions at issue for decision to the Permanent Court or any new court which may be established, the International Labour Office and the parties to the Convention being entitled to participate in the proceedings in accordance with established practice...."; see *Minutes of the Governing Body,* 92nd Session, *Philadelphia, 22 April - 4 May 1944, Appendix V, Fifth Item on the Agenda, Relation of the International Labour Organisation with other international bodies.* It should also be recalled that during the first discussion in the Governing Body concerning the clarifications provided by the Office on the meaning of a Convention, the question of the lack of authority of these clarifications before national courts was emphasized; see in this respect *Minutes of the Governing Body, 9th Session, October 1921, p. 308.*

[93] See, for instance, the procedure of the Court of Justice of the European Communities: the reference for a preliminary ruling enables national courts to ask this Court about the interpretation or validity of Community law. See the site of the Court of Justice under "jurisdiction": http://curia.europa.eu/jcms/jcms/Jo2_7024/#competences.

4.2 Bilateral, regional and multilateral agreements referring to ILO standards

64. Over the past two decades, there has been a proliferation of agreements concluded between States on a bilateral, regional or multilateral basis containing a social dimension. This proliferation also reflects a growing and deepening trend to include labour issues in a large and increasing number of trade agreements as well as in integration and economic liberalization processes. These labour clauses reiterate ILO commitments, referring to the ILO's fundamental principles and rights, with more recent agreements containing commitments to apply the ILO's eight fundamental Conventions. Some also include additional commitments reflecting ILO Conventions respecting acceptable conditions of work with regard to minimum wages, working hours, the protection of migrant workers and occupational safety and health.[94] These agreements also contain mechanisms for resolving disputes between the parties, accompanied by time-limits.[95] In recent agreements, the novelty has been to include a provision on seeking support from the ILO (US-Peru, 2007),[96] or advice from the ILO in the event of a dispute (EU-CARIFORUM, 2008).[97] The inclusion of labour provisions in such processes is not only occurring between the developed and the developing world through trade agreements, but also increasingly occurring between developing countries, either within or outside regional integration frameworks.

65. The significance of this phenomenon for the ILO standards system was considered by the Conference, on the basis of an Office report,[98] at its 96th Session (May-June 2007), in the framework of the discussions leading to the adoption of the Social Justice Declaration. The Office report emphasized that these agreements often take the form of "specific references to the principles and even standards of the ILO, without the Organization being able to ascertain the meaning or the relevance to its own mandate."[99] The Office report reviews, among other matters, the significance of this phenomenon from the standpoint of its impact on the integrity of ILO procedures.[100] In particular, it refers to the question of the possible impact of the commitments made by ILO member States under such agreements on their obligations deriving from the ratification of ILO Conventions. Insofar as they raise apparent questions of application, these agreements may also involve issues relating to the interpretation of international labour Conventions.[101]

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[94] See also *World of Work Report 2009*, International Institute for Labour Studies, Chapter 3: *The role of labour provisions in existing international trade arrangements and development finance policies*, pp. 63-82.

[95] See, "Free trade agreements and labour rights: Recent developments", by C. Doumbia-Henry and E. Gravel, *International Labour Review*, Vol.145 (2006), No.2, pp.185-206, and *Trade agreements and their relation to labour standards: The current situation*, by P. Lazo Grandi, ICTSD, Issue Paper No.3, November 2009.

[96] Article 17 paragraph 5 (5) (b) (iv).

[97] Article 193(4).

[98] ILC, 96th Session, 2007, Report V, *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, Chapter 4, paras. 96-108.

[99] *Ibid.*, para. 97.

[100] *Ibid.* paras 106 -108.

[101] *Ibid.*, para. 107. A similar issue might also arise in the context of the application of national or regional legislation adopted by ILO member States referring to compliance with ILO fundamental Conventions as a condition to benefit (on a voluntary basis) from specific measures or preferences in the import of goods and, or services; see for example: the Mineral-oil taxation Law and Mineral-oil taxation Ordinance adopted by Switzerland under which bio fuels are free of tax if they comply with certain environmental and social criteria, i.e. the compliance with the eight ILO fundamental

The question arises therefore as to which organization or body would best be placed to provide interpretative advice that member States might wish to seek in such situations. Recent regional developments appear to further substantiate the significance of such agreements in this respect (see US-Peru and EU-CARIFORUM above). This is borne out at the multilateral level as well, where deference is given to formal interpretations falling within the mandate of other specialized international bodies.

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66. It will be recalled that in 1999, in his report to the 87th Session of the International Labour Conference, in which he launched the Decent Work Agenda,[102] the Director-General highlighted the importance of enhancing the ILO's work on standards and considered a number of actions to raise the profile of its work in this area. Among these actions, the report emphasized enhancing the impact of the supervision of standards and reasserting the role of ILO standards in the broader world context.[103]

67. The use of international labour Conventions outside the ILO can be important in enhancing their impact and the rights that they promote. At the same time, there is an inherent risk to the cohesion of the ILO's body of standards. The work of the supervisory bodies provides invaluable guidance when a question of interpretation of these standards arises outside the ILO. This is particularly the case when such guidance can be accessed easily through compilations such as the *Digest of decisions and principles of the Freedom of Association Committee* or the general surveys of the Committee of Experts. On the other hand, the work of the supervisory bodies may not always be easily accessible and usable by entities outside the ILO.

68. The question arises as to whether the ILO could or should play a more important role in this respect, as both the Office and the supervisory bodies are increasingly being relied upon to provide information on compliance by countries and could in future be called upon to provide advice in the event of disagreements or disputes concerning compliance with labour clauses in these agreements. The recognition by the World Trade Organization, through the 1996 Singapore Ministerial Declaration, that the ILO is the competent body to set and deal with labour standards calls for a more proactive role by the Organization in this regard. This proactive role was first recognized by the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and further enhanced in the Social Justice Declaration. This latter Declaration calls on the ILO to review and adapt its institutional practices so that it can assist member States in their efforts to reach

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Conventions; see Mineral oil taxation Law (Limpmin) of 21 June 1996 (as amended 1 July 2008), article 12b, and Mineral oil taxation Ordinance (Oimpmin) of 20 November 1996 (as amended 1 July 2008) article 19d. See also, for example, the Generalized System of Preferences (GSP) of the European Union, which links trade preferences to the ratification and effective implementation of the eight ILO fundamental Conventions and provides for the temporary withdrawal of preferences in the event of serious and systematic violations of the principles of the Conventions on the basis of the conclusions and recommendations of the supervisory bodies of the ILO; Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007.

[102] ILC, 87th Session, 1999, Report of the Director-General, *Decent work.*

[103] *Ibid.*, p.17.

the ILO objectives. It calls on the ILO to make the best use of the unique advantage of its tripartite structure and standards system, with a view to "upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations".[104]

5. Strengthening the impact of the standards system in terms of interpretation

69. Established ILO practice shows that interpretation is part and parcel of furthering the ratification and effective application of international labour Conventions. As indicated above, the only existing body with the mandate to make authoritative interpretations is the ICJ. Hence, at present, there is no ILO body to which this mandate has been formally attributed.

5.1 A complete ILO machinery for a better impact of international labour standards?

70. Article 37.2 of the ILO Constitution provides for the appointment of a tribunal for "*the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention.*" Such a tribunal could therefore be a part of the ILO's machinery, which is geared to the effective implementation of international labour standards through the supervision of their application and their interpretation. As recalled earlier, supervisory procedures for the application of standards have evolved considerably over time. The ILO's machinery is therefore marked by the contrast between the fully developed machinery to supervise the application of Conventions and an unused internal constitutional mechanism for their interpretation.

71. The question accordingly arises as to whether the time is ripe for the ILO to enhance its machinery with regard to the interpretation of Conventions through the possible implementation of article 37.2 of the Constitution. The implementation of this provision would complete the internal architecture of the standards system.

72. In overall terms, the implementation of this provision could provide the Organization with an internal means of providing authoritative interpretations through an "expeditious determination". Further possible elements of the added value of pursuing this avenue may also be outlined. A first advantage of implementing article 37.2 could be an improvement in the legal predictability and security of the ILO standards system. This could further strengthen the central role of international labour standards in achieving constitutional objectives. This legal certainty would be extended to Conventions that have not yet entered into force, but in respect of which important and frequent questions may need to be settled in an authoritative manner before member States are in a position to ratify them.[105] Second, the implementation of article 37.2 could ensure that a mechanism is

[104] ILO Declaration on Social Justice for a Fair Globalization, 2008, Section II, A(iv).

[105] For example, the Maritime Labour Convention, 2006, has given rise to 20 requests for clarification since its adoption. Some of them raise complex and fundamental legal questions.

accessible to both governments and employers' and workers' organizations, in contrast with recourse to the ICJ, which is only directly accessible for States and international organizations.[106] In this sense, such a mechanism could be capable of taking into account the specificity of the Organization and its structure. Third, a mechanism to implement article 37.2 could offer an open procedure of an adversarial nature, thereby enabling all those with a legitimate interest in a particular question of interpretation to have their points of view taken into account, both with regard to the methods of interpretation and the substance. Their arguments could not consequently be set aside by the competent body without due reason. Fourth, such a mechanism could mean that the Organization would be in a position to respond to the rise in references to international labour standards in bilateral, regional and multilateral agreements through authoritative interpretations of its Conventions. Lastly, the authority of the ILO could be strengthened if it could rely on complete, balanced and authoritative internal machinery in relation to both the meaning and the application of international labour standards thus enhancing the Organization's ability to discharge its constitutional mandate.

73. The implementation of article 37.2 of the Constitution would have implications for the work of the supervisory bodies. In the interests of the effective observance of Conventions, it would therefore need to be guided by a paramount concern: to complement, and in no way to weaken, the existing supervisory machinery.

74. The implications on the work of the supervisory bodies would in the first instance hinge on the manner in which constituents decide to implement article 37.2 of the Constitution. In this respect, the Governing Body could be presented with the following options: (1) examining the possibility of entrusting the role of such a tribunal to the Committee of Experts under a separate procedure; or (2) studying the possibility of establishing a separate mechanism.

5.2 Entrusting the Committee of Experts with the formal mandate to interpret Conventions

75. It may be that, in view of the proven record of the Committee of Experts and the few occasions on which questions have been raised as to the legal status of the interpretations that it has provided, the time has come to recognize the role that it has been performing and to consider entrusting it with a formal mandate to interpret Conventions. One way of doing this could be to confer the authority under article 37.2[107] upon the Committee of Experts through the drafting by the

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[106] See para.19 above.

[107] This option would be different from the one considered by the Governing Body in the 1930s. At the time, the Office proposed that the Committee of Experts might be entrusted with the task of providing interpretation under "an intermediate procedure which, whilst not possessing the supreme authority of the [PCIJ], would, nevertheless, give Members of the Organisation greater guarantees than were provided by the opinions given by the Office". The proposal was unanimously rejected mainly for two reasons which could be set aside under the option being proposed: (1) no further guarantees would be really afforded since the only organ to interpret Conventions at the time under the Constitution was the PCIJ; (2) the Committee of Experts was appointed by the Governing Body, which approved its reports, including any interpretation set out therein, whereas the Governing Body had already decided that it was not prepared to give interpretations. Minutes of the 57th Session (April 1932) of the Governing Body, pp. 344-345.

Governing Body and the adoption by the Conference of specific rules enabling the Committee to provide such binding interpretations. This would require a revision of the mandate of the Committee of Experts, which was originally adopted by the Governing Body in 1947. This set of rules might provide for the establishment of a separate chamber (including criteria for appointment and financing), which could follow a procedure of an adversarial nature (clearly distinct from the procedure followed by the Committee as a supervisory body), through which the Committee of Experts would settle questions relating to the interpretation of Conventions.

76. If this option is pursued, in addition to the general advantages set out above, the function of the authoritative interpretation of Conventions would be institutionally linked to the day-to-day supervision of their application. In addition to ensuring a follow-up mechanism, this would guarantee that interpretation continues to be embedded in the national legislation and practice of member States, which is an important element in determining the meaning of Conventions.

77. This option could give rise to two obstacles. The first might arise in relation to the issue of the separation of powers, as the Committee of Experts, as a judicial body, would be called on to review the views that it had expressed as a supervisory body. This impediment could, however, be addressed if a separate chamber of the Committee were to be created, which would be called upon to handle interpretations and would be composed of experts who did not have direct responsibility for the supervision of the Convention(s) in question. If the decision is made that the proceedings before such a new chamber are to be adversarial, they would be clearly different from the procedure currently used by the Committee of Experts in supervising the application of standards. In other words, the adversarial and open procedure would be triggered in the case of a specific request for an authoritative interpretation, or in the event of a dispute, under the conditions to be determined by the Governing Body and the Conference. The outcome of the procedure – the award – could also be submitted to the Governing Body for appropriate follow-up, including transmission to the Conference, under a distinct procedure than the one applicable to the submission of the annual report of the Committee of Experts. A second obstacle could arise as a result of the traditionally complementary and non-hierarchical nature of the relationship between the Conference Committee and the Committee of Experts. If a formal role were to be given to the Committee of Experts in matters of interpretation, this might have the effect of changing the balance in this respect, as the interpretations made by the Committee of Experts would also be binding on the Conference Committee. This possible difficulty might be addressed by article 37.2, which provides that *"any award made by such a tribunal shall be circulated to the Members of the Organisation and any observations which they may make thereon shall be brought before the Conference"*. [108] In accordance with article 37.2, the Conference Committee might function as a forum in which member States could make their observations on an award by the tribunal. In this capacity, the Conference Committee could then reflect those observations in its report to the

[108] This mention was inserted by the Conference Delegation on Constitutional Questions in 1946 to allow member States other than the parties to the procedure before the tribunal to have a say on an award that would eventually be binding on all the members of the Organization.; See Minutes of the 29th Sitting of the Conference Delegation on Constitutional Questions, 5 February 1946, *Official Bulleting*, Vol. XXVII, No.3, 15 December 1946, pp. 770 -771.

Conference, together with any proposals that it might wish to make with regard to standard-setting action, and in particular the revision of a Convention.

5.3 The implications for the supervisory system of the appointment of a separate tribunal

78. Whenever the issue has been discussed of the appointment of a separate tribunal under article 37.2 of the Constitution, concerns have been raised by certain constituents relating to the possible weakening of the existing supervisory bodies. This issue is of fundamental importance and its consideration will be important in determining the possible implementation of article 37.2. Another issue that will need to be examined is the cost factor, as the creation of a separate tribunal might involve a greater cost than broadening the mandate of the Committee of Experts.[109]

79. The question of the impact of an additional body on the existing supervisory bodies is not new. It has arisen in the past whenever the supervisory system has developed, without constituting an impediment in this respect. Experience and the current functioning of the supervisory system would tend to indicate that the risk that the creation of a tribunal might weaken the supervisory system is rather limited. In any event, it would be up to the Governing Body and the Conference to provide the necessary legal guarantees to ensure the institution of a complementary relationship between such a tribunal and the existing supervisory bodies.

80. Past experience, in particular the consequences of the 1932 advisory opinion delivered by the PCIJ, provide useful indications in this respect. Although the advisory opinion was handed down at a time when the supervisory system was far less developed than is now the case, it is nonetheless a good example of the manner in which the supervisory bodies can bring to light important difficulties in the interpretation of Conventions. It also shows that an authoritative interpretation may have substantial consequences on the revision of a Convention.

81. The difficulty in relation to the interpretation of the Night Work (Women) Convention, 1919 (No. 4), was first raised by the Government of the United Kingdom in its annual report on the application of the Convention submitted in 1929. The Committee of Experts drew the attention of the Governing Body to the issue and invited it to take the comment into account should any revision of the Convention be considered. A first attempt to settle the question through the revision of the Convention was made at the 15th Session (May 1931) of the Conference. This effort failed because of divergences between member States as to the interpretation to be given to the Convention, which led the Government of the United Kingdom to propose to the Governing Body that an authoritative ruling should be sought from the PCIJ on the interpretation of the Convention.[110]

82. In examining the consequences of the interpretation by the Court, the Office emphasized to the Governing Body that it appeared that a number of member

[109] The question of cost could be covered in the rules for the possible appointment of a new tribunal either by reallocations, or a separate constitutional dues to this tribunal as is the case with the ILO Administrative Tribunal.

[110] A full account of the events leading up to the advisory opinion can be found in Permanent Court of International Justice, Series C, No. 60, op.cit., 287 p.

States which had ratified the Convention found themselves in a position of not applying the Convention strictly in accordance with the Court's interpretation. This situation had to be resolved either by an amendment of the existing laws of the member States concerned or by a revision of the Convention.[111] The Governing Body opted for the second option. The partial revision of the Convention was approved by the Conference at its 18th Session (1934).

83. The Committee of Experts took note of the advisory opinion in its 1933 report.[112] It also recalled that the legislation of a number of countries was not in harmony with the interpretation of the Court. As the proposal to revise the Convention was being revived and was more likely to obtain the requisite majority of the Conference in view of the Courts' opinion, the Committee took a rather pragmatic approach. It thus indicated that it "does not feel justified in calling attention in detail to cases in which the more restrictive interpretation of the Convention has been adopted in national legislation".[113] When the Convention was revised, the Committee of Experts invited the countries concerned to ratify the revised Convention and to denounce the 1919 Convention.

84. A parallel may also be found in the relationship which has developed in practice between the Committee of Experts and Commissions of Inquiry. It should be recalled that, although there has been a procedure for the submission of complaints under article 26 of the Constitution since 1919, the first Commission of Inquiry was only established in 1961.[114] By the early 1960s, the regular supervisory procedure had already developed considerably. The activation of article 26 and the consequent establishment of Commissions of Inquiry could have had an important impact on the work of the supervisory bodies, and particularly that of the Committee of Experts. In addition to the elements indicated above (composition, constitutional basis and judicial nature of the procedure),[115] the recommendations of Commissions of Inquiry may become legally binding through a decision of the ICJ under article 31 of the Constitution. In practice, through appropriate coordination, the Committee of Experts and Commissions of Inquiry have developed a relationship of complementarity and of mutual reinforcement. In general, whenever the Conference and the Governing Body have decided to complement the institutional framework of the supervisory system, emphasis has been placed on the distinctive nature of each procedure and the avoidance of duplication in their roles.[116] This general orientation set out by the ILO's policy-making bodies has swayed to an important extent the interaction between the supervisory bodies. Hence, the same could also apply in the case of the relationship between the supervisory bodies and a tribunal.

85. In view of the importance that the supervisory bodies and the Office have taken on in matters of interpretation, they will in all likelihood continue to address in practice the bulk of issues relating to interpretation in the course of their work (in relation, respectively, to supervising the application of Conventions and the provision of technical assistance). In particular, the Committee of Experts fulfils

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[111] Minutes of the 61st Session of the Governing Body, Geneva, February 1933, Appendix IV, Fourth Item on the Agenda, pp. 81-84.
[112] ILC, 17th Session, 1933, Report of the Committee of Experts on article 408, Appendix I, p.489.
[113] *Ibid.* p.489.
[114] GB.301/LILS/6(rev.), para. 51
[115] See para. 42 above
[116] GB. 301/LILS/6Rev), paras 42 to 49, and GB. 303/LILS/4/2, para.14.

its role by reviewing *on a regular basis* the manner in which member States give effect to Conventions. A tribunal, which would only be activated upon the submission to it of a specific dispute or a question for a formal interpretation, would hardly replace the Committee's regular dialogue with 183 member States in respect of the whole body of ILO Conventions.

86. Further, as shown by the 1932 advisory opinion, the most far-reaching impact of an authoritative interpretation may be in terms of the revision of a Convention, rather than its application.[117] Revision may be warranted because a concurring interpretation by the supervisory bodies and a tribunal is not deemed to be satisfactory by the constituents. Revision might also become necessary if a ruling by a tribunal conflicted with the views of the Committee of Experts, thereby entailing the amendment of national legislation and practice in a number of countries, which would be difficult in practice because the countries had followed the views of the Committee of Experts for a certain period of time.

87. Ultimately, the issue of the impact of the implementation of article 37.2 on the supervisory system, and the extent of such impact, lies with the constituents. This issue would therefore need to be addressed under the rules for the appointment of a tribunal made by the Governing Body and approved by the Conference. These rules could, in addition to the possible elements already highlighted above,[118] contain the necessary procedural guarantees to ensure appropriate coordination between a tribunal and the supervisory bodies.[119] In this regard, close consideration could first be paid to defining the relationship between a possible tribunal and the Committee of Experts. Thus, it "would certainly be desirable to specify (...) that the Governing Body would automatically refer to the tribunal questions that the Committee of Experts wished to see settled,"[120] as the Committee has always been best placed to identify the questions that might warrant an authoritative interpretation. Further, the rules could also provide that in considering the evidence before it, a tribunal could give due deference to the comments of the Committee of Experts. Another important procedural guarantee could also result from the manner in which a specific question of interpretation would be worded with a view to its referral to a tribunal, as this would define the scope of examination by the tribunal.

6. Points for discussion

88. For the purpose of the consultations and with the object of addressing all the views expressed by the constituents in the run up to the consultations, the present

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[117] In the long run, there could also be an impact on the revision procedures themselves, as indicated in para.35 above, and ultimately on the negotiation and drafting processes.

[118] See para.75.

[119] It should be recalled in this respect that the Conference Delegation on Constitutional Questions in 1946 inserted a reference to rules for the appointment of a tribunal specifically to afford guarantees that inconsistency of interpretation between the new ICJ and the tribunal would be avoided. The drafters did not wish to create a parallel and potentially conflicting system of interpretation, and thus crafted the wording to indicate that a tribunal could be brought into existence even if the ICJ, in principle, also had competence to provide interpretive advisory opinions. Minutes of the 21st Sitting of the Conference Delegation on Constitutional Questions, 5 February 1946, *Official Bulletin*, Vol. XXVII, No.3, 15 December 1946, pp. 728 -729 and 768-771.

[120] GB.256/SC/2/2, para.60.

paper has examined in detail the question of the interpretation of international labour Conventions, setting out its long-standing history, extensive practice and recent developments. By examining the issue of interpretation in the context of the strengthening of the impact of the standards system, the paper has sought to prepare the ground for its possible further consideration and has proposed options as a basis for possible ways forward should the consultations conclude that such steps are to be included in a paper for submission to the Governing Body. For this purpose, the consultations may wish to address the following points for discussion:

1. **Is the existing ILO internal machinery for handling questions relating to the interpretation of international labour Conventions adequate to respond to the current needs of constituents?**

2. **Are the external developments described in section 4 relevant to the consideration of the interpretation of international labour Conventions?**
   - **Can the current ILO internal machinery deal adequately with any questions relating to interpretation that may arise outside the ILO and effectively ensure the impact of the ILO standards system?**

3. **Would the advantages of implementing article 37.2 of the Constitution outweigh the disadvantages?**
   - **In particular, as regards the relationship with the supervisory bodies?**

4. **If the implementation of article 37.2 is to be considered, should one or both of the following options be further explored:**
   (1) entrusting the Committee of Experts with a formal mandate to interpret Conventions under a separate procedure;
   (2) establishing a separate tribunal to interpret Conventions?

5. **In considering options 1 and 2 under 4 above, what are the main elements that should be considered in developing rules under article 37.2 (for example, the appropriate level of tripartite involvement)?**

Geneva, February 2010.

Document No. 98

ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32

International Labour Conference
63rd Session 1977

Report III
(Part 4A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

General Report
and Observations concerning Particular Countries

International Labour Office Geneva

determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States. These are international standards, and the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any particular social or economic system.

32. The Committee's terms of reference do not require it to give interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution. Nevertheless, in order to carry out its function of evaluating the implementation of Conventions, the Committee has to consider and express its views on the meaning of certain provisions of Conventions.

33. The Committee considered that its methods of work, as adapted and improved from time to time, enable it adequately to discharge its functions. It has nevertheless agreed upon certain innovations. In particular, it has decided that, while the preliminary examination of particular Conventions or subjects will continue to be entrusted to individual members of the Committee, opportunities should be provided for optional consultations among the members at the preliminary stage of examination of reports. Thus, any member of the Committee may ask to be consulted by the expert responsible for a given Convention or subject before draft findings are finalised, and the responsible expert may himself consult other members in cases where he considers this desirable. However, the final wording of the drafts to be submitted to the Committee will remain the sole responsibility of the expert entrusted with the examination of the reports or information concerned. All members will, of course, remain free to present their observations on the drafts when these are considered by the Committee in plenary sitting.

34. The Committee noted that the new system for spacing out of reports on ratified Conventions adopted by the Governing Body will introduce greater flexibility into the periodicity of reporting, with a series of safeguards to ensure that regular and rapid attention be given to important matters and serious situations. In such cases, as a result of these various safeguards, detailed reports will be requested at two-yearly or even yearly intervals, instead of on a four-yearly basis. The Committee noted that, as hitherto, each country will also be required to supply a general report each year on ratified Conventions for which detailed reports are not due. Where such general reports indicate substantial changes in legislation or practice affecting the application of particular Conventions, these will be examined without awaiting the next detailed report on the Conventions concerned. Having regard to the fact that more rapid attention is also to be given to cases in which the application of ratified Conventions has been the subject of comments by employers' or workers' organisations, the Committee considers it important that the above-mentioned general report should include particulars of any comments received from such organisations in respect of the standards concerned.

35. With the greater spacing out of detailed reporting, the Committee is concerned to examine as closely as possible the manner in which Conventions are applied in practice. It therefore once again emphasises the importance of governments supplying full information in reply to the questions in the report forms concerning this aspect,

Document No. 99

ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7

International Labour Conference
77th Session 1990

Report III
(Part 4 A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(Articles 19, 22 and 35 of the Constitution)

General report
and observations concerning particular countries

International Labour Office Geneva

also in respect of specific matters concerning the way in which States fulfil their standard-setting obligations.

7. The Committee has examined the views expressed in the Conference Committee on the Application of Standards, at its 76th Session (1989), by the Employer members and certain Government members as regards the interpretation of Conventions and the role of the International Court of Justice in this connection. The Committee has already had occasion[1] to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. The situation is identical as regards the conclusions or recommendations of commissions of inquiry which, by virtue of article 32 of the Constitution, may be affirmed, varied or reversed by the International Court of Justice, and the parties can only duly contest the validity of such conclusions and recommendations by availing themselves of the provisions of article 29, paragraph 2, of the Constitution. The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation.

8. The Committee has followed with profound interest the changes in 1989 and the beginning of 1990 in several Central and Eastern European and Latin American countries which, among other changes, have resulted in important developments in law and practice in those States. In this way, certain matters principally related to the observance of Conventions concerning the fundamental human rights, which had been the subject of comments by ILO supervisory bodies for many years, have or are in the process of being resolved, as illustrated by the observations that have been made this year. The Committee hopes that these developments will continue and that it will extend to the application of all the international labour Conventions that have been ratified, since, as it has emphasised on many occasions, these Conventions as a whole constitute a framework for economic and social development based on justice and freedom that is a guarantee of lasting peace.

9. The Committee notes the decision by the Governing Body to set up a group of independent experts to follow up and monitor the implementation of sanctions and other action against apartheid. The mandate of this group of experts is to follow up and monitor the

[1] See Report III (Part 4A), International Labour Conference, 63rd Session, 1977, General Report, para. 32; idem: 73rd Session, 1987, General Report, para. 21.

Document No. 100

ILC, 80th Session, 1993, Report of the Committee on the Application of Standards, paras 9–25

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Provisional Record

Eightieth Session, Geneva, 1993

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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mittee on dialogue, showing belief in the power of persuasion as a means of achieving results: it seemed that the differences of opinion led to a search for consensus rather than confrontation. The present Committee, like the Committee of Experts, took time to reflect on how difficulties in conscientiously applying international labour standards might be resolved. Mr. Ruda was impressed too by the amicable atmosphere in which the Committee's deliberations took place: unpoliticized discussion in this way facilitated an objective appreciation of the Committee of Experts' own observations. Criticisms – which he had found to be constructive – would be transmitted to his colleagues. The Committee of Experts was an old and experienced organ of the ILO, which endeavoured to improve and adapt to change, while preserving intact its independence, objectivity and impartiality. Mr. Ruda recalled that the ILO supervisory system, of which the Committee of Experts is part, with its aim of achieving the due and complete implementation of international labour standards, remains the most effective in any international organization. The real conditions in which legislation is applied are always more complex than and cannot be fully anticipated by the legal standard itself. The present Committee and the Committee of Experts must each accomplish their complementary missions, in aid of the ILO's ultimate goal: social justice.

B. General questions relating to international labour standards

I. Supervisory system

(i) Roles of the supervisory bodies

9. The Committee noted with satisfaction the Committee of Experts' positive response to the invitation to be represented during the present Committee's general discussion. The relationship between the two bodies continues to strengthen on a well-established basis: the Committee of Experts' high-quality report is prepared on the principles of independence, objectivity and impartiality and is an essential starting-point for the work of the present Committee. The Committee believes that the effectiveness of the supervisory system depends on constructive dialogue between the two bodies.

10. The Employers' member of the United States recalled that the Committee of Experts had originally been set up to advise the present Committee as to the facts, since the Conference Committee was otherwise unable to complete its work in the time available. The Committee of Experts' role was to provide assistance to the Conference Committee by determining whether there was compliance with ratified Conventions, so that this Committee and the Conference could ultimately decide on their own attitude and what action they might take or recommend. He stressed the importance of cooperation between the two Committees, which each made different contributions, in particular, to the interpretation of Conventions. It was essential to the credibility of the supervisory system that the Committee of Experts should take account of the discussions held in the present Committee and respond to the questions raised, particularly in cases. The success of the supervisory system was a remarkable achievement and attempts to improve it were intended to be constructive.

11. The Workers' members emphasized the complementarity of the two bodies, and the indispensable demarcation of the functions and attributions of the two Committees. In its composition and working methods, the Committee of Experts guarantees the objective and impartial evaluation of the national situation with regard to standards. The Conference Committee gives the supervisory system vitality because of its experience and the evidence brought by employers' and workers' organizations. The Workers' members considered that respect for the respective functions and composition of the Committee of Experts and the Conference Committee are indispensable in guaranteeing the overall effectiveness of the supervisory system. The Workers' members welcomed the fact that the Committee of Experts in its choice of cases and subjects takes account of practical concerns and priorities. In this spirit, the Committee of Experts gives special attention to the observance of standards in export zones and cases which have provoked detailed discussion at the Conference. However, the Workers' member of the Netherlands considered there was sometimes a lack of continuity and responsiveness on the part of the Committee of Experts in certain cases where it has failed to formulate observations which the Workers' group would have wished to discuss in the Committee. During the Cold War, when the supervisory machinery had been under attack by the Soviet Union, the Workers' and Employers' groups in the Conference Committee had been united in wholeheartedly supporting the Committee of Experts, and the Conference Committee's concerted action had thus averted the threat to the supervisory system. However, by the end of the 1980s, the Employers in particular had begun to question the validity of certain conclusions of the Committee of Experts: this had led in turn to the Committee of Experts explaining their position as regards the question of interpretation in paragraphs 6 and 7 of their 1990 report, and now the Employers and Workers found themselves expressing opposite points of view. This jeopardized the integrity of the supervisory system far more than the Soviet threat and could lead to a breakdown of the normal functioning of the Conference Committee: time was uselessly consumed by the question of the Committee of Experts' authority in relation particularly to the question of interpretation of the right to strike, and there was a real danger that the Employers' arguments would precipitate further contentions by governments seeking a way out of their difficulties. The Workers' members observed that the Conference Committee had over the years unanimously acclaimed the fundamental principles of objectivity, impartiality and independence on which the Committee of Experts assessed individual States' compliance with ratified Conventions. Contesting the role of the Committee of Experts and the supervisory system was a wrong way of dealing with legitimate differences of view, and the efficient operation of the Committee would be seriously impaired by any failure of harmony and cooperation between Employers and Workers.

12. The Employers' members stated that they understood but did not share the concern of the Workers' members that the image of the Committee

of Experts might be in danger. Although they did not question the competence of the Committee of Experts within the framework of the supervisory system, they did not agree with all results of its work, and that they did openly and clearly. Repeatedly, the Workers' members had stated with respect to the question of who was allowed to give binding interpretations: "We share the Experts' opinion in this matter". If the Employers were correct they had to answer: "Then we all share the same opinion". For in 1991 the Committee of Experts had said in paragraph 11 of their report that it had "never regarded its views as binding decisions". With respect to the relation between the various supervisory bodies, the Committee of Experts stated in paragraph 12 "that its evaluations do not prevail *erga omnes*". The opinion which had been expressed by the Experts since 1991 and which had not since been changed was in line with the ILO Constitution, and with the historical development of the Committee of Experts and the Conference Committee. The Employers had repeatedly indicated this. However, in the practice of the Conference Committee, there were deviations from the evaluations of the Experts. The Employers thought that this happened more often from the Workers' than from their own side.

13. The Workers' members of the Netherlands and the United States also noted that the Committee of Experts' qualities of objectivity, impartiality and independence are complemented rather than duplicated by the present Committee, whose role it is to bring the Experts' analyses to life through its discussions. The Workers' member of Germany urged the Committee of Experts not to show any weakness by yielding to possible pressure from certain employers and governments.

14. The Government member of Cuba considered that the present Committee should not impede the Committee of Experts or obstruct it from carrying out its independent, impartial and objective tasks.

15. Several Government members (Australia, Netherlands, United States) expressly reaffirmed their support for the supervisory machinery. The Government member of the United States considered that the Committee of Experts' report was based on sound objective and impartial legal analysis, which endowed the present Committee with greater authority and was in turn itself reinforced by the weight of the tripartite Conference. In her view, it was the Committee of Experts' international reputation for solid legal and technical work which had increased its independence over many years when its views had met with virtually no objections in this Committee. While it was true that the Committee of Experts' findings were not legally binding, and that there was a measure of interpretation in the functions of both Committees, the present Committee need not be too concerned with interpretation issues, when it is ongoing dialogue between the two Committees which is the key.

16. The Government member of Saudi Arabia (speaking also on behalf of the Government members of Bahrain, Kuwait, Qatar, United Arab Emirates) raised the question whether there was sufficient expertise in Islamic law in the Committee of Experts and the Standards Department. A Workers' member of Poland welcomed the appointment of a new female member to the Committee of Experts and hoped that male dominance of that body would be further reduced. The Committee was reminded by the representative of the Secretary-General that, in addition to Ms. Letowska of Poland, the Committee of Experts includes Ms. Al-Awadhi, an experienced jurist, of Kuwait; further, one post in the Standards Department would shortly be occupied by a native Arabic speaker, while another of regional adviser on standards for Arab countries would also be filled in July 1993.

17. The Workers' member of Japan suggested that, in order to safeguard its objectivity and impartiality, the Committee of Experts should, when examining individual cases, ensure that an Expert from the country in question would refrain from participating, so as to avoid undue outside pressure on the Expert.

(ii) Interpretation of Conventions

18. The Committee noted that an Office document (GB.256/SC/2/2) had been submitted to the Governing Body Committee on Standing Orders and the Application of Conventions and Recommendations at its May 1993 Session, concerning article 37, paragraph 2, of the Constitution and the interpretation of international labour Conventions, and that that Committee would continue its examination of the matter at a future session. Article 37 (2) empowers the Governing Body to "make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention".

19. The Employers' members stated that the document had been called for in discussions held in the Conference Committee in recent years, and they found it interesting and in many respects well-researched. Further consideration should be given in due course to whether a tribunal should be established under the Constitution, as to which the Employers reserved their judgement. The document showed that every supervisory body examining whether a State was fulfilling its obligations under a Convention had to undertake the task of interpretation, although only one – the International Court of Justice – could do so with binding authority. The fact that the Conference Committee might be considered a "political" body did not mean that it does not find its rightful place in the interpretation of Conventions, as paragraphs 19 and 20 of the document indicated, according to article 7 of the Conference Standing Orders. The Employers' members recalled that the Committee of Experts did not regard its interpretations as establishing *res judicata* or decisions binding *erga omnes*.

20. As regards the principles and methods of interpretation, the Employers' members noted that the document referred to the 1969 Vienna Convention on the Law of Treaties, as they themselves and the Committee of Experts had done in the past. Under Article 32 of the Vienna Convention it was clear that recourse should be had to preparatory work only as a supplementary means of interpretation in order to confirm an interpretation made under Article 31 or to correct an ambiguous or absurd result. Paragraphs 43 to 48 of the document were also unclear in that it was unrealistic to distinguish between diplomatic and

tripartite conferences as bodies in which international treaties are elaborated: the decisive factor was that it is in international law States which have to fulfil obligations and to decide whether to incur them. Nor did Article 5 of the Vienna Convention help, as the ILO does not have its own rules on interpretation. Sometimes it was suggested or openly maintained that the Employers had formerly said something different. However, there was no contradiction of today's statements. The same had already been said in 1983 in the Employers' spokesman's comments regarding Conventions Nos. 87 and 96 under article 19. Further continuity could be found in the protocol of the 121st Session of the Governing Body from 3 to 6 March 1953. More than 40 years ago the then Employers' spokesman, Pierre Waline, had clearly rejected the deduction of a detailed right to strike from Conventions Nos. 87 and 98.

21. The Employers' member of the United States remarked that disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts. The report of the Conference Committee that had led to the creation of the Committee of Experts stated that it would have no judicial capacity or competence to give interpretations of Conventions. Whilst the work of the Committee of Experts was clearly of the utmost importance to the work of the present Committee, it could not be presumed that this Committee would automatically accept Committee of Experts' interpretations, which had to be discussed sometimes over a period of time. Developing the indication in paragraph 22 of the document, he considered that parties who had drafted standards were in the best position to determine their meaning: this could not lead to "clandestine modification of meaning", as the Conference Committee meets in public. The Committee of Experts should highlight and explain any new interpretations in the general part of its reports in its observations on cases, and in general surveys, so that they are more readily evident to everyone. Otherwise, States may ratify Conventions with no notice or indication from the wording or legislative history of detailed interpretations subsequently made and tending in some instances towards "optimal" labour standards. Too detailed interpretation was another factor discouraging ratification.

22. The Workers' members reaffirmed their attachment to the interpretation of Conventions by an impartial organ such as the Committee of Experts or the International Court of Justice: they agreed with the Experts that, as long as the opinions of the former are not contradicted by the latter, they are valid and to be accepted. It was against the ground rules of the supervisory system for a government to criticize the conclusions of the Committee of Experts without having recourse to the Court. The procedures would be prolonged to the detriment also of constructive tripartite dialogue in the present Committee. A better solution was to reinforce the present supervisory bodies.

23. The Workers' members found the Employers' arguments as to the Vienna Convention political and legally unconvincing. Article 31 (3) (b) of the Convention meant that account should be taken of interpretations and viewpoints expressed by the competent organs of the Organization (viz. the Committee of Experts and the Committee on Freedom of Association); Article 5 preserves the specificity of UN specialized agencies such as the tripartite ILO. The Workers' members as a whole associated themselves with the analysis made by a Workers' member of Poland, that Article 5 of the Vienna Convention guarantees the autonomy of rules and working methods of the ILO, and that the ordinary meaning of the terms of a Convention concerning human rights (such as Convention No. 87) must be found in their context and in the light of the object and purpose of the Convention. Human rights Conventions must necessarily be interpreted progressively as living instruments.

24. The Committee entertained a wide-ranging exchange of views but reached no conclusion as to the advisability of setting up an article 37 (2) tribunal. The Workers' members, as regards possible application of article 37 (2), and the creation of a tribunal to resolve any question or overcome any difficulty in the interpretation of a Convention, consider such a step could question the credibility and authority of the Committee of Experts. Several members (e.g. the Government members of France, Nigeria, Spain, Syrian Arab Republic) expressed varying degrees of support for a tribunal which would speedily resolve disagreements on interpretation and take account of the ILO's characteristics. The Workers' member of Norway (speaking also on behalf of the Workers' members of Denmark, Finland, Iceland and Sweden) compared article 37 (2) to similar provisions in the constitutions of other international organizations. Several other members (e.g. the Government members of Australia, Switzerland, United States) questioned the need for a tribunal, given the existing supervisory system, at least, in the view of the United States Government, until there was certainty that there would be no negative impact on the authority, credibility or effectiveness of those bodies. The Committee agreed that the matter required further study.

25. The representative of the Secretary-General assured the Committee its views would be brought to the attention of the Governing Body when it examined the document further, and the Committee would be informed of developments.

(iii) Reporting obligations

26. Following its discussions of governments' difficulties in meeting reporting obligations in recent years, the Committee was informed by the representative of the Secretary-General of preliminary consideration given by the Office to the possible rearrangement of the procedure for requesting reports, with the aim of maintaining and if possible improving the quality of the supervisory system, concentrating on cases of serious problems of application, and reducing the workload on national administrative authorities.

27. The Employers' members agreed with the approach taken by the Office in its internal working document. They recalled their concern that, alongside the increase in absolute terms in the numbers of reports due, following the accession to membership of the ILO of new States and the consequent new

Document No. 101

ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 10–12

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International Labour Conference, 100th Session, 2011

Report of the Committee of Experts on the Application of Conventions and Recommendations

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sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting. [3] Since 2007, the subcommittee has met at each of the Committee's sessions. [4]

7. This year, the subcommittee on working methods met under the guidance of Ms Pal, who was elected to this function for the first time. The subcommittee undertook a close examination of the comments made on specific aspects of the work of the Committee by members of the Committee on the Application of Standards at the 99th Session of the International Labour Conference (June 2010), as well as during the informal tripartite consultations held on the question of the interpretation of international labour Conventions in February, March and November 2010. Following consideration of the recommendations made by the subcommittee, the Committee agreed on the following issues.

8. With respect to its **general observations on the application of Conventions**, having heard the concerns expressed during the Conference Committee, the Committee welcomes the opportunity to explain the role of general observations. It notes that making general observations forms part of the normal discharge of its functions and contributes to the effective implementation of the Conventions concerned. It recalls that general observations are valuable tools, to be used on an occasional and timely basis, [5] primarily for two reasons:

– to draw attention to matters or practices which are of broad application across a number of countries;

– and/or to discuss trends in the application of a Convention.

It may be necessary to that end – as is done in individual comments – to request information from member States. In such instances, member States are invited to respond in their regular reports on the application of Conventions. Should the Committee find that a report form on a particular Convention has proven to be insufficient for the purpose of examining the application of this Convention, the Committee will, as it has done on previous occasions, draw this finding to the attention of the Governing Body so that consideration can be given to a possible revision of the report form. [6]

9. With respect to the **approach followed by the Committee in relation to cases of progress**, it recalls that the matter has twice been discussed extensively in recent years and its conclusion has been published as part of the General Report. The Committee has re-examined the matter and considers that the approach adopted earlier in this respect is sound and clear. It also emphasizes that, in indentifying cases of progress, in addition to the information set out in government reports, it closely examines comments made by the employers' and workers' organizations on the application of the Convention. It reiterates that the identification of a case of progress does not necessarily reflect a situation of overall compliance with the Convention by the country in question and that it is limited to a specific issue arising out of the application of the Convention and the nature of the measure taken by the government concerned. However, the Committee acknowledges that it could more effectively highlight the specific elements that are of particular importance to a full understanding of the approach adopted. The Committee has therefore decided to give greater visibility to the description of the approach adopted concerning cases of progress in its General Report. [7] It has also decided that this will be set out at the beginning of Part II [8] of its report, in which its observations on the application of ratified Conventions are published. In this respect, the Committee recalls that its task consists of pointing out discrepancies with the requirements of Conventions, as well as underlining progress in their application. It considers that the publicity given to cases of satisfaction in the observations published in the Committee's report is an important means of encouraging member States to pursue their efforts to improve the application of ratified Conventions. Finally, with respect to **the overall assessment of compliance with a particular Convention**, the Committee notes the information provided by the secretariat on the work undertaken to assess progress towards the full application of fundamental principles and rights at work. The Committee notes that a pilot project has been undertaken by the Office to construct a methodology for the measurement of progress towards the application of Conventions Nos 87 and 98, taking the Committee's comments fully into account.

10. With respect to **its practice when expressing its views on the meaning of certain provisions of Conventions**, the Committee recalls the following elements, which are of particular relevance. In accordance with the

[3] See General Report, 76th Session (November–December 2005), paras 6–8; General Report, 77th Session (November–December 2006), para. 13.

[4] See General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9; General Report, 80th Session (November–December 2009), paras 7–8.

[5] Twenty-eight general observations were published in the Committee's reports from 2000 to 2010. Their breakdown is as follows: (i) nine observations concerning fundamental Conventions (Nos 29, 87, 100, 111, 138, 182); (ii) seven observations concerning governance Conventions (Nos 81, 122, 129); (iii) ten observations concerning technical Conventions (Nos 27, 63, 68, 73, 102, 135, 158, 159, 169); (iv) two observations related to the topics of wages and seafarers.

This year, the Committee formulated two general observations, one on the Labour Inspection Convention, 1947 (No. 81) and one on the Indigenous and Tribal Peoples Convention, 1989 (No. 169). These are published in Part II of its report as an introduction to the individual examination of the reports due on the application of the Conventions concerned.

[6] Under article 22 of the ILO Constitution, the Governing Body approves a report form for each Convention. For further information, see para. 36 of the *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. All report forms are available on the ILO website, under the following link: http://www.ilo.org/ilolex/english/reportforms/reportformsE.htm.

[7] See para. 62 of the General Report.

[8] See Part II, p. 43, of the present report.

mandate given to it by the Governing Body, [9] its task consists of evaluating national law and practice in relation to the requirements of international labour Conventions. It emphasizes in this respect the importance of the principles consistently followed by the Governing Body in appointing members of the Committee. They are appointed in a personal capacity and are selected on the basis of their independent standing, impartiality and competence. The members are drawn from all parts of the world and possess first-hand experience of different legal, economic and social systems. The Committee remains conscious of the fact that its work can have value only to the extent that it remains true to its principles of independence, objectivity and impartiality. Further, the Committee has always considered that its task is carried out in the context of an ongoing dialogue with governments, enhanced by the contribution of the employers' and workers' organizations.

11. Against this background, the Committee reiterates the functional approach that it has followed with regard to its role when examining the meaning of the provisions of Conventions. Although the Committee's mandate does not require it to give definitive interpretations of Conventions, it has to consider and express its views on the legal scope and meaning of certain provisions of these Conventions, where appropriate, in order to fulfil the mandate with which it has been entrusted of supervising the application of ratified Conventions. The examination of the meaning of the provisions of Conventions is necessarily an integral part of the function of evaluating and assessing the application and implementation of Conventions. The application of Conventions being the Committee's mandate, the Governing Body has therefore chosen to ensure that the Committee is composed of persons who are capable of fulfilling such mandate. The Committee ensures that the understanding of the provisions remains constant and uniform so that all member States may be guided in fulfilling their obligations arising from ratification of a Convention.

12. In responding to the request to clarify the methods followed when expressing its views on the meaning of the provisions of Conventions, the Committee reiterates that it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention, giving equal consideration to the two authentic languages of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting. [10]

13. In examining these matters, the Committee has borne in mind the comments made on **the desirability of greater tripartite involvement in the supervision of the application of international labour Conventions**. In keeping with the spirit of mutual respect, cooperation and responsibility which prevails in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, the Committee engages in a process of continuous improvement of its methods of work consequent to the comments of the Conference Committee, and, where appropriate, refers to the Conference Committee's report in its observations and direct requests. The Committee considers that it would be in the interests of both Committees to further strengthen this relationship, by creating opportunities for an additional and more in-depth exchange of views on matters of common interest. It invites the Office to examine the possibilities for that purpose. It notes in this respect that the importance of reinforcing the complementary relationship between the two Committees was also discussed during its special sitting with the two Vice-Chairpersons of the Conference Committee on the Application of Standards.

Relations with the Conference Committee on the Application of Standards

14. As it has just emphasized, a spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in particular with regard to specific matters concerning the way in which States fulfil their standards-related obligations. Moreover, the Committee pays close attention to the comments on its working methods that are made by the members of the Committee on the Application of Standards and the Governing Body, which it normally considers through its subcommittee, as it has done this year.

15. In this context, the Committee again welcomed the participation of Ms Bellace as an observer in the general discussion of the Committee on the Application of Standards at the 99th Session of the International Labour Conference

[9] The Committee of Experts and the Conference Committee were established in 1926 under the same resolution by the International Labour Conference (see Appendix VII, proceedings of the Eighth Session of the International Labour Conference, 1926, Vol. 1). The Committee of Experts' terms of reference were extended by the Governing Body in 1947 (see Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37).

[10] An example of this approach can be found in the Committee's general observation on the application of Convention No. 169 which appears in Part II of the present report.

Document No. 102

ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Observation on the Indigenous and Tribal Peoples Convention, 1989 (No. 169), p. 783

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International Labour Conference, 100th Session, 2011

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(articles 19, 22 and 35 of the Constitution)

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Indigenous and tribal peoples

General observation

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

The Committee has been examining detailed reports on Convention No. 169 since the Convention came into force in 1991. The Committee notes that to date 22 countries have ratified the Convention. It also notes that one of the issues that it has most often examined since the Convention has been adopted relates to the "obligation to consult".

The Committee has taken note of the comments made in June 2010 during the 99th Session of the International Labour Conference (ILC) in the Committee on the Application of Standards concerning the comments made in respect of the application of Convention No. 169 by a number of member States and the Employer members and, in particular, the comments made on the meaning and scope of "consultation" as provided for by the Convention. The Committee considers that it is important, in view of the significance of this concept under the Convention for the indigenous and tribal peoples, for governments and the social partners to further clarify its understanding of the concept.

The Committee of Experts has, on a number of occasions, stated that, although its mandate does not require it to give definitive interpretation of ILO Conventions, in order to carry out its function of determining whether the requirements of Conventions are being respected, it has to consider and express its views on the legal scope and meaning of the provisions of Conventions, where appropriate. [1] In doing so, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention on the Law of Treaties, giving equal consideration to the two authoritative texts of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role the tripartite constituents play in standard setting.

In examining this question, the Committee has taken special note of the comments made by the Employer members of the Conference Committee on the Application of Standards that it had interpreted the right to consultation in such a way as to impose a more exacting requirement upon the government beyond that envisaged by the Convention. [2] This comment was made in the context of the request made by the Committee of Experts in a case concerning the application by the Government of Peru of Convention No. 169 and which was discussed by the Conference Committee in June 2010. [3]

In light of the above, the Committee makes this general observation in order to clarify its understanding of the concept of "consultation" in the hope that this will result in an improved application of the Convention particularly as it concerns this right. This would be a follow-up to the general observation made by this Committee in 2008. It notes the statement made by the Employer spokesperson during the general discussion of the Conference Committee in June 2009 that "the general observations on social security and indigenous and tribal peoples did not raise any particular issues and were an illustration of the correct approach to making general observations that were useful and contributed to the implementation of the Conventions concerned". [4]

As a general matter the Committee notes that, in view of the tripartite nature of the ILO, most of its Conventions make specific provision for consultation between governments and representatives of employers and workers or their organizations and of those concerned by the issues involved on the matters covered by the Conventions. Convention No. 169 is no exception. However, the provisions relating to "consultation" in Convention No. 169 specifically address consultation with indigenous and tribal peoples. The relevant provisions of the Convention are *Articles 6, 7, 15 and 17*. [5] *Articles 27 and 28* also refer to consultation specifically regarding education.

[1] See ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 21; ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7; ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 11 and 12.

[2] See ILC, 99th Session, 2010, *Provisional Record* No. 16, Part One, para. 54; Part Two, pp. 103–107.

[3] ibid., Part Two, p. 106.

[4] See ILC, 98th Session, 2009, *Provisional Record* No. 16, Part One, para. 50.

[5] *Article 6*

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

Document No. 103

ILO, Information paper on the history and development of the mandate of the Committee of Experts on the Application of Conventions and Recommendations, February 2013

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Introduction

1. This information paper has been prepared in response to the informal tripartite consultations[1] held on 19 September 2012 on the follow-up to the discussions in the Committee on the Application of Conventions and Recommendations (normally known as the Committee on the Application of Standards – CAS) at the 101st Session (2012) of the Conference, and the decision by the Governing Body at its 316th Session (November 2012) that its Officers should pursue the informal tripartite consultations and report to its 317th Session (March 2013).[2]

2. During the discussions in the CAS in 2012, the Employers' group objected to certain observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2011 General Survey concerning the right to strike. The CAS concluded by noting that "different views had been expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration…". The Conference decided, upon the recommendation of the CAS, to: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session".[3]

3. In November 2012, the Governing Body was provided with a brief report on the consultations and the Employer's group made a statement on their position. The present paper focusses specifically on the questions that have arisen regarding the mandate of the CEACR, particularly in relation to the question of the CEACR's role in clarifying the meaning of the provisions of specific Conventions, and its role in relation to that of the CAS. In response to the September 2012 consultations, and the discussions in the Governing Body at its 316th Session, *Section A* below provides details of the development of the mandate of the CEACR within the ILO supervisory system. This information on the historical background of the CEACR is intended to provide the Governing Body with a firm basis for its discussions, taking into account the evolutions and related discussions since 1926. The historical background provided in *Section A* is organized into four periods, for each of which information is provided on the terms of reference, composition and methods of work of the CEACR, and its relationship with the CAS and the Governing Body.

4. *Section B,* also in response to the requests made during the tripartite consultations and the discussions in the Governing Body, provides further succinct information on the history of the ILO constitutional mechanism and practices regarding the interpretation of ILO Conventions, placing emphasis on the question that has been at the fore of the recent discussions, namely the interpretation of ILO Conventions in the context of the functions of the CEACR and the CAS.[4] This information is intended to offer more specific background to the indications provided by the Deputy Legal Adviser in response to a question raised during the September 2012 consultations, and referred to during the 316th Session of the Governing Body, namely "Whether the Governing Body has ever decided to amend the stated terms of reference of the Committee of Experts to expressly include the interpretation of international labour standards and, if it had not, whether the Governing Body intended to change those terms of reference."[5] It also provides information regarding the context and legal process for referral of a matter to the International Court of Justice (ICJ) under article 37, paragraph 1, of the ILO Constitution.[6] This information is provided in response to requests made by the Employers' group during the 316th Session of the Governing Body and the Worker members in the CAS.

5. *Section C* provides reflections and orientations on possible ways forward.

Section A. The mandate of the CEACR: Historical background

1. 1926-1939: The concept of "mutual supervision" and the establishment of the CEACR and the CAS

6. The CEACR[7] and the CAS were established to carry out their respective supervisory functions under the concept of "mutual supervision" based on Article 408 of Part XIII of the Treaty of Versailles (article 22 of the ILO Constitution), which provides that:

> *Article 22*
>
> *Annual reports on ratified Conventions*
>
> 1. Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

7. The concept of "mutual supervision" among ILO Members emerged from the work leading to the development of the ILO (through the Labour Chapter of the 1919 Peace Treaties, which later became the ILO Constitution), based on the precept that ILO Members would all be bound by the same ratified Conventions, thereby preventing unfair competition between countries.[8] Each Member would therefore have an interest in ensuring that the others applied the Conventions that they had each ratified. Although it had originally been proposed that ratification of Conventions would be almost automatic by member States, when the Constitution was adopted the decision as to ratification was left to the discretion of Members, which were nevertheless under the obligation to bring Conventions and Recommendations before the competent authorities within one year of their adoption. However, the provisions concerning the supervisory procedures were still based on the assumption that ratification would be the general rule and objective. The report of the Commission on International Labour Legislation, which drafted the Labour Chapter, emphasized that the supervisory procedures had "been carefully devised in order to avoid the imposition of penalties, except in the last resort, when a State has flagrantly and persistently refused to carry out its obligations under a Convention". It added that, "while taking the view that it will in the long run be preferable as well as more effective to rely on the pressure of public international opinion rather than economic measures, (it) nevertheless considers it necessary to retain the latter in the background".[9]

8. Within this constitutional framework, the submission of annual reports under Article 408 of the Treaty of Versailles (now article 22 of the ILO Constitution) provided the necessary means for an exchange of information between Members. The summary of the contents of the reports by Members, presented by the Director-General, was to be submitted to the delegates at the Conference for their views. The representation and complaint procedures could potentially be implemented against Members which failed to give effect to ratified Conventions.

9. In practice, between 1921 and 1925, neither the Conference nor individual Members used the Director-General's summary as a basis for further action. As a result, following their establishment in 1926, the CEACR and the CAS were the only effective means of supervising ratified Conventions, as the other supervisory procedures had not been fully implemented during that period,[10] and the preference was to focus on the review of annual reports, so as to render recourse to the other constitutional procedures (representations and complaints) unnecessary.

The terms of reference of the CEACR

10. The Conference set up the CAS and requested the Governing Body to appoint a Committee (now the CEACR) under the same resolution at its 8th Session (1926).[11] The functions of the CEACR were defined in the report of the Committee on the examination of annual reports under Article 408 (the Committee on Article 408) of the Treaty of Versailles, set up by the Conference in 1926, including the indication that the CEACR would have no judicial capacity or interpretative authority.[12] It should be noted that, from its first session, the CEACR also examined information arising out of Article 421 (article 35 of the present ILO Constitution) concerning the application of ratified Conventions to "colonies, protectorates and possessions".[13]

11. Some governments questioned the constitutionality or need for the machinery set up under the 1926 resolution,[14] and some constituents objected that it attributed a role to the Conference in the supervision of Conventions that was not set out in the Constitution.[15] During the adoption of the resolution, an amendment had been moved to delete the paragraph concerning the establishment of the CAS, based on the arguments that the complaint procedure should be used instead, that the functions of the two Committees would be very limited and of no added value and that a Committee of the Conference would lack both the time and continuity to examine annual reports.[16] With regard to the CEACR, it was emphasized that, under the terms of Article 408, the constitutional responsibility of submitting a summary of the annual report regarding compliance by each Member rested solely with the Director-General (then known as the "Director").

12. Of the 180 reports received for the first session of the CEACR, 70 gave rise to "observations" by the CEACR, which also made a number of remarks and suggestions on the form and content of the report forms. The CEACR noted in its 1928 report that governments had furnished the information based on its earlier comments.[17] In 1928, the CAS recognized that the work of the CEACR had rendered useful results and the Governing Body decided to appoint the CEACR for one year on the understanding that its mandate would be tacitly renewed annually, unless opposition was raised.[18]

Composition of the CEACR

13. Prior to the adoption of the 1926 resolution, the Chairperson and Reporter of the Committee on Article 408 explained that the method of appointment of the members of the CEACR should be left to the Governing Body, but that they "should essentially be chosen on the ground of expert qualifications and on no other ground whatever".[19] In 1927 and 1928, the membership of the CEACR consisted of eight experts and a substitute member. The experts were initially appointed for the duration of the CEACR's two-year trial period,[20] although as from 1934 they were appointed for a renewable three-year period.[21] The ILO paid travel costs, but no honorarium.[22]

14. The criteria for appointment to the CEACR has experienced continuity, although the number of experts and the geographical balance evolved rapidly in response to the CEACR's increased workload and the diversification of ILO membership. The number of experts rose to ten in 1928 and 11 in 1932, with one member from an "extra-European" country. In 1939, the CEACR had 13 members, nine from European countries and four from non-European countries.

Methods of work of the CEACR

15. In terms of workload, the number of article 22 reports on ratified Conventions rose from 180 in 1927 to 600 in 1939, due largely to the number of international labour standards adopted. In addition, the reports submitted became more substantial as the report forms

were developed by the Governing Body, at the instigation of the CEACR and the CAS, and the replies were received to the observations made by the two committees. CEACR sessions lasted an average of one week.

16. The methods of work of the CEACR evolved through interaction between the Governing Body, the CEACR and the CAS. The CEACR developed the internal elements of its work, such as the methods of examining annual reports, their distribution among the experts, with specific tasks being attributed to some experts, the structuring of its technical report and the method for its adoption by the experts. Particularly in its first reports, the CEACR made recommendations either to the Office or the Governing Body on follow-up action that could be taken with certain governments. During this period the CEACR also began addressing governments directly (unless the nature of the issue justified its referral to the Governing Body) and thereby gradually established a dialogue with governments. The Governing Body, on the other hand, in practice confined itself to communicating the CEACR's observations to governments and to the Conference.

17. In its 1929 report, the CEACR suggested that certain Members might wish to engage in direct contact to provide oral explanations on the application of ratified Conventions. The Governing Body, despite the reservations expressed by some of its members,[23] eventually approved this procedure.

Relationship between the CEACR, the CAS and the Governing Body

18. This period (1926-1939) was marked by regular interaction between the CEACR, the CAS (through the Conference) and the Governing Body. The Governing Body's active involvement in the supervision of ratified Conventions reflected its broader involvement in all standards-related matters at the time. The report of the CEACR gave rise to institutional dialogue, first in the CAS, and second with follow-up by the Governing Body based on the elements highlighted by the Office.[24] In particular, by this time, this dialogue addressed three aspects regarding the development of the report forms: (1) the practical application of Conventions; (2) comments from employers' and workers' organizations (a question to this effect was added to the report forms by the Governing Body in 1932); and (3) the application of ratified Conventions to "colonies, protectorates and possessions".

19. With respect to the relationship between the CEACR and the CAS, when the two committees were established, the CAS was to base its examination on the summary of annual reports produced by the Director and the report of the CEACR. The CAS initially appointed "sub-reporters" to conduct an additional examination of the annual reports, but stopped in 1932 to avoid unnecessary duplication of the work of the CEACR.[25] Instead, the CAS would focus on matters of principle and any facts that emerged during discussion. The CAS indicated for the first time that the report of the CEACR was the basis of its deliberations,[26] while its independent examination was confined to reports received too late to be examined by the CEACR. At this time, the CAS examined all observations made by the CEACR, together with subsequent information received from Governments and the views expressed by delegates. Despite this "double examination" of reports, the working methods of the CEACR and the CAS gradually differed. While the CEACR examined reports and other written information provided by the Office, the procedures of the CAS gradually developed around the opportunity given to member States to submit explanations either orally or in writing.[27]

20. The Governing Body regularly discussed the nature and scope of its consideration of the report of the CEACR, and particularly whether it should approve or take note of the report.[28] However, there was no time for it to consider the CEACR's report in detail before its communication to the Conference. The report was submitted simultaneously to both the

Governing Body and the Conference. In its reports, the CEACR regularly recalled the authority of the Governing Body concerning the supervision of Conventions and sought its "instructions."

2. 1944-61: The expansion of supervision

21. Following the Second World War, the ILO reviewed its role, particularly in relation to standard-setting and the supervisory machinery, based on: the first 14 years of the operation of the supervisory machinery;[29] the related tripartite discussions and decisions; and the weaknesses of the standards system, as revealed through the operation of the supervisory machinery.

22. In 1941, a report by the Acting Director to the special Conference convened by the Governing Body explicitly recognized the value of standards and their supervision by the CEACR and the CAS, an element which was taken into account when the future policies, programmes and responsibilities of the ILO were drawn up in the new international environment.[30]

23. In 1944, the 26th Session of the Conference, meeting in Philadelphia, discussed the future policy, programme and status of the ILO. The report prepared for the discussion reviewed the extent to which the broadening of the ILO's responsibilities in the post-war period would involve developments in the arrangements for the adoption and application of Conventions and Recommendations, including improvements in existing arrangements for the mutual supervision of the application of standards. It noted that the thoroughness of mutual supervision depended on the combination of the independent judgment of experts, the special knowledge of the Office and the practical experience and outlook of the representatives of the interests affected. A weakness of the system was that, although it offered a fairly reliable impression of the extent to which national laws and regulations were in conformity with Conventions, it did not provide a clear picture of the extent to which those laws and regulations were effectively applied. The report emphasized that the operation of the arrangements for mutual supervision should be resumed as soon as circumstances allowed.[31]

24. Meeting once again in 1944, the CAS emphasized in its report that it had been impossible to examine the application of Conventions due to the absence of a preliminary examination by the CEACR. The Conference endorsed the recommendation of the CAS that the CEACR be reappointed at the earliest possible date and requested the Governing Body to appoint a Constitutional Committee to examine all of the issues relating to the revision of the Constitution.[32] As indicated below, the CAS made a determining contribution to the two-year debate on constitutional amendments.[33]

25. In 1945, the CAS reviewed a number of questions concerning the application of ratified Conventions, although noting that, in so doing, it was going beyond its existing terms of reference. The CAS emphasized that experience had demonstrated that certain obligations of Members in respect of Conventions and Recommendations should be clarified or amplified in order to ensure increased efficiency in the working of the Organization. A resolution adopted unanimously by the CAS called for reports by member States on the submission of Conventions and Recommendations to the competent authorities and on the effect given to unratified Conventions and to Recommendations, as well as the communication of their annual reports on ratified Conventions and on Recommendations to the most representative national organizations of employers and workers for their comments. It also called for future reports to be communicated by the Director-General to the CEACR and to the Conference, and for the terms of reference of the CAS and the CEACR to be modified accordingly.[34]

26. In 1946, upon the recommendation of the Delegation on Constitutional Questions, the Conference endorsed most of the proposals contained in the CAS resolution, including broadening the terms of reference of the CAS and the CEACR. The Delegation also recommended, with some reservations, that consideration should be given to a procedure to note cases in which Conventions had not been ratified, but where the situation was not less satisfactory than the requirements of the Convention, so that governments could receive appropriate credit.[35]

27. The Conference also accepted the Delegation's proposal that when a ratified Convention was declared applicable to what were now designated "non-metropolitan territories," it would require the acceptance on behalf of the territory concerned of the reporting obligations set out in the Convention and the Constitution. Although the representation procedure was not modified, the procedure for complaints was adjusted, notably through the replacement of the reference to measures of an economic character in the original Constitution by a provision under which the Governing Body can recommend to the Conference the measures that it deems wise and expedient to bring compliance with the Convention concerned.[36]

28. The 1946 instrument of amendment of the Constitution therefore enlarged the scope of supervision, based on the experience of the work of the CEACR and the CAS in the pre-war years. The work of the CAS and the CEACR led to reforms emphasizing the effective application of all instruments adopted by the Conference and obtaining fuller information on national law and practice on these instruments. Ultimately, these reforms recognized the important role of standards in achieving the objectives of the ILO.

Terms of reference of the CEACR[37]

29. During this time, the Conference, the Governing Body and the Office acknowledged that the amendments to the Constitution extended the system of information and reports to be supplied by Members on Conventions and Recommendations.[38] The CEACR noted in 1952 that its work that year marked "the end of a period of transition and adjustment." The Constitutional amendments had "widely extended the obligations of Governments to submit reports." It further noted four elements of the new procedure:

1. the new obligation on governments to report on measures to bring Conventions and Recommendations before the competent authorities;

2. the fuller indications provided on the influence of Conventions, whether ratified or not, and of Recommendations on national law and practice;

3. the indications provided of the causes which may have prevented more widespread ratification of Conventions and acceptance of Recommendations, and the resulting guidance for the ILO's future legislative programme and decisions; and

4. the emphasis on the practical application of Conference decisions, and the enlistment of the cooperation of the representative organizations of employers and workers by requiring governments to communicate copies of reports to them.[39]

30. A further proposal was also made at that time by the Governing Body Committee on Standing Orders, arising out of a recommendation by the Delegation on Constitutional Questions, which would have involved enabling governments to request that the Conference take formal note, based on the examination carried out by the CEACR and the CAS, that their national law and practice were "in substantial conformity" with unratified Conventions. However, in its 1948 report, the CEACR indicated that it would be difficult to reach objective conclusions on the substantial conformity of national law and practice

with unratified Conventions. Despite the recommendations made by the Conference and the Governing Body, the proposal was not therefore given effect.[40]

31. In 1956, based on a request by the Secretary-General of the Council of Europe, the Governing Body assigned the CEACR the task of examining country reports on the European Social Security Code to ascertain the conformity of legislation in ratifying countries.[41] The CEACR started this examination following the entry in force of the Code in the 1960s.

Composition of the CEACR

32. During the course of 1945, the Governing Body appointed nine experts for the 13 vacant seats, which was the authorized number prior to the Second World War. Of those, five had been members of the CEACR prior to 1939. Following a request by the CEACR for the reinforcement of its membership, which had dropped to ten, and for experts qualified to examine the application of Conventions in non-metropolitan territories, the Governing Body had appointed three additional experts by March 1948, including the first woman expert.

33. In 1951, the CAS recommended that the Governing Body examine the possibility of lengthening the duration of the sessions and of adding once more to the number of experts.[42] As from the beginning of the 1950s, the sessions of the CEACR were lengthened to an average one and a half weeks and its membership rose from 13 to 17 members.

Methods of work of the CEACR

34. The methods of work of the CEACR evolved during this period due to the extension of its terms of reference and the corresponding increase in its workload.[43] The impact of the extension of its terms of reference on the functions of the CEACR was shaped through its interactions with the CAS and the Governing Body. The proposals to reactivate the procedure of the direct supply of information by governments to the CEACR were approved by the Governing Body, but not used by governments.[44] Dialogue between the CEACR and governments had developed constantly throughout the years and was further enhanced during this period. For example, in 1951, the Governing Body included a question in the annual report forms requesting information on the action taken by governments in response to observations made by the CEACR and the CAS. The Governing Body also approved the Director-General's proposal that he draw the attention of the governments concerned to the requests for information and observations made by these bodies.[45] This dialogue was also characterized by the first references to technical assistance to overcome difficulties in the application of Conventions.[46]

Relationship between the CEACR, the CAS and the Governing Body

35. The institutional dialogue between the CEACR, the CAS and the Governing Body, which had prevailed in the early years, continued, although it was adapted in light of the Constitutional amendments regarding articles 19 and 23, paragraph 2.[47]

36. *Relationship between the CEACR and the CAS.* The CAS' recommendation played a determining role in the reconstitution of the CEACR, placing emphasis on the fact that the "double examination" (by the CEACR and then the CAS) was essential to the proper functioning of supervision. Thereafter, it repeatedly supported calls for the membership of the CEACR to be increased and its sessions to be lengthened.[48]

37. *Participation of employers and workers' organizations.* Both the CEACR and the CAS repeatedly expressed concern at the lack of comments from employers' and workers' organizations based on the question added to the report forms in 1932. It was only in 1953 that the CEACR could note comments received from workers' organizations in two countries. In 1959, it indicated that comments had been received from nine countries.[49] Nevertheless, during this period, both the CEACR and the CAS focused on ensuring that governments fulfilled their new constitutional obligation to provide representative organizations of employers and workers organizations with copies of the information and reports supplied under articles 19 and 22 of the Constitution.

38. *Relationship between the CEACR and the Governing Body*. Prior to 1939, the Governing Body had authorized the Director-General to transmit the report of the CEACR to the Conference without first discussing it, and in March 1947 the Director-General noted that this had become a "standard procedure," although the right of the Governing Body to discuss the actual contents of the report of the CEACR was also recalled.[50] The report of the CEACR continued to be submitted directly to the Governing Body, although specific issues raised were referred to itsCommittee on Standing Orders and the Application of Conventions and Recommendations, which dealt with most of the matters arising out of the work of the CEACR and the CAS during this period. As of the mid-1950s, the Governing Body confined itself to taking note of the report of the CEACR and no longer commented on it.

39. *Supply of information and reports concerning the submission of instruments to the competent authorities.* In 1953, the CEACR defined the "principal rules with which States should comply in carrying out their obligations under paragraphs 5*(b), 6(b),* 7*(a)* and *(b)* of article 19 of the Constitution". In light of the different possible interpretations of the scope of this obligation, the CEACR suggested that a form should be established for governments setting out various points on which information was to be supplied. This proposal was strongly endorsed by the CAS, and in 1954 the Governing Body approved a draft memorandum containing details on the extent of the obligation to submit Conventions and Recommendations to the competent authorities, which reproduces "extracts from the report of the Committee of Experts […] unanimously approved by the Conference Committee on the Application of Conventions and Recommendations."[51] After discussion in the CAS and the CEACR, the memorandum was amended in 1958 to indicate that it "should not be considered as affecting article 37 of the I.L.O. Constitution, which confers on the ICJ the power to interpret the provisions of the Constitution."[52]

40. *Information and reports on unratified Conventions and Recommendations.*[53] Based on the arrangements approved by the Governing Body in March 1948, and its selection of the Conventions and Recommendations adopted by the Conference at its 26th (1944) and subsequent sessions, the CEACR first examined reports on unratified Conventions in 1950. Its first examination highlighted relevant information on national law and practice concerning the selected instruments, including the ratification situation and divergences in interpretation. In view of the limited number of reports received and the uneven information provided, between 1950 and 1953 the CEACR and the CAS proposed a reduction in the number of instruments selected and a simplification in the forms to secure better information from governments.[54]

41. The examination of reports on unratified Conventions and on Recommendations was strengthened in 1955 and 1956. In November 1955, with a view to reinforcing the work of the CAS, the Governing Body approved a proposal by its Committee on Standing Orders and the Application of Conventions and Recommendations, which was supported by the CAS, that the CEACR should undertake, in addition to a technical examination on the application of Conventions, a study of general matters, such as positions on the application of certain Conventions and Recommendations by all governments. Such studies, now known as "general surveys", were intended to cover the Conventions and

Recommendations selected for the submission of reports under article 19 of the Constitution. As the reports requested under article 19 were grouped around one or two central themes each year, it was proposed that the reports provided under article 22 of the Constitution might also be taken into consideration.[55] The CEACR carried out this examination in 1956 and, as from that year, the CAS has consistently discussed the general surveys of the CEACR.

3. 1962-1989: Supervision and diversification

42. The ILO's membership tripled between 1945 and 1982, as many territories became independent. With new members came new needs, and the ILO began to emphasize the assistance that it could provide to its new Members, particularly to help them meet their obligations under ILO Conventions. The approach of certain individual constituents towards the application of international labour standards was also changing, as some began questioning the work of the CEACR. Some constituents had previously disagreed with the technical examination undertaken by the CEACR; now, the competence, objectivity and impartiality of the CEACR were questioned.[56] These challenges, the expansion of the standards system and the profound changes in patterns of work led to a new review of ILO standard-setting activities. This review focused on the substance of ILO standards and policy regarding their adoption, elaboration and revision.[57]

43. The convergence of views between the Employers' and Workers' groups on promoting compliance with standards led to further developments in the work of the CEACR. This, combined with the growth of the international trade union movement and supported by the CEACR and the CAS, contributed to the increased participation of employers' and workers' organizations in the process of the supervision of standards. By the mid-1970s, a series of measures had been taken to strengthen tripartism in ILO activities, including supervision, resulting in important changes in the workload and methods of work of the CEACR. The adoption of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), established the requirement for ratifying States to consult the representatives of employers and workers on certain standards-related matters, including their reports on ratified Conventions.

44. The representation and complaint procedures began to be used and implemented more systematically, resulting in the establishment of Commissions of Inquiry (to examine complaints under article 26 of the Constitution) and tripartite committees (to examine representations under article 24 of the Constitution). The Governing Body entrusted the CEACR with responsibility for following up the effect given by the governments concerned to the recommendations of these bodies. This use of all the procedures and their coordination was a major development during the period and demonstrated that "the different parts of the ILO supervisory system do not operate in isolation, but constitute complementary components".[58]

The terms of reference of the CEACR

45. Although the mandate of the CEACR regarding the supervision of standards did not change during this period, its related functions were further developed.

46. First, in 1971, the Conference adopted a Resolution concerning the strengthening of tripartism in the over-all activities of the ILO, which invited the Governing Body to request the CEACR: (i) to give particular attention to the equality of representation between workers and employers in tripartite bodies where provision was made in international labour instruments; and (ii) to consider measures which the ILO could take to ensure the effective implementation of article 23, paragraph 2, of the Constitution.[59] Another Conference resolution adopted in 1977 concerning the strengthening of tripartism

in ILO supervisory procedures of international labour standards and technical co-operation programmes reaffirmed that "absolute impartiality in the ILO supervision of international standards [was] the key to their credibility in order to ensure that obligations freely contracted are complied with and remain the same for all countries irrespective of their size, economic and social system and level of economic development."[60] As explained below, these resolutions had an important impact on the work of the CEACR.

47. Second, while other international organizations were developing their own monitoring mechanisms, the ILO collaborated in supervising the application of instruments relating to matters of common interest. Following the entry into force of the European Code of Social Security in 1968, the CEACR started examining reports on the application of the Code and its Protocol. In 1976, at the request of the Secretary-General of the United Nations, the Governing Body entrusted the CEACR with responsibility for examining reports from States Parties to the International Covenant on Economic, Social and Cultural Rights in matters falling within the ILO's mandate.[61] This collaboration ceased in 1987 at the recommendation of the CEACR in light of the establishment in 1985 of the United Nations Committee on Economic, Social and Cultural Rights, with a view to avoiding "any duplication of work and possible conflict of competence" between the specialized agencies and the new Committee, although the information in CEACR reports continues to be shared with the United Nations.[62]

48. The CAS and the Conference Plenary frequently discussed the competence of the CEACR during this period. In 1963, some governments and a minority of Worker members formally requested the Conference to adopt "definite rules" regarding the composition and organization of the CEACR. This request was debated each year until 1989, but agreement was never reached. The constituents concerned indicated that the rules should be based on a set of "principles," such as the objective appraisal of facts, the need to take into account the economic and social conditions of each country, the equitable representation in the CEACR of different social and economic systems and geographical regions and the regular replacement of its members.[63] They expressed concern that an attempt was being made to "turn the supervising machinery of the Organisation into a supranational body that has the functions of a tribunal",[64] and emphasized that the supervisory bodies should provide assistance to member States and promote the ratification and application of Conventions. They added that the 1926 resolution entrusted the CEACR with purely technical terms of reference and that its task was to assist the Director-General and the Conference in discharging their responsibilities under the Constitution in relation to the supervision of standards.[65]

49. A large number of Government and Employer members, and the great majority of Worker members, disagreed with these views. They considered that the CEACR had functioned well without any formal rules of procedure and "expressed their faith in the impartiality, objectivity and integrity of the Committee of Experts, a quasi-judicial body whose professional competence was beyond question […] Objectivity could not be guaranteed by rules of procedure but depended upon the personal qualities of the members of the Committee."[66] The independence of the CEACR could not be hindered by rigid rules of procedure and its methods of work should retain the necessary flexibility to adapt to new conditions and needs.[67] They emphasized the autonomy of the supervisory bodies to define their methods of work.[68]

50. In 1983, delegates from a number of socialist countries presented a memorandum to the Conference.[69] They considered, in particular, that the composition, criteria and methods of the supervisory bodies did not reflect the present membership of the Organization and present day conditions and that ILO procedures were being misused for political purposes to direct criticism primarily at socialist countries and developing countries. They noted the need for reform and, in 1984, submitted a draft resolution calling for the establishment of a Conference working party to undertake a thorough review of the supervisory system.[70] The

resolution was not adopted and, although the Governing Body subsequently set up a Working Party on International Labour Standards, its terms of reference did not include the supervisory procedures.

Composition of the CEACR

51. The membership of the CEACR reached its current level of 20 experts in 1979.[71] In November 1962, the Governing Body appointed an additional member to ensure broader geographical distribution, with the CEACR's membership increasing to 18 in 1962, 19 in 1965 and 20 in 1979. The issue of the geographical composition of CEACR membership took on greater importance in view of the ILO's increased membership,[72] and constituents debated the emphasis to be given to personal qualifications versus the need to ensure geographical distribution. Some recalled that "[g]eographical distribution, though important, was not the prime consideration," as "the main requirements for membership were competence, integrity and the ability to make comparative study of the provisions of national legislation and ILO instruments."[73] Critics of the composition of the CEACR also suggested that it should include not only legal experts, but also experts on economic and social policy and international trade union matters.[74] In 1964, the Governing Body decided that an honorarium of US$500 would be paid to each member of the CEACR every year.[75]

Methods of work of the CEACR

52. During this period, the CEACR regularly described its procedure and methods of work in its reports, and adapted its methods of work, as indicated below.

53. In 1963, the CEACR indicated that it reviewed the practical application of ratified Conventions, focusing on the incorporation of standards into domestic law. The CAS concurred that standards must be applied not only in law, but also pursued nationally and internationally.[76] Moreover, for the first time, unanimous agreement among the CEACR members could not be reached regarding Convention No. 87. The difference of views between two experts and the rest of the CEACR was set out at the beginning of the observations on the application of the Convention concerning particular countries. This practice became part of the methods of work of the CEACR and mainly concerned Conventions Nos 29 and 87.

54. In 1964, the CEACR started to record cases of progress in its report, noting that a considerable number of governments had taken account of its past observations and direct requests and had amended their legislation and/or practice accordingly.[77] The CAS welcomed these records and noted the tangible influence that the annual examination carried out by the CEACR and by the Conference could have on the implementation of Conventions.[78]

55. The procedure of direct contacts was introduced in 1968, at the suggestion of the CEACR, and was further developed by the CAS[79] and supported by the Governing Body. Originally intended to address problems relating to the application of ratified Conventions, the direct contacts procedure was extended in 1973 to cover difficulties in fulfilling the constitutional obligations of the submission of Conventions and Recommendations to the competent authorities, the submission of reports and information under articles 19 and 22 and possible obstacles to ratification.

56. As from 1970, the CEACR began paying special attention to the manner in which States met their constitutional obligation under article 23, paragraph 2, of the Constitution to communicate to representative employers' and workers' organizations copies of the information and reports transmitted to the ILO in pursuance of articles 19 and 22. The CEACR proposed various measures to encourage greater participation by employers' and

workers' organizations and further developed its practice as it began to receive an increasing number of comments from them.[80]

57. In 1972, pursuant to the Conference resolution on the strengthening of tripartism, the CEACR reviewed the role of employers' and workers' organizations in the supervision of standards. It emphasized that article 23, paragraph 2, of the Constitution was intended to enable employers' and workers' organizations to submit comments on the way that governments fulfilled their standards-related obligations.[81] The improvements suggested by the CEACR, which were welcomed by the CAS and approved by the Governing Body in November that year, included amending the questions in report forms and the Memorandum on the submission of Conventions and Recommendations to the competent authorities.

58. In 1973, the CEACR noted that the number of comments from employers' and workers' organizations had increased to 30 cases from seven the previous year. While most of the comments were transmitted by governments in their reports, others were sent directly to the ILO by the organizations. They were then forwarded to the governments concerned for their observations, in accordance with the practice initiated by the CEACR in 1959. To reduce delays in examining comments from employers' and workers' organizations, the CEACR developed the practice of examining them once the governments' observations had been received, irrespective of whether a report was due. If governments did not submit their observations within a reasonable period, the Committee nevertheless examined the substance of the comments from employers' and workers' organizations.[82]

59. The submission of comments by employers' and workers' organizations became an established practice. For example, when, in November 1976, the two-year reporting cycle was increased to four years (except for 20 Conventions), the safeguards introduced by the Governing Body to ensure that the effectiveness of the supervisory system was not weakened included the consideration by the CEACR of comments on ratified Conventions by national or international organizations of workers and employers. On the basis of these comments, and in light of any explanations provided by the governments, detailed reports could be requested earlier than normal. Where comments were sent directly to the Office, they should be communicated to the government concerned for its observations.[83]

60. By 1986, the CEACR noted that there had been a considerable increase in the comments received, from nine in 1972 to 52 in 1975 and 1980, 82 in 1983, 102 in 1984 and 149 in 1985. That year, the CEACR also reviewed "Practice and experience concerning the comments by employers' and workers' organizations on the application of international labour standards." Its views, while documenting significant developments in its practice, did not give rise to specific comments from the Governing Body or the CAS.[84]

Relationship between the CEACR, the CAS and the Governing Body

61. The trend, which had emerged after the Second World War, continued for the Governing Body not to involve itself in the work of the CEACR. The Governing Body continued to take note of the CEACR's report and, while the issues previously raised in this connection resurfaced, "the well-established procedure" was maintained.[85] Substantive matters raised by the CEACR were handled outside the Governing Body plenary, in its Committee on Standing Orders, or even by the Office. The composition of the CEACR was the main issue discussed by the Governing Body, as well as entrusting the CEACR with the follow-up to the effect given to the recommendations of Commissions of Inquiry and tripartite committees.

62. During this period, institutional dialogue mainly occurred between the CEACR and the CAS, although it was limited due to the disagreements that arose in the CAS concerning the work of both Committees.[86] Individual constituents also had the opportunity to raise issues relating to the work of the CEACR in the Conference Plenary.

4. 1990-2012: Standard-setting and globalization

63. As most of the issues that have arisen since 1990 are fairly familiar to readers, they are examined more briefly. The review of standards-related activities, begun in 1970, was broadened during this period to take into consideration the context of globalization. This broader review was launched in 1994 based on the report of the Director-General to the Conference,[87] which raised a series of issues regarding the relevance, effectiveness and need for adaptation of ILO standard-setting activities, as well as suggestions and options for consideration. While the majority of constituents supported the functioning of the supervisory system, some called for it to be further strengthened. The Governing Body and the Conference discussed almost all aspects of the ILO standards system between 1994 and 2005.[88] The discussions were expanded under the impetus of the Standards Strategy, which was designed to enhance the impact of the standards system, and its related interim plan of action, adopted by the Governing Body in 2005 and 2007. The discussions addressed the methods of work of the CEACR, its role in relation to matters of interpretation and the streamlining of the information and reports submitted by governments under articles 19 and 22. The decisions taken by the Governing Body related in particular to the reporting cycle and the grouping of Conventions for reporting purposes.

64. The issues covered by the discussions during this period were similar to those that had arisen during the ILO's early years and the period prior to the Second World War, as illustrated by the discussions leading up to the adoption of the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Declaration on Social Justice for a Fair Globalization (2008).[89]

The terms of reference of the CEACR

65. In 1998 and 1999, the Office proposed to the Governing Body that the substance of representations submitted under article 24 of the Constitution, which raised strictly legal questions, should be referred to the CEACR, rather than to a tripartite committee. Based on the examination by the CEACR, the Governing Body would decide on the follow-up to the representation.[90] Although this proposal was not accepted, when the Governing Body revised the procedure for the examination of representations in 2004, it attributed a role to the CEACR in cases where a representation declared receivable relates to facts and allegations similar to those of an earlier representation.[91]

66. While the terms of reference of the CEACR were not adjusted during this period, its role in relation to matters of interpretation gave rise to discussion in the CAS and the Governing Body. Among other matters, the discussions covered the legal effects of the CEACR's views on the meaning of provisions of Conventions and its methods of developing such views.

Composition of the CEACR

67. During this period, the membership of the CEACR remained unchanged and stands at 20, the number approved by the Governing Body in 1979. In 2002, the CEACR decided to establish a 15 year limit for all members, representing a maximum of four renewals after the first three-year appointment. This decision has had an impact, as stability of membership and continuity had been features of the CEACR's work. For the first time, the

Governing Body began to appoint new members regularly. Some members of the CAS have emphasized the need to ensure that the CEACR operates at full capacity.[92]

68. In 1996, the dates of the sessions of the CEACR were moved from February-March to November-December.[93] The Governing Body also raised the honorarium of the experts to CHF 4,000.

Methods of work of the CEACR

69. In 2001, the CEACR established a subcommittee on its working methods which met on three occasions from 2002 to 2004.[94] During its sessions in 2005 and 2006, the CEACR discussed issues relating to its working methods in plenary.[95] From 2007 to 2011, the subcommittee again met each year.[96] In addition to its terms of reference and the interpretation of Conventions, the CEACR has also examined: measures to assist governments to follow up on CEACR comments; the procedure for treating comments from employers' and workers' organizations in non-reporting years; the criteria for cases of progress; the criteria for the inclusion of special notes in its report (traditionally known as footnotes); the identification of cases of good practice; general observations; changes to the presentation, content and structure of its report; and measures to enable the CEACR to manage its increasing workload better.

70. The CEACR's review of its methods was prompted by the discussions in the Governing Body of ILO standards-related activities, as well as the desire to effectively address its growing workload. Particularly since 2005, most of the discussions of its subcommittee have reflected issues raised by members of the CAS.[97]

71. During this period, there was an even greater increase in the number of comments received from employers' and workers organizations, which rose from 183 in 1990 to 1,004 in 2012.

Relationship between the CEACR, the CAS and the Governing Body

72. During this period, there has been a heightened level of interaction between the CEACR and the CAS in discharging their respective mandates. In addition to the CEACR reviewing its methods of work, this led to greater coordination between the two Committees, at the initiative of the CAS, and with the assistance of the Office, to strengthen the follow-up to cases of serious failure by member States to fulfill their reporting and other standards-related obligations. Both committees have also worked jointly, with the Office, to promote the provision of technical assistance to member States for the implementation of the Conventions.

73. However, the period has also been marked by divergences concerning the role of the CEACR in relation to matters of interpretation and the division between the functions of the respective Committees. In 1994, on the occasion of the ILO's 75th anniversary, the CEACR recalled developments in the practice of the two Committees, and concluded that the division of functions was "one of the keys to the success of the ILO's supervisory system in that the complementary nature of the independent examination carried out by the Committee of Experts and the tripartite examination of the Conference Committee on Standards makes it possible to maintain a desirable balance in the treatment of cases."[98] In response, the Employer members, referring to the 1926 resolution, emphasized that the function of the CEACR was to inform the CAS of the facts, and that the CAS was under no obligation to follow the comments of the CEACR. The Worker members recalled that the two Committees had always worked in a spirit of openness and constructive dialogue and were therefore complementary. Some Government members expressed agreement

concerning the complementary roles of the two supervisory bodies and emphasized the need for dialogue and cooperation.[99]

74. In the meantime, the Governing Body began to address the work of the CEACR more frequently, particularly due to: the more rapid renewal of CEACR membership; the streamlining of the submission of information and reports on ratified Conventions; and the new arrangements for the examination of reports on unratified Conventions and Recommendations in light of the Social Justice Declaration. Some members of the CAS have also called for greater integration between the work of the CEACR, the CAS and the Governing Body.[100]

Matters arising out of the discussions in the CAS at the 101st Session (June 2012) of the ILC

75. In June 2012, the CAS was for the first time unable to adopt a list of individual cases for discussion because of the difference of views expressed on its functioning in relation to the reports of the CEACR, which are submitted for its consideration.[101] Several matters arose out of the report of the CAS, including: (a) the submission of a list of individual cases on the application of ratified Conventions for adoption by the CAS at the 102nd Session (2013) of the Conference; (b) the comments of the CEACR on the right to strike under Convention No. 87; and (c) the mandate of the CEACR. With respect to the latter issues, the views expressed can be summarized as follows.

76. The Employer members stated that tripartite ownership of the supervision of ILO standards had been lost sight of. ILO standards were politically negotiated texts and, in case of problems of application or ratification, the body that had created them should be able to review those matters and take a decision. It was not the role of the CEACR to determine the development of the application of standards and, while acknowledging that the CEACR might need to interpret and judge in order to undertake the preparatory work for the CAS, the critical issue was that its observations were being viewed by the outside world as a form of soft law labour standards jurisprudence. The Governing Body should consider how to find an urgent way forward to improve the transparency and governance of the work of the CEACR. The CEACR should do its work within an agreed tripartite framework. In the past, the Employer members had repeatedly proposed changes to the format of the report of the CEACR by giving employers, workers and governments the possibility to set out their views on standards and issues related to supervision, including the application and interpretation of Conventions.[102]

77. With respect to the General Survey on the fundamental Conventions submitted to the Conference in 2012, the Employer members stated that they could support the great majority of the General Survey. The CEACR was an independent body entrusted with examining the application of ILO Conventions and Recommendations by member States. However, overall responsibility for the supervision of ILO standards lay with the Conference, in which the governments, employers and workers from all member States were represented. The CEACR had a mandate to undertake the preparatory work in that context, but not to replace the tripartite supervision carried out by the CAS. In particular, the General Survey was a guide to the CAS to assist it in its work of supervising the application of standards ratified by member States. The General Survey, like the report of the CEACR, was not an agreed or authoritative text of the ILO tripartite constituents.[103]

78. The Employer members added that the eight fundamental Conventions were important not only within the ILO, but also because other international institutions regularly used them in their activities. They were embedded in the United Nations Global Compact, the OECD Guidelines for Multinational Enterprises and the Human Rights Council's "Protect, Respect and Remedy" framework. The ILO supervisory machinery related to member

States only, not to businesses, so it was vital, when other international institutions used the fundamental Conventions, that their use was correct. A correct understanding of the fundamental Conventions was imperative for businesses because they were used in international framework agreements, transnational company agreements and in European framework agreements with global trade unions, where they were often not defined. In particular, the Employers' group had repeatedly expressed their opposition to any attempt by the CEACR to interpret the ways in which the right to strike, where it was recognized in national law, could be exercised. This issue was complicated by the fact that Convention No. 87 itself was silent on the right to strike and, in the view of the Employer members, was therefore not an issue upon which the CEACR should express any opinion. The mandate of the CEACR was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87. The General Survey was simply meant to be used by the CAS to inform its work, leaving it for the tripartite constituents to determine, where consensus existed, the position of the ILO with regard to the supervision of Conventions. Further, under article 37 of the ILO Constitution, only the ICJ could give a definitive interpretation of international labour Conventions. It should also be noted that the principle of freedom of association contained in Convention No. 87 had a separate supervisory procedure, namely the CFA. In the view of the Employer members, Convention No. 87 cases that concerned a nationally recognized right to strike should only be supervised by the CFA in order to ensure certainty and coherence.[104]

79. The Employer members proposed, in particular, that a clarification be inserted in the documentation prepared by the Office and the CEACR for the Conference or the Governing Body, to the effect that the General Survey was part of the regular supervisory process and the result of analysis by the CEACR, and that it was not an agreed or determinative text of the ILO tripartite constituents. They also proposed an urgent review of the working methods and mandate of the supervisory system. It remained the position of the Employer members that the mandate of the CEACR was that which had been historically agreed upon on a tripartite basis.[105]

80. The Worker members reaffirmed that the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87. In its General Survey, the CEACR had once again advanced a well thought-out argument on why the right to strike was quite properly part of fundamental labour rights. It was important to recall that the CEACR was a technical body which followed the principles of independence, objectivity and impartiality. It would be wrong to think that it should modify its case law on the basis of a divergence of opinions among constituents. While the mandate of the CEACR did not include giving definitive interpretations of Conventions, for the purposes of legal security it nevertheless needed to examine the content and meaning of the provisions of Conventions and, where appropriate, to express its views in that regard. The Worker members referred to the views expressed by the CEACR in its report in 1990 regarding its role in matters of interpretation.[106]

81. The Worker members emphasized that they did not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the CEACR. It was not the place of the CAS, and certainly not the Employer and Worker members alone, to discuss such a disclaimer, as a discussion of that type fell within the competence of all ILO constituents. The Worker members might eventually agree to a joint statement on the divergence of views on the role and mandate of the CEACR. They could thus envisage discussing this divergence of views where it should be discussed, namely in the Governing Body. The ILO Constitution established the competence of the ICJ for the interpretation of Conventions.[107]

82. The Worker members stated that the CEACR, which had been the cornerstone of the supervisory system since 1926, retained the confidence of the Worker members and its opinions, although not legally binding, still had and would always enjoy high moral authority. As long as these opinions were not contradicted by the ICJ, they remained valid and commonly agreed upon. This essential prerequisite had to be accepted, in particular to ensure the legal certainty necessary for the proper functioning of the ILO. The criticisms addressed to the CEACR concerning an alleged abuse of authority regarding the interpretation of Convention No. 87 in relation to the right to strike were excessive and indirectly constituted a denial of the jurisprudence of the CFA, which was itself a tripartite body. The right to strike was not only a national matter to be dealt with and assessed according to economic or time-bound considerations. In addition to Conventions Nos 87 and 98, the right to strike was also set out in the International Covenant on Economic, Social and Cultural Rights, as well as several regional texts, including the Charter of Fundamental Rights of the European Union, the European Social Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").[108]

83. Several Government members recalled that the right to strike was well established and widely accepted as a fundamental right. One Government member expressed appreciation of the CEACR for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike. Another Government member added that her country fully accepted the position of the CEACR that the right to strike was a fundamental right protected under Convention No. 87.[109] It was IMEC's view that the role of the CAS was to consider the report of the CEACR on individual cases, and not to question the status of its report. The issues raised by the Employer members needed to be dealt with in an appropriate forum, but IMEC did not consider that the CAS was the appropriate place.[110] IMEC had a long history of supporting the independence, impartiality and objectivity of the CEACR, as well as its autonomy. It understood that there would be occasions when members or groups within the CAS would have views that differed from those of the CEACR, and all members had the fundamental right to express those views.[111] Another Government member expressed full commitment to the ILO supervisory system and emphasized the importance that it attached to the fair and objective, apolitical and impartial analysis undertaken by the CEACR in the context of its well-defined mandate.[112]

Section B. Interpretation of ILO Conventions: Role of the CEACR and the constitutional process of referral to the International Court of Justice

84. This section supplements the information presented on the question of the interpretation of Conventions in the context of the informal tripartite consultations held in 2010, further to the decisions taken by the Governing Body in November 2008 and November 2009.[113] Following a brief historical review of the constitutional mechanisms, a summary is provided of practice on the question of the interpretation of ILO Conventions and the Constitution, focusing on the role of the CEACR in the interpretation of Conventions. Information is also provided on the process for referring questions of interpretation to the ICJ under article 37, paragraph 1, of the Constitution.

1. Review of the constitutional mechanism for the interpretation of Conventions and the Constitution

85. In 1919, the Treaty of Versailles provided, in Part XIII, Article 423, that: "Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice." It may be noted that an additional provision contained in the original proposed wording, to the effect that the decision of the International Court on such questions or disputes shall be final, was not retained "so as to remove any ambiguity on the powers" of the Court.[114]

86. During the history of the ILO, five requests for advisory opinions have been submitted to the Permanent Court of International Justice (PCIJ), the precursor to the ICJ, all through the League of Nations. Only one involved a request for the interpretation of a Convention. The other four concerned the interpretation of certain provisions of the ILO Constitution.

87. In 1932, Advisory Opinion No. 15 (15 November 1932) of the PCIJ on the interpretation of the Night Work (Women) Convention, 1919 (No. 4),[115] acknowledged the interpretation given by certain governments to Convention No. 4, which had given rise to differences of application between countries and had been referred by the CEACR to the Governing Body. Consequently, the Governing Body decided to include an item to revise the Convention on the agenda of the next session of the Conference, which duly adopted a revised Convention.

88. Before the Second World War, the Governing Body held a number of discussions on access to the PCIJ. At the time, the ILO considered that it was deprived of any direct access, either through its jurisdiction in contested cases – open only to Members – or as an advisory body, since only the Council and Assembly of the League of Nations could lodge requests for an advisory opinion. The ILO made several unsuccessful attempts for direct access by the League of Nations under its advisory jurisdiction.

89. This prompted the inclusion in the ILO Constitution in 1946, upon the proposal of the Conference Delegation on Constitutional Questions, of a second more expeditious procedure to deal with the interpretation of Conventions without having recourse to the ICJ through the appointment of an ILO tribunal.[116]

90. The current article 37 therefore combines the results of two constitutional drafting phases and reads as follows:

> 1. Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.
>
> 2. Notwithstanding the provisions of paragraph 1 of this article, the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgment or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organization and any observations which they may make thereon shall be brought before the Conference.

91. In 1946, when the ILO became the first specialized agency of the United Nations, Article IX, paragraphs 2 and 3, of the "relationship agreement" authorized the ILO to request advisory opinions from the ICJ. In light of this authorization, the Governing Body decided that it was not necessary for the time being to consider rules for a tribunal under article 37, paragraph 2.[117] Subsequently, in 1949, the Conference authorized the Governing Body to request advisory opinions of the ICJ.[118]

92. Between 1993 and 2002, the question of the interpretation of Conventions, including possible recourse to paragraph 2 of article 37 of the Constitution, was discussed on a number of occasions, without giving rise to any specific action.

93. In 2008 and 2009, the Governing Body asked the Office to study the question of the interpretation of Conventions, including the possible implementation of article 37, paragraph 2, and to start consultations in the context of the ILO Standards Strategy to enhance the impact of the standards system and its related plan of action. Two sets of informal tripartite consultations were held (in February-March and November 2010). These consultations have not been resumed since.

94. The question of the implementation of Article 37, paragraph 1, was discussed by the Governing Body and the Conference in 1999 in relation to the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). In March 2006, the Governing Body decided to place the item on the agenda of the 295th Session (2006) of the Conference.[119] In so doing, the Governing Body instructed the Office to prepare an analysis of all relevant options that the Conference could consider, which included: (Option 1) a binding ruling by the ICJ under article 37, paragraph 1, of the Constitution;[120] (Option 2) a decision through the establishment by the ILO of a tribunal under article 37, paragraph 2, of the Constitution;[121] and (Option 3) an advisory opinion from the ICJ.[122] The Selection Committee, which had examined the matter, concluded that the ILO could seek an advisory opinion from the ICJ.[123] However, the Governing Body decided to defer the question of an advisory opinion by the ICJ on the understanding that the issue would continue to be studied and prepared by the Office, in consultation with the constituents and using the necessary legal expertise, so that it would be available whenever necessary.[124] The question of the procedure to be followed to invoke Article 37 before the ICJ was raised by the Worker members in their statement to the CAS in June 2012.[125] The same question was also raised by the Employers' group at the Governing Body in November 2012.[126]

2. Developments in practice in the ILO supervisory system relating to the interpretation of Conventions[127]

95. Issues relating to the meaning of specific provisions of Conventions have often arisen in practice in the supervisory system and, upon request, have been addressed by the Office. They also often arise when Members seek information or advice when taking steps to implement Conventions.[128]

1926-1939

96. Between 1926 and 1939, matters relating to the interpretation of Conventions arose regularly before the Governing Body regarding both substance and procedure. Matters of interpretation arising out of the application of ratified Conventions came before the Governing Body after the establishment of the CEACR and the CAS.

97. When the question of interpretation was raised in 1926 in relation to the functions of the CEACR, the Committee on Article 408 emphasized that the CEACR would not be competent to give interpretations of the provisions of Conventions, but recognized that examination by the CEACR "will certainly reveal" cases of divergences in the interpretation of Conventions. The CEACR was invited to call attention to those cases.

98. When the CEACR identified divergences in the interpretation of Conventions, it usually invited the Office to contact the government concerned. When the difficulties were of a certain importance, as they affected national legislation in a number of countries, it drew the attention of the Governing Body to them. The major difficulties were noted by the CAS which, in turn, drew them to the attention of the Conference and invited it to request the Governing Body to take appropriate steps.[129] The CAS and the Governing Body occasionally asked the CEACR to pay special attention to any differences of interpretation.[130]

99. In relation to matters of interpretation, as indicated in its 1930 and 1931 reports, the CAS noted the difficulties encountered in view of certain divergences.[131] The Governing Body requested its Standing Orders Committee to consider a procedure for the interpretation of Conventions. In this context, the Office proposed that, between the unofficial procedure of consulting the Office and the constitutional procedure of approaching the PCIJ, provision be made for an intermediate procedure which, while not possessing the supreme authority of the PCIJ, would nevertheless offer Members greater guarantees than were provided by the practice at the time. The Office considered that the CEACR was the most suitable body for the task. However, after examining the matter, the Standing Orders Committee came to the unanimous conclusion that the procedure for the interpretation of Conventions should not be changed.[132]

100. In 1933, the CAS acknowledged that the PCIJ was legally competent to interpret Conventions, but that in practice the situation was unsatisfactory and should again be brought to the Governing Body.[133] The Governing Body noted this concern, but considered that it "did not appear to require any decision" on its part.[134]

1944-1961

101. The extension of the terms of reference of the CEACR in 1946, combined with the wider examination of reports on Conventions and Recommendations under articles 19, 22 and 35, further broadened the role of the CEACR.

102. An important factor in this respect was the examination of information and reports on the application of unratified Conventions and of Recommendations, which as of 1956 was supplemented with the examination of reports received under articles 22 and 35.[135] Before 1956, perhaps due to a lack of information, the CEACR had confined itself to noting the position in law and practice with regard to the instruments selected by the Governing Body for review. In 1959, the CEACR began incorporating the relevant findings of the Committee on Freedom of Association (CFA) to support its own comments on the application of Conventions.[136] However, the general approach followed in the earlier years was maintained. The CEACR's individual comments highlighted divergencies in the interpretation of some provisions of Conventions when analysing the extent to which the Conventions were applied.[137] The reports of the CAS recorded the statements of government representatives referring to the "interpretations" provided by the CEACR, either indicating that they disagreed or that they were willing to modify their national legislation on that basis.[138]

Since 1962

103. As its role developed and became more visible, the CEACR began to develop its practice in relation to interpretation. In this respect, it reiterated its acknowledgment of the different methods of interpreting treaties under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969.[139] At the same time, as of the 1960s, the role of the CEACR in matters of interpretation, its interpretative practice and the question of the legal effects of its comments became the subject of numerous and repeated discussions in the CAS. While the terms of the current discussions, which began in the 1990s, are well-known,[140] those that took place between 1962 and 1989 are recalled below.

104. From 1962 to 1989, the socialist countries raised concerns relating to what they viewed as "mistaken conclusions as regards the interpretation of national legislation and the clarifications and explanations given by governments". They emphasized that the Constitution did not authorize "judgments and condemnations" or "the interpretation of the provisions of Conventions.[141] In reply, on the occasion of its 50th anniversary in 1977, the CEACR stated that its "terms of reference do not require it to give interpretations of Conventions, competence to do so being vested in the [ICJ] by article 37 of the Constitution." Nevertheless, it recalled that, to carry out its function of evaluating the implementation of Conventions, it had to "consider and express its views on the meaning of certain provisions of Conventions."[142] This statement did not give rise to comment in the CAS.

105. In its 1987 report, the CEACR returned to the subject of interpretation with a similar statement,[143] which led to a number of comments by CAS members. The socialist countries considered that the CEACR had gone beyond its terms of reference and had "converted itself into a kind of supra-national tribunal," and proposed once more the establishment of a set of rules for the CEACR. This proposal was rejected by the Employer members spokes person, the Worker members and by a number of member States, who recalled that the report of the CEACR, "in which it evaluates the effect given to Conventions from a strictly legal point of view, is a basis for the dialogue which takes place in the Conference Committee."[144]

106. In 1989, the Employer members voiced concern regarding the interpretation of Conventions, and in particular "the jurisprudence of the [CEACR which] was sometimes unstable, evolving". They indicated that, "if the report of the [CEACR] was the very basis of the Committee's work, this was not to say that all the opinions and evaluations of the [CEACR] had to be shared, and different views would be expressed if necessary in concrete cases." They recalled that "[o]nly one body – the ICJ – could make authoritative interpretations of international labour Conventions. Recourse to it had seldom been sought, probably because there had been considerable satisfaction with the way the system

functioned. Nonetheless, the role of the [ICJ] as the ultimate arbiter should always be borne in mind. A Convention had to be interpreted in line with the principles laid down in the Vienna Convention on Treaties (1969) […].” Attention was drawn to the CEACR’s 1989 report which “unfortunately contained a number of over-interpretations, especially regarding basic human rights Conventions and in particular Convention No. 87.” They reiterated that it was neither for the CEACR nor the Office to provide conclusive interpretations of Conventions.[145]

3. Legal process for the referral of a request for interpretation to the ICJ

107. As explained in the preceding paragraphs, an authoritative interpretation of an international labour Convention can at present only be provided by the ICJ when a question or dispute is submitted to it in accordance with article 37, paragraph 1, of the Constitution. The other mechanism for interpretation provided for under article 37, paragraph 2, has not been implemented.

108. The distinction between *“questions and disputes” (“questions et difficulties”)*, to the extent such a distinction can be understood, could have important consequences as to how proceedings are instituted and the nature of the participants and the outcome. As to “questions” relating to the interpretation of a Convention, the ICJ jurisdiction under article 37, paragraph 1, is understood to be advisory in nature, and is addressed to it by the Conference or the Governing Body.[146] As to “disputes” concerning the interpretation of a Convention under article 37, paragraph 1, it is likely that such a case before the ICJ would involve member States that recognize the contentious jurisdiction of the ICJ pursuant to the provisions of the United Nations Charter and the ICJ Statute. While the resulting judgment, if the ICJ accepted jurisdiction, would binding on the States concerned, the institutional consequences to be drawn from such a judgment raise a number of legal questions that are beyond the scope of the present paper.

109. *In considering whether to refer a matter to the ICJ, it would be for the Governing Body or the Conference to approve the question to be submitted to the Court.* Defining the question to be submitted to the Court involves careful consideration, not only of the legal issues, but also of any concrete facts and circumstances relevant to the question. The precise definition of any question would be undertaken with appropriate expert advice.

110. If the question relating to the interpretation of a Convention or the Constitution is submitted by the ILO, the *advisory jurisdiction of the ICJ* would apply. Once the request containing an exact statement of *the question is lodged* before the Court with any relevant documents, the ICJ Registrar gives notice of it to all States entitled to appear before the Court. A procedure for receiving either written statements or holding a public sitting for oral statements follows. States entitled to appear and international organizations considered as likely to furnish relevant information may submit statements and subsequently provide comments on other statements. Where the Court decides to issue an advisory opinion, the *period between the submission of a request and the delivery of an opinion* has run to approximately two years in recent cases. The procedure for filing written statements and comments to other written statements is set out in article 66 of the Statute of the ICJ and at http://www.icj-cif.org.

Section C. Main issues and possible ways forward

111. The specific questions raised concerning the supervisory system in the CAS in 2012 and during the Governing Body discussions in November 2012 seek to clarify certain aspects of the legal situation as a basis for future solutions to several more general institutional questions. The matters that constituents may wish to consider, in the light of the information provided in the present paper, include:

(i) How to improve coordination between the CAS and the CEACR, in particular in relation to the consideration by the CAS of the reports of the CEACR; and

(ii) How can the CEACR fulfill its mandate in terms of providing the CAS with an assessment of the application of a Convention in a member State based on the submission of information from international and national tripartite sources and its independent legal comparative review of this information for tripartite examination by the Conference.

112. *With respect to coordination between the CAS and the CEACR*, as noted in *Section A*, the Conference conceived the CAS and the CEACR together, providing them with complementary roles. Neither body can replace the functions of the other, nor is one body hierarchically superior to the other. The coordination of functions operates generally as follows:

- The CAS, like the Conference, is a tripartite body of political composition and, as such, is intended primarily for dialogue and discussion on ways of dealing with problems and methods of the application of standards noted in the CEACR's observations on the reports of member States. At each session, the Conference appoints this standing Committee under article 7 of the its Standing Orders "*to consider ... measures taken by Members to give effect to [ratified] Conventions ... information and reports ... communicated by Members in accordance with article 19 of the Constitution ... [and] measures taken by Members in accordance with article 35 of the Constitution*". It "*shall submit a report to the Conference*." The CAS elects its own Officers under article 57 of the Standing Orders for the duration of the Conference. In considering the report of the CAS, the Conference gives full effect to the Organization's mandate for the supervision of standards through reports submitted by Members pursuant to articles 19, 22 and 35 of the Constitution.

- In contrast with these political organs, the CEACR is an independent body called upon to make an objective and impartial assessment of compliance with obligations under the applicable ILO standards, from a technical standpoint. The CEACR assumes full control of its findings and its report is not subject to approval; the Governing Body has consistently limited its role in this respect to taking note of the report of the CEACR without discussing it, and has left its discussion to the CAS. This reflects the constitutional authority of the two organs: that of the Conference to review reports under articles 19, 22 and 35, and that of the Governing Body to determine the Conference agenda.

- The main elements of the CEACR's work currently include the following: (i) the examination of reports sent by governments concerning the obligation under article 19 of the Constitution to submit ILO instruments to the competent authorities; (ii) the examination of reports sent by governments concerning ratified Conventions under article 22 of the ILO Constitution and the comparative analysis of the situation in national law and practice; (iii) the examination of reports sent by governments concerning unratified Conventions under article 19 of the Constitution; within this

framework, the analysis of difficulties in national law or practice which may prevent or delay the ratification of unratified Conventions; (iv) the examination of cases of failure to comply with reporting obligations; (v) the examination of employers' and workers' comments under article 23, paragraph 2, of the Constitution, as well as of failure by governments to respond to such comments; (vi) the follow-up to recommendations in respect of the examination of representations under article 24 of the Constitution and of complaints under article 26 of the Constitution, as requested by the Governing Body; (vii) the follow-up of legislative issues raised by the CFA; (viii) the follow-up given to the conclusions adopted by the CAS in individual cases; (ix) drawing the attention of the CAS to cases which it may wish to discuss ("double-footnoted" cases), due to the nature of the problems encountered in the application of ratified Conventions concerning a given country; and (x) drawing the attention of the CAS to cases of progress where governments have introduced changes in their law and practice, in order to eliminate discrepancies previously noted by the CEACR or the CAS.

- The Governing Body contributes to the organization of the "regular supervisory system" based on reporting by Members as follows:

  — It establishes the report forms provided for in articles 19 and 22 of the Constitution through which States submit information on the application of standards;

  — It decides on the composition of the CEACR; it nominates CEACR members and decides on the renewal of their mandates;

  — It follows up the decisions of the Conference to coordinate the responsibilities of the CEACR with those of the CAS. At the initiative of the Conference which, through a 1926 resolution created the CEACR, the Governing Body:

    – appointed the CEACR in response to the 1926 resolution;

    – approved the continuation of the CEACR in 1928;

    – has endorsed improvements in the way the CEACR's views are communicated to the CAS; for example, it approved the suggestion of the CEACR that it should introduce footnotes to guide the CAS in its discussions; and

    – extended the CEACR's mandate to include reports under articles 19 and 35 of the Constitution, thus aligning it with the extension of the mandate of the CAS by the Conference in 1946.

113. The Governing Body exercises constitutional functions in the "case-based" aspects of the supervision of adherence to Conventions which complement, yet operate distinctly in purpose and scope from the regular reporting system. Its functions in this regard consist generally of the following:

- The Governing Body receives representations concerning non-observance of ratified Conventions under article 24 of the Constitution by national and international employers' and workers' associations and sets up tripartite committees to examine them. The results in some instances are relevant to the work of the CEACR in relation to reporting on the application of the Convention concerned.

- The Governing Body decides whether to appoint a Commission of Inquiry to investigate complaints concerning the non-observance of ratified Conventions filed under article 26 of the Constitution by other member States that have ratified the Convention, or by a Conference delegate, or by the Governing Body itself.

- In cases of failure to give effect to the recommendations of a Commission of Inquiry within the time specified, it may recommend action to the Conference to secure compliance with those recommendations pursuant to article 33 of the Constitution.

- The Governing Body may also transmit the results of article 24 and 26 procedures to the CEACR for follow-up in the framework of reporting on the country's application of the Convention concerned.

- Through its Committee on Freedom of Association (CFA), the Governing Body examines complaints brought against any member State concerning adherence to the constitutional principle of freedom of association, regardless of whether the country has ratified the relevant Conventions. It discusses and adopts the CFA's report as a whole, as well as its recommendations on a case-by-case basis. Where States have ratified the relevant Conventions, the Governing Body may refer the legislative aspects of such cases to the CEACR.

114. The other matter referred to under (ii) of paragraph 111 above, to which constituents may wish to give particular consideration, relates to *how the CEACR can fulfill its mandate more effectively in terms of providing the CAS with an assessment of the application of a Convention in a member State based on the submission of information from international and national tripartite sources and its independent legal comparative review of this information for tripartite examination by the Conference.* This matter, which relates to the basic mission of monitoring the effect given to Conventions and Recommendations, also raises the question of how this mission can be performed effectively when authoritative legal interpretations of ILO Conventions are needed. It should be recalled that, as indicated in *Section B,* the political organs of the tripartite Conference and its Committee, the CAS, do not have the constitutional authority to resolve questions or disputes relating to the interpretation of Conventions or the Constitution. In such cases, a final answer of a strictly judicial nature remains under article 37, paragraph 1, of the Constitution, under which questions or disputes relating to the interpretation of any Convention or of the Constitution may be referred to the ICJ.

* * *

115. In light of the above, it is clear that discussion of the interpretation of Conventions in the context of the performance of its mandate by the CEACR will need to take into account the fact that, in practice, recourse to the PCIJ, now ICJ, for the interpretation of a Convention has only been made once in the history of the ILO. Account will also need to be taken of the discussions concerning the possibility of establishing, pursuant to article 37, paragraph 2, of the Constitution, a tribunal for the expeditious determination of disputes relating to the interpretation of international labour Conventions. This second mechanism has never been used by the Organization although, as indicated in *Section B,* its possible use has been the subject of discussion.

116. In terms of future steps and general approaches to the role and mandate of the CEACR and the CAS, one possibility would be to put in place a mechanism within the spirit of article 37, paragraph 2. For example the Appellate Body of the international trade regime or other specialized bodies, such as the International Tribunal on the Law of the Sea (ITLOS), which operate in parallel with the ICJ, deal with interpretative issues. Such a mechanism would be an independent body appointed by the ILO. Subject to rules

approved by the Conference, it would have the authority and expertise to interpret Conventions and decide on questions submitted to it in relation to ILO legal instruments.

117. Another approach would be to emphasize the role of the ICJ as the authoritative legal body for interpreting ILO Conventions and the Constitution. The interpretative views of the CEACR would be understood as advisory only, but useful as expert legal information for the CAS and for individual Members giving effect within their jurisdictions to Conventions and Recommendations.

118. It would also be possible to build explicitly on the tripartite nature and strength of the ILO and its history, and particularly the early foundation of "mutual supervision". The existing combination of the technical and legal expertise of the CEACR, tripartite discussion in the CAS and the role played by employers' and workers' organizations in the supervision of standards would be maintained, as would the exclusive competence of the ICJ with respect to the interpretation of ILO Conventions. These existing practices and approaches might however be strengthened by procedures under which constituents (in all member States, or only in those that have ratified the Convention concerned) would be invited to express their views through the CAS on questions of interpretation arising for the CEACR in the performance of its mandate, before any conclusions are reached by the Conference .

End notes

[1] The paper prepared for the informal tripartite consultations in September 2012 provided a synopsis of the background to the establishment and role of the CEACR in the ILO supervisory system: *The ILO supervisory system: A factual and historical information note*, paper prepared for the informal tripartite consultations on the follow-up to the discussions of the Committee on the Application of Standards (19 September 2012) (hereinafter, "2012 Information Note").

[2] Dec-GB.316/INS/5/4; GB.316/INS/5/4, para. 14; and GB.316/INS/PV/DRAFT, paras 98-115.

[3] ILC, *Provisional Record* No. 19 Part 1 (Rev). 101st Session, Geneva, 2012, para. 208. The decision specifically refers to paragraphs 21, 54, 81–89, 99–103 and 133–224 of the report as the basis for the CAS decisions.

[4] It should be noted that the present paper does not address the important issue of the use of the comments of the CEACR by other entities, such as national, regional and international courts. That complex issue deserves its own comprehensive study.

[5] GB/316/INS/5/4, para. 11.

[6] GB.316/INS/PV/DRAFT, para 98; ILC, *Provisional Record*, No. 19, Part 1 (Rev.), 101st Session, op. cit., para. 204.

[7] The title of the CEACR has varied over the years. Until 1935, it was called the "Committee of Experts appointed to examine the annual reports made under article 408". From 1936 to 1948, it was known as the "Committee of Experts on the Application of Conventions". Since 20 April 1948, its title has been the "Committee of Experts on the Application of Conventions and Recommendations.

[8] There are numerous references to the concept of "mutual supervision" in the reports of the Governing Body, Conference, CEACR and CAS. See for example: ILC , 14th Session, 1930, Report of the Director, Appendix to the second part, Second Part, p. 288; ILC, 19th Session, 1935, *Record of Proceedings*, Appendix V, p.750; Governing Body, 49th Session, June 1930, p. 479 (statement from the Director); Governing Body, 73rd Session (October 1935), Appendix X, p. 480.

[9] ILO, *Official Bulletin*, Vol. 1, Apr. 1919–Aug. 1920, p. 266. The reference to economic sanctions in the 1919 Constitution was deleted when the Constitution was amended in 1946.

[10] See 2012 Information Note, paras 19-21, and Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 (current article 22) of the Treaty of Versailles, ILC, Eighth Session, 1926, *Record of Proceedings*, Vol. I, Appendix VII, p. 429. From 1919 to 1939, seven representations were submitted for the non-observance of ratified Conventions, but the complaints procedure was never implemented. The representation procedure was used by workers' organizations to secure observance of the general principles set out in article 41 of ILO Constitution including, for the first time in 1920 concerning the principle of freedom of association. As indicated in the 2012 Information Note (para. 68), the procedure for the examination of allegations concerning infringements of trade union rights was established in 1950 having regard to the fact that the principle of freedom of association was enshrined in the ILO Constitution and the Declaration of Philadelphia.

[11] See note 10 supra. Under the 1926 resolution, the Conference requested the Governing Body to:

> appoint … a technical Committee of experts … for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex his summary of the annual reports presented to the Conference under Article 408.

[12] The CEACR "would have no judicial capacity nor would it be competent to give interpretations of the provisions of the Conventions nor to decide in favour of one interpretation rather than another. It could not therefore encroach upon the functions of the Commission of Enquiry and of the PCIJ in regard to complaints

regarding the non-observance of ratified Conventions or in regard to their interpretation. In the Committee's view, the functions of the Committee of Experts could be defined positively […]: (a) it will note the cases where the information supplied appears inadequate for a complete understanding of the position either generally, or in a particular country. To remedy any such deficiencies, it may suggest to the Conference that the Governing Body should take into consideration the revision of the questionnaire with a view to securing greater precision in the reports in general. If deficiencies concern the report of a particular country, it may suggest that the Office ask by correspondence for any further details […] (b) Its examination will certainly reveal cases in which different interpretations of the provisions of Conventions appear to be adopted in different countries. The Committee should call attention to such cases. (c) Finally, it would present a technical report to the Director, who would communicate this report to the Conference." ILC, Eighth Session, 1926, *Record of Proceedings*, Appendix V, Report of the Committee on Article 408, pp. 405-406.

[13] The CEACR examined this information as it was requested in the report form under Article 408. Although governments questioned the inclusion of a question in the report form relating to "colonies, protectorates and possessions", they did not object to the examination carried out by the CEACR. The 1946 Instrument for the amendment of the Constitution clarified the matter and, in 1947, the Governing Body explicitly included article 35 of the ILO Constitution concerning the application of ratified Conventions to non-metropolitan territories in the terms of reference of the CEACR.

[14] The Resolution was adopted by 66 votes for and 36 against.

[15] Governing Body, *Minutes*, 30th Session (January 1926), p. 56.

[16]ILC, *Record of Proceedings*, Eighth Session, 1926, Vol. I, pp. 254-255.

[17] ILC, *Record of Proceedings*, 11th Session, 1928, Vol. II, p. 458.

[18] Governing Body, 42nd Session, October 1928, *Minutes*, p. 546.

[19] ILC, *Record of Proceedings*, Eighth Session, 1926, p. 239. The Office indicated that the members of the CEACR should "possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation." Ibid., Appendix V, p. 401.

[20] Governing Body, 33th Session (October 1926), *Minutes*, pp. 384-386; and 34th Session (January 1927), pp. 59 and 67-68.

[21] Governing Body, 68th Session (September 1934), *Minutes*, p. 292.

[22] The absence of honorarium, combined with the lack of substitute experts, affected attendance during the sessions of the CEACR, which often indicated in its reports that experts were prevented from attending due to their profession commitments.

[23] It was recalled that the CEACR was not provided for under the Treaty of Versailles and that by having direct contacts with governments might assume similar functions to the bodies referred to in Articles 409 and 411 of the Peace Treaty and the PCIJ. Governing Body, 47th Session (February 1930), *Minutes*, pp. 68-75 and 77-78.

[24] After the Conference sessions, the Governing Body generally discussed substantial matters arising out of the supervision of ratified Conventions, based on the suggestions of the CEACR, supplemented by the views of the CAS.

[25] ILC, *Record of Proceedings*, 16th Session, 1932, Appendix V, p. 671.

[26] In its 1939 report, the CAS indicated that, in its opinion, it was the double examination of reports by the CEACR and the CAS "that places States Members of the Organisation on a footing of equality in respect of the supervision of the application of the ratified Conventions. It added that "from the very nature of their constitution", the examination of the reports by the CEACR and the CAS differed in certain respects: the CEACR "consists of independent experts, i.e. persons who are independent of Governments, employers and workers, and its examination is generally limited to a scrutiny of the documentary information submitted to it by the

Governments concerned." The CAS, on the other hand, "is a tripartite organ […] whose membership consists of representatives of Governments, employers and workers, who are therefore in a better position to go beyond the mere question of conformity between national legislation and the ratified Conventions, and, as far as practicable, to verify the day-to-day practical application of the Conventions in question […] In this system of mutual review and supervision, the preparatory work carried by the Experts plays an essential part. ILC, *Record of Proceedings*, 25th Session, 1939, Appendix V, p. 414.

[27] The CAS began to face important difficulties due to the lack of time and continuity of membership. Accordingly, in 1935, the CAS suggested that the Governing Body consider the inclusion of the examination of the annual reports on the application of ratified Conventions among the items placed on the agenda of each Session of the Conference so that the CAS could start its work at the beginning of the Conference and delegates could appoint advisers qualified to participate in its work. This gave rise to a far-reaching discussion in the Governing Body on matters of principle, such as the constitutionality of the machinery set up in 1926, and particularly of the CAS. In 1937, the Conference approved the inclusion in its Standing Orders of a provision calling for the election "as soon as possible" of "a Committee… to consider the measures taken by Members to give effect to the provisions of the Conventions to which they are parties". ILC, *Record of Proceedings*, 23rd Session, 1937, p. 295.

[28] Under the 1926 resolution, the CEACR reported to the Governing Body and the Director-General, after consultation with the Governing Body, annexed the report of the CEACR to his summary of the annual reports presented to the Conference under Article 408.

[29] The CEACR met in 1940 (from 29 April to 2 May), but its report was not published. It did not meet between 1941 and 1944, and resumed its work in 1945. The CAS did not meet between 1939 and 1943, and resumed its work in 1944.

[30] ILO: *The ILO and Reconstruction*, Report of the Acting Director of the ILO, New York, October 1941, pp. 82-83. The report emphasized that "the system of international supervision of the fulfilment of the obligations assumed by the ratification of conventions on the basis of an expert examination of annual reports by Governments followed by discussion in a tripartite conference where the interested parties are represented has been one of the most successful innovations introduced by the International Labour Organisation. It is now a tried and tested part of the machinery of international cooperation in respect of labour questions, which will have a large part to play in the future development of the work of the Organisation."

[31] ILC, *Future, policy, programme and status of the ILO*, Report I, 26th Session, Montreal, 1944, pp. 95-96 and 99-100.

[32] ILC, *Record of Proceedings*, 26th Session, Montreal, 1944, p. 186, and Appendix IV, para. 5. p. 310.

[33] Haas, E.B.: *Beyond the Nation-State: Functionalism and international organization*, Standford University Press, 1964, pp. 164-165.

[34] ILC, *Record of Proceedings*, 27th Session, 1945, Appendix IX, pp. 441-442.

[35] Two suggestions made by the CAS were not retained by the Delegation on Constitutional Questions: the clarification of the nature of the "authority or authorities" to which Conventions and Recommendations have to be submitted (the national parliament or other competent legislative authority in each country); and the proposal that unratified Conventions and Recommendations should be resubmitted to the legislative authorities as frequently as possible if no relevant legislation had been enacted or other action taken. The Delegation also adjusted the reference to the communication of reports to employers' and workers' organizations so that they were communicated for information only, and not for the organizations' observations, as proposed by the CAS. ILC, Report II(1), *Reports of the Conference Delegation on Constitutional Questions*, 29th Session, 1946, paras 49-50, 55-56 and 58; 2012 Information Note, para. 27.

[36] Ibid., paras 62-64 and 95.

[37] This Section supplements the information provided in the 2012 Information Note, paras 26-31.

[38] The Committee on Standing Orders of the Governing Body referred to the "amplification" of the terms of reference of the CAS and drew attention to the need for "the corresponding extension of the terms of reference" of the CEACR; Governing Body, 102nd Session (June-July 1947), p. 234. The Governing Body approved the "extension of the terms of reference" of the CEACR without much discussion; Governing Body, 103rd Session (December 1947), *Minutes*, pp. 56-59 and 167-173.

[39] ILC, Report III(Part IV), 25th Session, 1952, paras 7 and 11.

[40] Governing Body, 105th Session (June 1948), *Minutes*, p. 104.

[41] When asked for its views by the Governing Body, the CEACR welcomed the suggestion, considering that its examinations in this respect could "promote uniformity in the interpretation" of identical obligations. The Governing Body approved the procedure in 1956: Governing Body, 132nd Session (June 1956), *Minutes*, p. 32, and Appendix XI, pp. 79-80.

[42] ILC, *Record of Proceedings*, 34th Session, 1951, Appendix VI, para. 23.

[43] For information on the changes made in the methods of work of both the CEACR and the CAS to manage their workload, see 2012 Information Note, paras 37-40 and 42.

[44] The Governing Body approved the suggestion by the Office that the attention of governments might be drawn to this possibility, as part of the improvements to the procedure for the examination of reports and information supplied by governments. Governing Body, 103rd Session (December1947), *Minutes*, pp. 170-171.

[45] Governing Body, 114th Session (March 1951), *Minutes*, pp. 18 and 99.

[46] The CAS first made reference to technical assistance in 1953: ILC, *Record of Proceedings*, 36th Session, 1953, Appendix VI, p. 365. The comments of the CEACR included such references in the late 1950s.

[47] This dialogue continued to encompass improvements in the report forms and the important issue of workload: see 2012 Information Note, paras 31 and 40.

[48] For example, in 1952, the CAS emphasized "the high value of the work which the Experts so willingly undertake and so effectively perform" and the fact "that the Committee is able to discharge the responsibilities laid upon it is in no small measure due to the thorough and accurate preparatory work which is done by the Committee of Experts in circumstances of growing difficulty. The Committee knows that the Committee of Experts already enjoys, as it has done for many years, a special position of prestige and esteem in the International Labour Organisation". ILC, *Record of Proceedings*, 35th Session, Geneva, 1952, Appendix VI, para. 26.

[49] ILC, 36th Session, 1953, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report, para. 15. (Hereinafter, as the report of the CEACR began to be published as a separate Conference report, the short reference "CEACR Report", followed by the year of the Conference session, will be used); CEACR Report, 1959, General Report, para. 25. In one case, when an observation from a workers' organization had been sent directly to the Office, the CEACR asked for the observation to be sent to the government concerned for comments and for that practice to be followed in future cases.

[50] Governing Body, 101st Session (March 1947), *Minutes*, p. 22; and 103rd Session (December 1947), *Minutes*, p. 171.

[51] Governing Body, 124th Session (March 1954), *Minutes*, Appendix XII, para. 7.

[52] Governing Body, 140th Session (November 1958), Minutes, pp. 40-41, and Appendix XII, para. 9.

[53] These elements build on the information provided in the 2012 Information Note, paras 50-55.

[54] In particular, they suggested grouping Conventions and Recommendations by subject matter and that the subjects chosen should be of current interest so that the reports could be used by the Office, Governing Body and Conference in considering the programme of work of the Organization. They repeatedly recommended selecting

fewer instruments. The number of instruments selected was 12 for 1950 and eight for 1951. The CEACR urged the Governing Body to limit the number of instruments for which reports were requested.

[55] Governing Body, 129th Session (May-June 1955), *Minutes*, pp. 89-91; and 130th Session (November 1955), *Minutes*, pp. 44 and 134-136.

[56] These criticisms coincided with the comments of the CEACR to certain countries on their application of the Conventions on freedom of association, the elimination of discrimination and forced labour. See, for example, the observation to the USSR in 1962: CEACR Report, 1962, pp. 104-111.

[57] The review began in 1974 with a Governing Body paper. The Governing Body set up a Working Party on International Labour Standards in 1977. The Director-General's report to the 70th session (1984) of the Conference addressed international labour standards. Following the Conference discussion, the Governing Body established an additional Working Party on international labour standards in November 1984 and discussed its report in March 1987; See ILO, *Official Bulletin, Special Issue,* Vol. LXII, Series A, 1979; ILO, *Official Bulletin, Special Issue, Vol. LXX*, Series A, 1987.

[58] ILC, 70th Session, 1984, Report of the Director-General, Part I, International Labour Standards, p. 35.

[59] ILC, 56th Session (1971), Resolution concerning the strengthening of tripartism in the over-all activities of the International Labour Organisation, para. 2(c) and (d).

[60] ILC, 63rd Session (1977), Resolution concerning the strengthening of tripartism in ILO supervisory procedures of international labour standards and technical co-operation programmes; preamble. Para. 2(b) invited the Governing Body to strengthen the participation of employers' and workers' organizations in supervision.

[61] ECOSOC resolution 1988 (LX) of 11 May 1976; Governing Body, 201st Session (November 1976), *Minutes*, p. VIII/21. This decision was taken pursuant to Article 18 of the Covenant, under which the Economic and Social Council may make arrangements with the specialized agencies in respect of the progress made in achieving observance of the provisions of the Covenant falling within their scope of activities.

[62] The Governing Body also adopted the recommendation of the CEACR to entrust the Office with communicating to the United Nations information on the results of the various ILO supervisory procedures. GB.236/5/3; and GB.236/PV(Rev.), p. I/12.

[63] The Government members of Bulgaria, Belarus, Czechoslovakia, Romania, Ukraine and the USSR, the Worker members of Belarus and Ukraine and the Government member of Iraq: ILC, 47th Session, 1963, *Record of Proceedings*, Appendix V, pp. 513-514, para. 9.

[64] ILC, *Record of Proceedings*, 67th Session, 1981, p. 40/22: (statement made by a Government adviser, USSR).

[65] ILC, *Provisional Record* No. 24 (Part 1), 73rd Session, 1987, paras 20 and 26.

[66] ILC, *Record of Proceedings*, 47th Session, 1963, p. 514, para. 10.

[67] ILC, *Record of Proceedings*, 51st Session, 1967, Appendix VI, p. 647, para. 10.

[68] For example, "The Government member of France recalled that an unwritten principle of the ILO is that all its supervisory bodies establish their own working methods with complete autonomy." ILC, *Provisional Report* No. 24 (Part 1), 73rd Session, 1987, p. 24/5, para. 21.

[69] ILC, Record of Proceedings, 69th Session, 1983, pp. 7/18-19.

[70] GB.230/19/4, Appendix II, p. 14.

[71] 2012 Information Note, note No. 22.

[72] In 1967, the CEACR noted that that it was "now composed" of five members drawn from Western Europe, four from Asia and the Middle East, three from Eastern Europe, three from Latin America, two from Africa and one each from North America and the Caribbean; CEACR Report, 1967, General Report, para. 24.

[73] Governing Body, 159th Session (June-July 1964), *Minutes*, statement by the Employers' group, p. 49.

[74]ILC, *Provisional Record* No. 31, 63th Session, 1983, p. 31/1, para. 14.

[75] Governing Body, 158th Session (February-March 1964), *Minutes*, p. 44.

[76] ILC, 47th Session, 1963, *Record of Proceedings*, Appendix V, para. 5.

[77] CEACR Report, 1964, General Report, para. 16.

[78]ILC, 48th Session, 1964, *Record of Proceedings*, Appendix VI, para. 6.

[79] ILC, 51st Session, 1967, *Record of Proceedings*, Appendix VI, para. 6.

[80] 2012 Information Note, paras 70-74.

[81] CEACR Report, 1972, paras 28-98. In so doing, the CEACR was coming back to the proposal made by the CAS in 1945, but modified by the Delegation on Constitutional Questions in providing that information and reports were to be communicated to employers' and workers' organizations for information only.

[82] With a view to ensuring that employers' and workers' organizations were better informed of ways of contributing to the implementation of ILO standards in their countries, the Office organized study meetings on the procedures for drawing up and supervising standards for workers' representatives at the International Labour Conference and at regional conferences. Seminars were also organized for workers and employers at the national level.

[83] 2012 Information Note, para. 41.

[84] CEACR, Report, 1986, paras. 80-108; GB.233/PV(rev) P.II/I; ILC, *Provisional Record* No. 31, Part One, paras 42-46.

[85] Governing Body, 155th Session (May-June 1963), *Minutes*, p. 13.

[86] The comments of the CEACR on the application of the Conventions on freedom of association by certain countries gave rise to a strong divergence of views in the CAS. At the 47th Session of the Conference (1963), it was agreed that the discussion that had taken place the previous year should not be renewed, no additional information concerning the Conventions should be requested and that it should be indicated in the report of the CAS that it noted the absence of any new element in the report of the CEACR and in the position of the governments concerned. ILC, *Record of Proceedings*, 47th Session, 1963, pp. 516-517, para. 26. Difficulties were encountered in the adoption of the report of the CAS, and in 1974, 1977 and 1982 the Conference failed to adopt its report of the CAS for lack of quorum.

[87] ILC, 81st Session, 1994, Report of the Director-General (Part I), *Defending values, promoting change: Social justice in a global economy: An ILO agenda*.

[88] See GB.292/LILS/7 for an overview of the main developments between 1994 and 2005.

[89] For example, the Report of the Director-General to the 81st Session (1994) of the Conference (op. cit.), referring to the Preamble to the ILO Constitution, recalled that it clearly showed that "the wish of our founding fathers to promote social reform and social justice was accompanied by a concern that States engaged in social reform should not be placed at a disadvantage in international competition." It added that the framers of the Constitution had thought that fair competition could be achieved through the voluntary ratification of Conventions (p. 55). The Report of the Director-General to the 85th Session (1997) of the Conference, in emphasizing a system of emulation between States, noted that it reflected certain aspects of the "mutual supervision" which had prevailed before the Second World War, and also observed that the original intent behind the examination of reports on unratified Conventions and Recommendations under article 19 of the Constitution was to assess the impact of the instruments on national law and practice, evaluate gaps in these instruments and draw the necessary consequences for standard-setting action. See ILC, 85th Session, 1997, Report of the Director-General, *The ILO, standard-setting and globalization*, pp. 22-25 and 60-62. These discussions ultimately resulted in new

arrangements for the submission and examination of reports on unratified Conventions and Recommendations under the follow-up to the Declaration on Social Justice for a Fair Globalization, 2008.

[90] GB.273/LILS/1; GB.276/LILS/2.

[91] Article 3, paragraph 3, Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO.

[92] See, for example, ILC, 95th Session, 2006, *Provisional Record* No. 24, Part One, para. 57, and 98th Session, 2009, *Provisional Record* No. 16, Part One, paras 43 and 60.

[93] GB.258/6/19, paras 32-40. The change was made in response to complaints by member States that they did not receive the CEACR report in time to be able to prepare adequately for the Conference discussion. The sessions of the CEACR were therefore brought forward, together with the dates on which article 19 and 22 reports were due; GB. 258/6/19, Appendix, paras 22-24.

[94] CEACR Reports: 2003, General Report, paras 4-8; 2004, General Report, paras 7-9; 2005, General Report, paras 8-10.

[95] CEACR Reports: 2006,General Report, paras 6-8; 2007, General Report, para. 13; 2012, General Report, para. 6.

[96] CEACR Report, 2011, General Report, para. 6.

[97] ILC, 93rd Session, 2005, *Provisional Record* No. 22, Part One, para. 44; 96th Session, 2007, *Provisional Record* No. 22, Part One, para. 52; 97th Session, 2008, *Provisional Record* No. 19, Part One, paras 45, 47, 50, 52, 55; 98th Session, 2009, *Provisional Record* No. 16, Part One, paras 47-50, 56-58, 60; 99th Session, 2010, *Provisional Record* N0.16, Part One, paras 46, 51-53; and CEACR Reports: 2006, General Report, paras 8, 36-37, 42-47; 2008, General Report, para. 8; 2009, General Report, para. 9; 2010, General Report, para. 8; 2011, General Report, paras 7-13; 2012, General Report, paras 7-12.

[98] CEACR Report, 1994, General Report, para. 39.

[99] ILC, 81st Session, 1994, *Provisional Record* No. 25, paras 21, 23 and 26.

[100] ILC, 99th Session, 2010, *Provisional Record* No. 16 (Part 1), para. 51.

[101] ILC, *Provisional Record* No. 19, Part 1 (Rev.), 101st Session, op. cit., paras 208 and 226.

[102] Ibid., paras 48, 49, 51.

[103] Ibid., paras 61, 145.

[104] Ibid., paras 145-148.

[105] Ibid., paras 153 and 209.

[106] Ibid., paras 85, 102.

[107] Ibid., para. 186.

[108] Ibid., para. 216

[109] Ibid., para. 90.

[110] Ibid., para.180.

[111] Ibid., para. 182.

[112] Ibid., para. 223.

[113] GB.303/12, paras 100-111; GB.306/10/2(Rev.), para. 44(a). The two papers prepared for the informal tripartite consultations in 2010 were: a "non-paper" for the February-March 2010 consultations (hereinafter "2010 non-paper"): *Interpretation of international labour Conventions*, prepared by the International Labour Standards Department in consultation with the Office of the Legal Adviser for the consultation process launched by the Governing Body at its 306th Session (November 2009); and an "informal exploratory paper" for the November 2010 consultations (hereinafter "2010 informal exploratory paper"): *Interpretation of international labour Conventions: Follow-up to the informal tripartite consultations held in February-March 2010*, prepared by the International Labour Standards Department and the Office of the Legal Adviser. These papers were distributed for the consultations in 2010, November 2011 and September 2012. They will be made available during the forthcoming consultations.

[114] The minutes of the discussion reveal the reluctance of some delegates to leave in the hands of a court the final say over the interpretation of Conventions, considering that the delegates gathered at the Conference were also entitled to have a say. *La Paix de Versailles: Législation international du travail*, Paris: Les Editions internationales, pp. 377-379.

[115] ILO, *Official Bulletin*, Vol. XVII, 1932, pp. 179-197. See also note No.129 infra.

[116] 2010 informal exploratory paper, Appendix I.

[117] Article 96 of the United Nations Charter in combination with Article 65 of the Statute of the ICJ and Article IX of the UN-ILO Relationship Agreement of 1946: Governing Body, 101st Session (March 1947), *Minutes*, pp. 45-46 and Appendix VIII, p. 97.

[118] ILO, *Official Bulletin*, Vol XXXII, 1949, pp. 338-9.

[119] ILC, 95th Session, 2006, *Provisional Record* No. 2, "*To review what further action could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar's compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives*."

[120] Ibid., para. 24: recourse to the ICJ was to be read as a compromissory clause which enabled Members to obtain a ruling in case of a dispute over the interpretation of a Convention, i.e., the Court could order Myanmar to stop the prosecution and any such ruling would be binding and the judgment enforceable through the United Nations Security Council. A formal decision by the Conference was not required in this case, as the procedure could be initiated by a Member at any time.

[121] Ibid., while the ILO would have full control to manage its own interests, by its very nature, such a tribunal established on a purely ad hoc basis would require substantial time and involve substantial cost. Further, while any ruling would be binding, this option might not provide significant leverage since it would have to be enforced through ILO procedures which had not, thus far, rendered the intended results.

[122] Ibid.: while such an advisory opinion would not be binding, it carried juridical weight and, in contrast to Option 1, would first require a formal decision by the Governing Body.

[123] ILC, 95th Session, 2006, *Provisional Record* No. 3-2, p. 11.

[124] Conclusions on item GB.298/5: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), paras.139-141.

[125] ILC, *Provisional Record* No. 19, Part 1 (Rev.), 101st Session, op. cit., para. 204.

[126] GB.316/INS/PV/DRAFT, para. 98.

[127] 2010 non-paper, paras 28, 33-41, 48-52.

[128] See GB.256/SC/2/2, paras 11-18. From the beginning, the Office has provided opinions in response to requests from constituents concerning the meaning of certain provisions of Conventions. As the Office did not have authority under the Treaty of Versailles to give interpretations of the provisions of Conventions, it raised the

possibility of the Governing Body approving the opinions that it provided in response to requests for clarification. However, the Governing Body considered that it was not qualified to give a "juridical interpretation of the text of conventions…": Governing Body, 9th Session (October 1921), *Minutes*, p. 309.

[129] In its first report in 1927, the CEACR noted that a government's interpretation of the provisions of a Convention was not the same as that of other governments, and invited the Office to communicate with the government concerned. In another case, it expressed doubt concerning the application of a Convention in light of its "strict interpretation" and indicated that the Office should be invited to study the question and communicate with the government concerned: ILC, 10th Session, 1927, *Record of Proceedings*, Vol. II, pp. 410 and 412. In its 1929 report, the CEACR drew the attention of the Governing Body to the difficulty in the interpretation of Convention No. 4 raised by the British Government. It indicated that "it is difficult to interpret the absence of any express stipulation on this subject in the Convention as implying that the employment at night of women in such position (that is, positions of supervision, management or employed) is authorised": ILC, 14th Session, 1930, Report of the Director, Second Part, pp. 289-290. The ensuing discussions led to the submission of the issue to the PCIJ. In 1932, the CEACR noted that "in considering the reports, the experts discussed a certain number of questions referring to the application or the interpretation of Conventions of which it is not possible to give an account here…": ILC, 16th Session, 1932, *Record of Proceedings*, Appendix V, pp. 600-601. In its 1933 report, the CEACR noted that the interpretation given by a government corresponded "neither to the spirit nor to the letter" of Convention No. 24. It considered it useful to draw the Government's attention to the discrepancies between the Convention and the national legislation, and asked it to consider remedying "this disagreement": ILC, 17th Session, 1933, Summary of annual reports under article 408, p. 496. In 1935, the CEACR recalled that it had "no power to give interpretation" and drew the divergences in the interpretation of Conventions to the attention of the Governing Body: ILC, 19th Session, 1935, summary of annual reports under article 408, Appendix, p. 274.

[130] Governing Body, 50th Session (October 1930), *Minutes*, pp. 656-7, 766.

[131] In its 1930 report**,** the CAS indicated that: "The discussions […] have shown that there exist in certain cases, as between different States which have ratified the same Convention, divergencies of interpretation on the meaning and scope of certain provisions of the Convention. These divergencies sometimes relate to important questions. It is not the function of the Committee to give an authentic interpretation of the provisions in question. The Committee […] suggests that the Conference might invite the Governing Body to study the question. It is important to find a means of solving the questions with regard to which there have been such divergencies. The choice of the procedure remains open…": ILC, 14th Session, 1930, *Record of Proceedings*, Appendix IV, 638-39. In its 1931 report, the CAS, noted that certain members "wondered whether the responsibility for settling differences of interpretation of the Conventions could not be entrusted to the Conference. Other members however considered on the one hand that by reason of its very composition the Conference was hardly the body qualified to give an opinion on questions of law, sometimes of an extremely delicate character, and on the other that according to the terms of Article 423 of the Treaty of Versailles, all questions or difficulties relating to the interpretation of the Conventions adopted through the International Labour Organisation are to be referred for decision to the PCIJ. Some members who were in favour of the intervention of the Conference in connection with questions of interpretation accordingly wondered whether such interpretation could not in any case be given when the Conventions came up for revision. To this it was replied that to revise a Convention and to interpret it were two quite distinct things. It was further pointed out that the Conventions are ordinarily revisable only after a relatively long period, and that it is obviously inadmissible that the divergences existing with regard to the real meaning of certain Conventions should not be settled before the expiry of a number of years. In any case, it appears difficult to the Committee not to take account of the fact that, for reasons which it is easy to guess, the PCIJ has so far not been called upon to deal with any complaint submitted in accordance with Articles 415 and 416 of the Treaty or to examine any question or difficulty relating to the interpretation of a Convention. […]the Committee considers that the time appears to have come to put an end to this uncertainty which exists in the International Labour Organisation with regard to the real meaning of certain Conventions or, rather, of certain provisions of these Conventions […] It ventures […] to suggest that perhaps the Committee of Experts which, among its ten members, includes five jurists, might be called upon to deal with this question […] reservations were made as regards the suggestion referred to above. In particular one member expressed the opinion that it would be desirable that the Committee of Experts should not deal with questions of interpretation except through the medium of the Conference and the Committee on Article 408. […] The Committee hopes that it will not be long before this problem, as important as it is urgent, receives a satisfactory solution: ILC, 15th Session, 1931, *Record of Proceedings*, Appendix IV, pp. 618-620.

[132] Governing Body, 57th Session (April 1932), *Minutes*, pp. 210-211. During the discussion in the Standing Orders Committee, "it was pointed out that no further guarantees would really be afforded to States by calling upon the Committee of Experts to give interpretations, since the only organ provided for by the Treaty of Peace to interpret Conventions was the PCIJ. Furthermore, the Committee of Experts was appointed by the Governing Body, which had to approve [its] reports, so that in point of fact any interpretations given by the Committee would have to be approved by the Governing Body itself. But the latter had already decided that it was not prepared to give interpretations to Conventions […]. It was also suggested that it would be undesirable to give judicial powers to a body which had been set up merely to examine the annual reports, and that the additional duty of giving interpretations might, therefore, entail the necessity of modifying its constitution which, in view of the excellence of the work that it performed, would be most undesirable. In view of the above considerations, the Committee came to the unanimous conclusion that it was undesirable to make any change in the present procedure as regards the interpretation of Conventions. Ibid., p. 345.

[133] The CAS added that "the fact remains that certain provisions of Conventions are interpreted differently by different States. In such cases the position of the Committee is extremely difficult; it can indeed discuss the question at issue, but the only conclusion it can reach generally is that there are two conflicting assertions, that the question is brought up by the Experts every year and that their view is opposed by the Government concerned without any possibility of a solution being arrived at. The Committee therefore feels obliged to draw the attention of the Governing Body once more to this question, which it considers to be very important. Ways and means should be found of removing these discrepancies which constantly arise": ILC, 17th Session, 1933, *Record of Proceedings*, Appendix V, p. 520.

[134] Governing Body, 64th Session (October 1933), *Minutes*, p. 339. This view may have been prompted by the Office note, which observed that: "The Governing Body has frequently devoted consideration to the question of the interpretation of Conventions. It has always felt, however, and will no doubt still feel, that the parties concerned, and particularly the Governments, should avail themselves in the first place of the existing facilities for obtaining either an unofficial interpretation from the Office, or an authentic interpretation from the PCIJ. In the present instance, the problem is referred to the Governing Body in quite general terms, and without any concrete and specific reference to precise points of interpretation. If at any time the Committee reports differences of interpretation in the case of a particular convention which indicate that there is a substantial difference in the obligations assumed by the different States as a result of ratification, the Governing Body will no doubt be ready, as it has been in the past, to apply to the PCIJ for an advisory opinion": Ibid., Appendix X, p. 452.

[135] 2010 non-paper, para. 34.

[136] 2012 Information Note, paras 67-69: the ILO established a procedure in 1950 for the examination of allegations concerning the infringement of trade union rights, including a new supervisory body: the Fact-Finding and Conciliation Commission on Freedom of Association. The CFA was established in 1951. The CEACR noted that it was "also evident, as the [CFA] has emphasised, the degree of freedom enjoyed by occupational organisations in determining and organising their activities depends very largely upon certain legislative provisions of general application relating to the right of free meeting, the right of free expression and, in general, to civil and political liberties enjoyed by the inhabitants of the country": CEACR Report, 1959, part three, para. 71.

[137] For example, CEACR Reports: 1950, General Report, p. 6, and pp. 40 (observations concerning Conventions Nos 29, 50, 64 and 65), 55 (Appendix IV, Recommendation No. 68) and 56-57 (Appendix IV, Recommendation No. 69).

[138] See, for example, ILC, 38th Session, 1955, *Record of Proceedings*, Appendix V, p. 604 (statement by a Government member concerning the application of Convention No. 52 by Israel); 39th Session, 1956, *Record of Proceedings*, Appendix VI, p. 657 (statement by a Government member concerning the application of Convention No. 1 by Belgium), and p. 662 (statement by the Government representative of Chile concerning the application of Convention No. 11).

[139] 2010 non-paper, paras 48-51; CEACR Report, 2011, General Report, para. 12.

[140] 2010 non-paper, paras 35, 40, 52.

[141] ILC, 46th Session, 1962, *Record of Proceedings*, p. 417 (statement by a Government adviser of the USSR). In view of the divergence of views regarding the interpretation of certain Conventions, some members of the CAS asked whether the difficulties might be resolved through the implementation of article 37, paragraph 1, of the Constitution: see, for example, ILC, 49th Session, 1965, *Record of Proceedings*, p. 455 (statement by a Workers' adviser of the Federal Republic of Germany); ILC, 66th Session, 1980, *Provisional Record* No. 37, Part One, para. 8 (statement by the Government member of Belarus); ILC, 69th Session, 1983, *Provisional Record* No. 31, Part Two, p. 31/40 (statement by the Government member of the German Democratic Republic); ILC, 71st Session (1985), *Provisional Record* No. 30: part one, para. 25 (several Government members).

[142] CEACR Report, 1977, General Report, para. 32.

[143] The CEACR indicated that "its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the ICJ by article 37 of the Constitution; nevertheless, in order to carry out its function of evaluating the implementation of Conventions, the Committee has to consider and express its views on the meaning of certain provisions of Conventions": CEACR Report, 1987, para. 21.

[144] ILC, 73rd Session, 1987, *Provisional Record* No. 24, Part 1, paras 26-27: "The spokesman for the Employers' members, speaking in the name of the large majority of those members, rejected the argument that the Committee of Experts has gone beyond its terms of reference" and "The spokesman for the Workers' members speaking in the name of the large majority of those members, recalled that the Committee of Experts is not a tribunal and does not act like one. He repeated their convictions that the Committee of Experts should remain above the struggle and should retain its autonomy." See also the statements made by the Government Members of Belgium and France, para.27.

[145] ILC, 76th Session, 1989, *Provisional Record* No. 26, Part 1,p. 26/6, para. 21.

[146] See note 118 supra.

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ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 8–36

International Labour Conference, 102nd Session, 2013

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

Third item on the agenda:
Information and reports on the application of Conventions and Recommendations

Report III (Part 1A)

General Report
and observations concerning particular countries

International Labour Office Geneva

sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting. [3] From 2007 to 2011, the subcommittee met at each of the Committee's sessions. [4]

7. This year, a new subcommittee on the streamlining of treatment of certain reports was established. This subcommittee met twice before the beginning of the work of the Committee and examined all the comments related to repetitions (269 observations and 462 direct requests – which are comments repeating what had been said previously by the Committee), as well as the general observations and direct requests. The subcommittee then presented, for adoption in the plenary, its report to the Committee of Experts and drew attention to the most important issues which had been raised during its examination. The approach taken by the subcommittee has enabled the Committee of Experts to save precious time for the examination of individual observations and direct requests regarding ratified Conventions and it was suggested that it should be reconvened every year.

Relations with the Conference Committee on the Application of Standards

8. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts has always taken the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also with regard to specific matters concerning the way in which States fulfil their standards-related obligations. Moreover, the Committee has paid in recent years close attention to the comments on its working methods that have been made by the members of the Committee on the Application of Standards and the Governing Body.

9. In this context, the Committee once more welcomed the participation of Mr Yokota as an observer in the general discussion of the Committee on the Application of Standards at the 101st Session of the International Labour Conference (June 2012). It noted the decision by the Conference Committee to request the Director-General to renew this invitation for the 102nd Session (June 2013) of the Conference. The Committee of Experts accepted this invitation.

10. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Mr Christopher Syder) and the Worker Vice-Chairperson (Mr Marc Leemans) of the Committee on the Application of Standards at the 101st Session of the International Labour Conference (June 2012) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

11. This year's special sitting was of particular importance in the light of the events that had taken place during the session of the Conference Committee in June 2012 as well as the subsequent developments, including the informal tripartite consultations in September 2012 and the discussions that took place during the November Session of the Governing Body.

12. During the sitting, the Employer Vice-Chairperson insisted that for his group, this internal dialogue within the ILO's standards supervisory system was of utmost importance for the proper functioning of the system. He stressed that the Employers remained fully committed to preserving and strengthening the cooperation and coordination between the Conference Committee on the Application of Standards and the Committee of Experts.

13. Regarding the issue of the right to strike, he reiterated that the Employers had objected for many years to the view that the right to strike was to be considered to be part of the obligations politically negotiated and agreed by the ILO constituents under Convention No. 87. The Employers had set out on many occasions that a right to strike was not regulated in Convention No. 87 and that the ILO constituents did not agree to the inclusion of the right to strike at the time Convention No. 87 was adopted in 1948. According to the Employers, this was clearly stated in the preparatory work that preceded the adoption of the Convention and the Employers had put forward detailed arguments in the past showing that in considering all applicable rules of interpretation, a right to strike could not be read into Convention No. 87. In this regard, the Employers regretted that in the context of the 2012 General Survey on the eight fundamental Conventions, the Committee of Experts had included nearly 20 pages on their view that Convention No. 87 contained an inherent right to strike.

14. The Employer Vice-Chairperson recalled that the role of the Committee of Experts was first mandated at the ILC in 1926 and that it had been explicitly stated at the time that the functions of this new committee would be entirely technical and that the Committee of Experts would have no judicial capacity, nor would it be competent to give interpretations of the provisions of Conventions or to decide in favour of one interpretation rather than another. Further explanation was provided on the role of the Committee of Experts at the ILC in 1947 when it was stated that the supervisory machinery in question consisted of a Committee of Experts appointed by the Governing Body for the purpose of carrying out a preliminary examination of the annual reports of governments. The Employers were of the view that

[3] See General Report, 76th Session (November–December 2005), paras 6–8; General Report, 77th Session (November–December 2006), para. 13.

[4] See General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9; General Report, 80th Session (November–December 2009), paras 7–8; General Report, 81st Session (November–December 2010), paras 6–13; General Report, 82nd Session (November–December 2011), paras 6–12.

nothing had changed since then and that the decisions of 1926 and 1947 remained the guiding principles on the role and mandate of the Committee of Experts. Therefore, the fact that the Employers inside the Conference Committee on the Application of Standards had consistently opposed the CEACR's view on the right to strike should not be construed as the view of external opposition but rather as evidence that there had never been an agreement inside the ILO on the issue of the right to strike.

15. Furthermore, the fact that many countries had enshrined a right to strike, together with restrictions on that right was, in the Employers' view, not determinative of the proposition that Convention No. 87 was the source of that right. To the contrary, it would be far more supportive of a view that countries had rightly found it necessary to regulate this important issue themselves in the face of a lack of clear and explicit guidance from an agreed source. Citing national practice as a basis for interpreting an unstated right into an international document did not, in the Employers' view, advance the argument that Convention No. 87 was the source of the right to strike. In conclusion on this point, the Employer Vice-Chairperson indicated that with regard to Convention No. 87, the Committee of Experts had taken a role more akin to the role of the Conference Committee on the Application of Standards than the advisory role the experts were originally assigned in 1926. It appeared that the Committee of Experts had developed and maintained views concerning the right to strike that should have been the subject of tripartite policy debates. In order to move forward with this issue, he recalled that the Employers had expressed their willingness to contribute to a balanced solution in this regard and had proposed, during the 2012 November session of the Governing Body, to have a proper tripartite discussion on the right to strike during the International Labour Conference. Such a discussion would be meant to determine if and to what extent there was common ground amongst ILO constituents for global standard-setting on the right to strike. He once again requested the Committee of Experts to reconsider its position on the right to strike and to immediately suspend any references to this right in future reports until a tripartite discussion had taken place on the right to strike.

16. Regarding the issue of the mandate of the Committee of Experts and more precisely the legal status of its views and observations, the Employer Vice-Chairperson underlined that these were not clearly and precisely set forth in the Committee's report, which could lead to misunderstandings outside the ILO that they were approved by the ILO's tripartite constituents or were legally binding. As stated under the point regarding the right to strike, it was the Employers' understanding that the Governing Body had never decided to amend the stated terms of reference of the Committee of Experts to expressly include the interpretation of international labour standards. In addition, it could not be the Governing Body's intention to change those terms of reference since the ILO Constitution provided that the authority to interpret ILO Conventions was vested with the International Court of Justice, which meant that the Constitution would need to be amended first. Based on this understanding, the Employers were of the view that what needed to be mentioned in all of the Committee of Experts' reports was that their views and observations were meant to provide a basis for the supervisory work of the Conference Committee on the Application of Standards, they had not been approved by the tripartite bodies of the ILO and that these views were not legally authoritative interpretations and not legally binding for ratifying countries. In view of the above, the Employers respectfully requested the Committee of Experts to consider this issue with a view to clarifying its mandate and the legal status of its views in a clear and concise manner in all of its future reports. This clarification should be made at a visible place, preferably on the first pages in the reports.

17. Following exchanges with the Committee of Experts, the Employer Vice-Chairperson acknowledged that a certain degree of interpretation by the Experts was inevitable when the provisions of a Convention were not clear, but insisted that the main issue was when this rule of interpretation was extended into the development of policy considerations which were the sole domain of the ILO tripartite constituents.

18. While the Employer Vice-Chairperson very much welcomed the opportunity to clarify the respective roles of the Conference Committee on the Application of Standards and the Committee of Experts through this special sitting, he stressed that this dialogue with the two committees should also be extended in terms of participants and time. He suggested that rather than this limited exchange between the two spokespersons of the Conference Committee and the members of the Committee of Experts, the Office should organize one-day consultations, outside the meeting of the Committee of Experts', between the CEACR and a number of Conference Committee Employer and Worker members nominated by the two groups and assisted by ACT/EMP and the IOE as well as ACTRAV and the ITUC respectively. Finally, he expressed the view that in the process which was currently underway in the Governing Body to move forward on all these issues, one element that was missing was the involvement of the members of the Committee of Experts in the discussion of their mandate.

19. For its part, the Worker Vice-Chairperson emphasized that the present meeting was an occasion that was valued by his Group each year as an opportunity to reaffirm its confidence in the Committee of Experts, and also in the other supervisory bodies on the application of ILO standards, and particularly the Conference Committee on the Application of Standards and the Committee on Freedom of Association, both of which were of tripartite composition. Those two bodies had also contributed over the years to developing principles, beyond the framework of the ILO Constitution, which were of undeniable value for workers, employers and governments, particularly by offering security for key concepts in the context of international labour law. Those concepts were valid because they had their origins in joint tripartite analysis. Moreover, the reports of the supervisory bodies constituted a reference point on standards which ensured stability and social peace in member States, not only in relation to the social partners and the world of enterprise, but also between member States themselves, with a view to avoiding unfair competition based on social dumping.

20. With regard to the question of the mandate of the Committee of Experts, the Worker Vice-Chairperson recalled that as early as 1928 the Conference Committee on the Application of Standards had considered, after noting that the Committee of Experts was confining itself to examining the compliance of national laws and regulations with international Conventions, that its analysis of the subject should not be limited to assessing the concordance of the provisions of national laws and regulations with those of Conventions, but should also go more deeply into the issue of the effective application of the Conventions. He emphasized that the role of the Committee of Experts was fundamental and that its work was an essential and permanent instrument in improving the application of standards. That role consisted of preparing, under unimpeachable conditions of scientific rigour, independence and objectivity, the work that would be taken up by the Conference Committee on the Application of Standards with a view to ensuring that effect was given to standards in law and practice.

21. The Worker Vice-Chairperson stated that the work of the Conference Committee on the Application of Standards, through the examination of individual cases, was another fundamental aspect of the supervisory system. Its examination was based on the work of the Committee of Experts, as well as the tripartite examination of individual cases. The role of the Committee of Experts was therefore to enter into dialogue with governments through its comments. But, however important that role might be, the Committee of Experts was only one element of the omnipresent tripartite involvement in supervising the application of standards. Indeed, the Governing Body, with its tripartite composition, was a constitutional body which had a determining role to play at the various levels, for example by first approving the questionnaires under articles 19 and 22 of the Constitution. Moreover, the work of the Conference Committee on the Application of Standards could only be valid with the total involvement of employers, workers and governments, not only in relation to reporting obligations, but also through the comments made by the social partners under article 23(2) of the Constitution. The Committee of Experts therefore worked in a very precise framework and its mandate, which was the result of an evolutionary process overseen by the Governing Body, had not been left to its sole discretion.

22. The Worker Vice-Chairperson also welcomed the fact that the informal tripartite consultations held in September 2012 had given rise to the promise that working methods would be adopted that should ensure the possibility of serene and effective work at the next session of the Conference Committee on the Application of Standards in June 2013.

23. With reference to the issue of the right to strike, the Worker Vice-Chairperson warned against the desire to weaken inter-occupational and sectoral social dialogue, which appeared to have its roots within the European Union. In that respect, he emphasized that it would be difficult for the Workers' Group to accept a method of work based on a question of principle arising out of the differences of views concerning the relationship that existed between the right to strike and Convention No. 87. The reasoning put forward by the Employers, calling for the right to strike only to be addressed at the national level, was designed to weaken the trade union movement, social dialogue and the right to collective bargaining. But all of those rights were linked in their spirit to those negotiated in Conventions Nos 87 and 98.

24. The Worker Vice-Chairperson stated that the ILO supervisory bodies recognized the right to strike and considered it to be a fundamental instrument available to workers' organizations for the defence of their economic and social interests. In its 1959 General Survey the comments of the Committee of Experts had been in line with such recognition, and it currently considered the right to strike to be an essential corollary of the right to organize. That was also the opinion of the Committee on Freedom of Association, which had recognized such a right in 1952. It should also be noted that 137 countries had ratified Convention No. 87 since 1952, and that 115 of those ratifications had been registered after the publication of the 1959 General Survey on freedom of association, which clearly implied recognition of the exercise of the right to strike. The Conference Committee on the Application of Standards also recognized the right to strike. However, those bodies considered that it was not an absolute right and that it could be subject to certain restrictions, or even prohibited. The Committee of Experts had therefore never gone beyond its mandate in formulating its principles on the right to strike. Those principles were in line with reality, with the provisions of other international instruments that referred to the right to strike and with the decisions and principles followed by other supervisory machinery.

25. Finally, in reply to the proposal put forward by the Employers regarding the inclusion of a caveat at the beginning of all future reports of the CEACR, the Worker Vice-Chairperson voiced his strong opposition to the inclusion of such a caveat.

26. The Committee very much welcomed the frank and constructive interventions of both Employer and Worker Vice-Chairpersons. Concerning its mandate, the Committee recalled that, since 1947, and during the past 50-plus years, it had regularly expressed its views on its mandate and methods of work. Since 2001, it had done so even more thoroughly through the efforts of its subcommittee on working methods. The Committee recalled three elements of particular relevance in this regard: (i) it had repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the tripartite Governing Body in their personal capacity precisely because of that impartial and independent status; (ii) it had regularly clarified that, while its terms of reference did not authorize it to give definitive interpretations of Conventions (competence to do so being vested in the International Court of Justice (ICJ)), in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it had to consider and express its views on the legal scope and meaning of the provisions of these Conventions; and (iii) as from at least the

1950s, it had expressed its views on the meaning of specific ILO instruments in terms that inevitably reflected an interpretive vocabulary.

27. Reviewing the position of the Employers' group over the years, the Committee stressed that, historically, that group had accepted the Committee's interpretive role as part of its mandate. For instance, the Committee recalled that, during the 1987 Conference Committee on the Application of Standards, addressing concerns raised by certain governments, the Employers' spokesperson had "rejected the argument that the CEACR had gone beyond its terms of reference" and both the Employers' and Workers' spokespersons "supported the CEACR's current methods of work." In the 1993 Conference Committee, the Employers' group had remarked that "disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts". More recently, during the 2011 Conference Committee, the Employers' group had not responded to the detailed discussion of the interpretive methods that the CEACR had presented in paragraphs 10–12 of its General Report, which discussed in considerable detail: (a) the logical necessity of interpreting Conventions in order to fulfil its mandate, (b) the necessity that its work remain committed to independence, objectivity, and impartiality, and (c) that the Committee constantly bore in mind all different methods of interpreting treaty law, especially the Vienna Convention.

28. The Committee further stressed that its mandate derived from three main principles. First, assessment and evaluation of textual meaning was logically integral to the application of ratified Conventions. In this regard, the Committee noted that it needed to bring to the Conference Committee's attention: (i) any national laws or practices not in conformity with the Conventions, which inevitably required the evaluation and thus, a certain degree of interpretation, of the national legislation and the text of the Convention; and (ii) in conformity with its working methods, the cases of progress in the application of standards, which also required a degree of interpretation. Second, the equal treatment and uniformity of the application of Conventions assured predictability. The Committee highlighted in this regard that its approach to examining the meaning of Conventions also prioritized achieving equal treatment for States and uniformity in practical application. This emphasis was essential to maintaining principles of legality, which encouraged governments to accept its views on the application of a Convention and, in this manner, promoted a level of certainty needed for the proper functioning of the ILO system. Third, the Committee stressed that its composition, i.e., independent persons with distinguished backgrounds in the law and direct experience of the different national legal systems to which Conventions were applied, helped to ensure a broad acceptance within the ILO community of its views on the meaning of Conventions.

29. The Committee acknowledged the Employers' concerns expressed by the Employer Vice-Chairperson at the June 2012 Conference that its observations were "being viewed by the outside world as a form of soft law labour standards jurisprudence". However, the Committee noted that the world outside of the ILO was not its designated or intended audience. Rather, the Committee directed its non-binding opinions and conclusions to governments, social partners, and the Conference Committee pursuant to its well-settled role in the ILO supervisory structure. While aware that its guidance was taken seriously in certain specific settings, both by domestic courts and international tribunals, the Committee considered that this reflected respect for its independent and impartial nature and for the persuasive value of its non-binding analyses and conclusions. The Committee recalled that those analyses or conclusions could only become authoritative in any "binding" sense if the international tribunal, or instrument, or the domestic court independently established them as such.

30. Regarding its working methods and particularly its examination of governments' reports and comments of social partners, the Committee recalled that it was relying exclusively on written evidence and that there were no oral hearings or scope for oral arguments. While the Committee took due note of the well documented and constructive comments of the social partners, it would welcome receiving more of such comments from the employers to better reflect their views. The Committee underscored the substantial individual and collective work it carried out in reviewing the application of Conventions which further benefited from an intensive exchange of views from a diversity of legal, social and cultural backgrounds. Finally, the Committee recalled that its mandate must by necessity be understood within the framework of the ILO Constitution which firmly anchors the aims and objectives of the Organization as being the elimination of injustice, hardship and privation and the fostering of social justice as the means for ensuring universal and lasting peace.

31. On the matter of the right to strike, the Committee of Experts welcomed the frank discussion of issues that enabled it to address directly a number of points. In the first instance, there appeared to remain the challenge as to whether there was a right to strike at all under Convention No. 87. The Committee indicated that it would take into account the arguments raised by the Employers, although the Committee considered that it had already addressed these arguments in detail in its 2012 General Survey. The Committee recognized that the Employer Vice-Chairperson appeared to make a distinction between interpretive application of the Convention and what the Employers felt was making policy, and gave particular examples of such policy extension. The Committee indicated, however, that once it had decided in 1959 that the Convention included the right to strike, the Committee was faced with the need to determine what the acceptable restrictions were, rather than leaving it as an absolute right. The Committee did this on a case-by-case basis over the years, looking at a country's law and practice, bearing in mind the information provided to it, and taking into account national circumstances, while ensuring equal treatment and universal application. In order to make this assessment, the Committee encouraged, and continues to encourage, all parties, including the employers' organizations, to make use of article 23(2) of the Constitution in order to provide relevant information for its reflection. In so far as the Committee's reliance on the

decisions of the Committee on Freedom of Association was concerned, the Committee recalled that it made its own decisions. It takes into account the decisions of the Committee on Freedom of Association but does not justify its observations on the basis of those decisions. Moreover, the Committee recalled several examples of complaints or comments submitted by international and national employers' organizations to the Committee on Freedom of Association and the CEACR in which the employers' organizations requested both supervisory bodies to make statements regarding the need to set limits to the exercise of the right to strike when, in their opinion, the legislative texts contained objectionable provisions.

32. The Committee further emphasized that, contrary to the social partners who often defend conflicting interests, and therefore had to negotiate, it did not defend interests and, although there may be differences between the experts when examining the application of Conventions, they did not negotiate between themselves when preparing their comments. The experts sought legal truth, completely objectively and impartially.

The Committee's views regarding its mandate

33. The Committee is aware that, as a result of the informal tripartite consultation in September 2012, the tripartite constituencies have requested that the Office prepare an information document on the mandate of the Committee of Experts for the 317th Session (March 2013) of the Governing Body. Following its meeting with the Vice-Chairpersons of the Committee on the Application of Standards, the Committee of Experts also has an increased understanding of the concerns expressed by the Employers and of the positions taken by the Workers with regard to its mandate. These concerns and positions were ably presented by the two Vice-Chairpersons at the meeting of the Committee on 1 December 2012. The Committee has decided to put forward the following considerations in the spirit of assisting the ILO constituents in their understanding of the Committee's work. The Committee wishes to draw attention to four principal factors.

(a) *Logically integral to application.* The terms of reference of the Committee of Experts call for it to examine a range of reports and information in order to monitor the application of Conventions and Recommendations. In fulfilling this responsibility, the Committee must bring to the attention of the Conference Committee on the Application of Standards any national laws or practices not in conformity with the Conventions, including the severity of certain situations. This logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention.

Further, in conformity with longstanding working methods, the Committee of Experts has identified over 3,000 cases of progress (noting with ***satisfaction***) since 1964, which again logically requires an interpretive judgment that a government's change in law or practice has given fuller effect to a ratified Convention as it has been construed by the Committee.

(b) *Equal treatment and uniformity assure predictability in application.* The Committee's approach to examining the meaning of Conventions stresses due regard for achieving equality of treatment for States and uniformity in practical application. This emphasis is essential to maintaining principles of legality, which encourage governments to accept the Committee of Experts' views on application of a Convention. In this manner, the Committee can promote a level of certainty needed for the proper functioning of the ILO system.

(c) *Composition.* The Committee of Experts' views on the meaning of Conventions are broadly accepted because the Committee is composed of independent persons who have distinguished backgrounds in the law and direct experience of the different national legal systems for which they must evaluate the application of the Conventions. The Committee's independence is importantly a function of its members' occupations, principally as judges from national and international courts and as professors of labour law and human rights law. This independence is also attributable to the means by which members are selected. They are not selected by governments, employers, or workers, but rather by the Governing Body upon recommendation of the Director-General. The Committee's combination of independence, experience, and expertise continues to be a significant further source of legitimacy within the ILO community.

(d) *Consequences.* Governments rely on the valid and generally recognized nature of the Committee of Experts' observations, direct requests, and General Surveys to help structure their conduct in law and practice. If governments were to view the Committee's positions as somehow discounted or of less certain value, some would feel freer to ignore its requests or invitations to comply. This would inevitably undermine orderly monitoring and predictable application of the standards – the precise result that the Committee of Experts mandate was established and then extended in order to prevent.

In addition, the Conference Committee, the Committee on Freedom of Association, and the Governing Body also rely on the Committee of Experts framework of opinions about the meaning of the provisions of the Conventions in the course of the applications process. Without this independent role, the supervisory system would lose a vital element of impartiality and objectivity, an element that has been central to the monitoring system for 85 years.

Prior statements from the CEACR and the Employers regarding the Committee's mandate

34. The Committee believes it may be useful to review certain past and recurrent perceptions with regard to its mandate, as expressed before the Conference.

(a) *Statements by the CEACR.* For more than 50 years, the Committee has regularly expressed its views on its mandate and methods of operation. Since 2001, it has done so even more thoroughly through the efforts of its subcommittee on working methods. Three elements are of special relevance here:

First, the Committee has repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the Governing Body in their personal capacity precisely because of that impartial and independent status. [5]

Second, the Committee has regularly made clear that, while its terms of reference do not authorize it to give definitive interpretations of Conventions – competence to do so being vested in the International Court of Justice (ICJ) under article 37 of the ILO Constitution – in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it must consider and express its views on the legal scope and meaning of the provisions of these Conventions. [6]

Third, at least as far back as the 1950s, the Committee has expressed its views on the meaning of specific ILO instruments in terms that inevitably reflect an interpretive vocabulary.

(b) *Statements from the Employers' group.* Over the past 25 years, the Employers group has often made clear its support for or endorsement of the Committee's role in construing Convention text as a key element of the supervisory mechanism.

Thus, for example, in 1986 in the Conference Committee on the Application of Standards, "the Employers' members were of the opinion that the criticism which had been expressed [by certain governments] with respect to the supervisory machinery attested to its effectiveness. They completely rejected the idea of dismantling or weakening the supervisory system. In their opinion, the arguments put forth against this machinery were unfounded. This was particularly the case in regard to comments critical of the supervisory machinery because it allegedly constituted an interference in internal affairs of States. To the contrary, it was a question of knowing whether a member State intended to comply with obligations it had assumed. ... This procedure was clear, unambiguous, fair, and above all necessary" (paragraph36, page 31/8). [7]

Again in 1987, the Employers responded to arguments by the USSR and other Eastern European countries (paragraph 26) that the Committee of Experts had gone beyond its 1926 terms of reference, which were purely technical, by converting itself into "a kind of supra-national tribunal, interpreting national laws and Conventions" although such interpretation was the responsibility of the national courts or the ICJ. The Employers' spokesperson "rejected the argument that the Committee of Experts had gone beyond its terms of reference" (paragraph 27) and both the Employers' and Workers' spokespersons "supported the Committee's current methods of work" (paragraph 32). [8]

While in 1990, the Employers criticized a statement in the Committee's report that they viewed as saying in substance that competence to interpret Conventions absent an ICJ submission rests solely with the Committee (paragraph 22), following extended discussion involving workers and governments as well, the Employers emphasized their view of the Vienna Convention as "the appropriate – in fact the only – yardstick to be used in interpreting ILO Conventions. It was this yardstick that *they invited the Committee to use in their interpretation of international labour standards*" (paragraph 30, emphasis added). [9]

In 1993, the Employers remarked that "disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts" (paragraph 21). [10]

[5] ILC, Report III (Part IV), 1957, para. 15; ILC, Report III (Part IV), 1967, para. 25; ILC, Report III (Part 4A), 1977, para. 12; ILC, Report III (Part 4A), 1987, para. 19; ILC, 1990, para. 6; ILC, Report III (Part 4A), 1991, para. 12; ILC, Report III (Part IA), 2006, p. 2; ILC, Report III (Part IA), 2011, para. 10.

[6] ILC, CEACR, Report III (Part 4A), 1977, para. 32; ILC, CEACR, Report III (part 4A), 1987, para. 21; ILC, CEACR, Report III (Part 4A), 1990, para. 7; ILC, Report III (Part 4A), 1991, para. 9; ILC, CEACR, Report III (Part 1A), 2011, para. 11.

[7] ILC, *Provisional Record* No. 31: Report of the Committee on the Application of Standards, 72nd Session, Geneva, 1986, p. 31/1.

[8] ILC, *Provisional Record* No. 24 (Part 1): Report of the Committee on the Application of Standards, 73rd Session, Geneva, 1987, p. 24/1.

[9] ILC, *Provisional Record* No. 27 (Part 1): Report of the Committee on the Application of Standards, 77th Session, Geneva, 1990, p. 27/1.

[10] ILC, *Provisional Record* No. 25 (Part 1): Report of the Committee on the Application of Standards, 80th Session, Geneva, 1993, p. 25/1.

In 2010, the Employers again made clear that "they were not questioning the valuable role of the Committee of Experts but only certain of its interpretations" (paragraph 75). [11]

The non-binding nature of CEACR opinions and recommendations

35. (a) In stating that its views are to be considered as valid and generally recognized (absent contradictory ruling from the ICJ), the Committee is not saying that it regards its views as having any res judicata or comparable effect. The Committee does not regard itself as a court of law. Indeed, it has been consistently clear that its formulations of guidance – presented as opinions or recommendations in the context of observations, direct requests, and General Surveys – are not binding. Rather, the persuasive validity of the Committee's formulations for member countries, social partners, the Conference Committee, and others within the ILO stems from: (1) their logical relation to the standards application process; (2) the equal treatment and uniformity that accompanies their implementation; (3) the quality of their reasoning; and (4) the recognized independence and expertise of the Committee as a whole.

(b) In this respect, the Committee's guidance is part of the so-called international law landscape. Like the work of independent supervisory bodies created within other UN organizations addressing human rights and labour rights, [12] the Committee's non-binding opinions or conclusions are intended to guide the actions of ILO member States by virtue of their rationality and persuasiveness, their source of legitimacy (by which is meant the independence, experience, and expertise of the members), and their responsiveness to a set of national realities including the informational input of the social partners. At the same time, the Committee observes that it is only before the ILO supervisory machinery that the social partners can bring forward their concerns relating to the application of Conventions.

Proposed addition of a caveat to the Committee's General Surveys and Reports

36. The Committee has considered the Employers' position that some form of caveat or disclaimer should be prominently featured in Committee documents, stating that Committee interpretations are not authoritative and hence not legally binding for ratifying countries, as well as the Workers' position that such a caveat or disclaimer should not be included. The Committee understands and respects the views of both constituents and wishes to clarify its own position on this matter.

(a) The Committee believes that such a caveat or disclaimer is not necessary. As noted earlier in this General Report, the Committee repeatedly states with regard to its terms of reference, both in its general reports and in other settings, that its opinions are non-binding. The Committee includes a similarly unambiguous statement as part of the preliminary portion of its 2013 General Survey and will continue with this practice in future years.

(b) The Committee believes that adding the caveat or disclaimer proposed by the Employers would interfere in important respects with its independence. The Committee fully appreciates and respects that tripartism carries moral force as well as technical authority within the ILO system. The Committee's moral authority, however, derives substantially from the fact that, while appointed by the tripartite Governing Body, it has remained an independent and impartial body of experts for 85 years. As mentioned earlier, Committee members are nominated and selected with regard to their independence and objectivity, not their participation in a tripartite framework. That this caveat is being proposed by one group of tripartite constituents, and opposed in principle and in its specific language terms by another group of the tripartite constituents, highlights the risks of attempting to add to the Committee's own work product.

(c) In this regard, it bears emphasis that the General Surveys and the report of the Committee under articles 19, 22 and 35 of the Constitution are instruments created by the Committee at the direction and pursuant to the constitutional authority of the Conference. The Committee feels strongly about the views expressed above and believes that it should continue to follow its current practice.

[11] ILC, *Provisional Record* No. 16 (Part 1): Report of the Committee on the Application of Conventions and Recommendations, 99th Session, Geneva, 2010, p. 16/1.

[12] The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have comparable monitoring responsibilities with respect to provisions of their Covenants, based on their impartial and independent expert status.

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Application of International Labour Standards 2014 (I)

REPORT III (Part 1A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

7. Last year, a new subcommittee on the streamlining of treatment of certain reports was established. This subcommittee met again this year, on two occasions, before the beginning of the work of the Committee and examined all the comments related to repetitions (which are comments repeating what had been said previously by the Committee of Experts), as well as the general observations and direct requests. Concerning repetitions, the subcommittee examined 143 observations (compared to 269 in 2012) and 329 direct requests (compared to 462 in 2012). This represents a significant 35.43 per cent decrease in the total number of repetitions. The subcommittee then presented, for adoption in the plenary, its report to the Committee of Experts and drew attention to the most important issues which had been raised during its examination. The approach taken by the subcommittee has enabled, once again, the Committee of Experts to save time for the examination of individual observations and direct requests regarding ratified Conventions.

Relations with the Conference Committee on the Application of Standards

8. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts has always taken the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but importantly with regard to specific matters concerning the way in which States fulfil their standards-related obligations. The Committee has also paid close attention in recent years to the comments on its working methods that have been made by the members of the Committee on the Application of Standards and the Governing Body.

9. In this context, the Committee once more welcomed the participation of Mr Yokota as an observer, in his capacity as Chairperson of the 2012 session of the Committee of Experts, in the general discussion of the Committee on the Application of Standards at the 102nd Session of the International Labour Conference (June 2013). It noted the decision by the Conference Committee to request the Director-General to renew this invitation to the Chairperson of the Committee of Experts for the 103rd Session (May–June 2014) of the Conference. The Committee of Experts accepted this invitation.

10. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) of the Committee on the Application of Standards at the 102nd Session of the International Labour Conference (June 2013) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

11. The Chairperson of the Committee of Experts welcomed the opportunity to exchange views on issues of common interest with the two Vice-Chairpersons of the Conference Committee. In the current institutional context arising from the session of the Conference Committee in June 2012, the dialogue between the two committees was even more important. This dialogue would be constructive and embedded in mutual respect, cooperation and responsibility, which helps to generate an atmosphere of trust between the two committees. He reassured the Employer and Worker Vice-Chairpersons that the Committee of Experts, in adhering to the fundamental principles of independence, impartiality and objectivity, was attentive to the issues that had been raised and had continued to give them due consideration.

12. The Employer Vice-Chairperson welcomed the opportunity to participate in this meeting. In the first place, she emphasized that the ILO supervisory mechanisms were increasing in relevance and importance for a number of reasons, including the consideration by national courts of the international obligations of member States, the globalization of business and the adoption by multinational corporations of codes of conduct. In that context, the Employers were completely committed to ensuring the relevance, sustainability and credibility of the ILO supervisory system. The technical work carried out by the Committee of Experts in preparing observations was an invaluable and crucial part of the supervisory system. The Employers also recognized and appreciated the invaluable contribution that the Office made in supporting the work of the Committee of Experts.

13. With reference to the ongoing process following up on the 2012 Conference Committee, she indicated that there had been a few encouraging developments, but that the constituents were far from having achieved a definitive and forward-looking outcome. The Employers considered that the following principles had been identified to guide the way forward: the need to restore the balance between the different supervisory bodies, as well their complementarity so as to eliminate overlap; the need to better articulate a progressive hierarchy and predictability in the use of the different supervisory bodies; the possibility to require prior recourse to national jurisdiction before a claim is presented to the ILO, as well as more objective admissibility criteria before a claim is accepted for discussion; and the need to reinforce the capacity of the constituents to jointly provide alternative guidance on Conventions, or to explore other possibilities for the review of labour standards, as foreseen by the ILO Constitution. The Employer Vice-Chairperson also indicated that it had been possible to re-establish some of the trust between Employers and Workers. However, substantial progress was yet to be achieved. The Employers felt that one of the keys to further progress also lay with the Committee of Experts and they were fully committed to cooperating closely with the Committee for that purpose, in a spirit of respect, mutual collaboration and responsibility.

14. Turning to the issue of the right to strike, the Employers had expressed the view on many occasions that a "right to strike" was not regulated in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In a recent submission to the Committee of Experts, the International Organisation of Employers (IOE) had added further arguments on the "right to strike" and Convention No. 87 in response to a submission on the same subject by the International Trade Union Confederation (ITUC). She added that there had been an important change in the treatment by the Conference Committee in June 2013 of cases involving the "right to strike", when most of the conclusions on those cases included the sentence: "The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike in Convention No. 87." The sentence made two things clear: firstly, that there was no consensus in the Conference Committee that Convention No. 87 contained and guaranteed a "right to strike"; and secondly, that the Conference Committee accepted that, because of the lack of consensus, it was not in a position to ask governments to change their law and practice with regard to strike issues. The statement in the conclusions of the Conference Committee was in contrast with the current position of the Committee of Experts. The Employers considered that a difference of opinion of that nature between the two main supervisory bodies of the ILO on such an important matter was detrimental to the Organization and was bound to result in a loss of credibility, authority and therefore relevance for the supervisory system in the long term. It was the hope of the Employers that there would be coherence between the two pillars of the supervisory system on this issue and that the Committee of Experts would therefore reconsider its views. The Employers had declared their readiness to hold an in-depth and thorough examination of the issue of "industrial action" through a general discussion at the Conference. They therefore respectfully called on the Committee of Experts to desist from making observations related to the "right to strike" pending the outcome of a general discussion on this subject.

15. With regard to the mandate of the Committee of Experts and the related question of its clarification, while appreciating the recognition by the Committee of Experts that its views were not legally binding in its 2013 report, the Employers regretted that, by providing additional explanations, this recognition had been rendered ambiguous. They called on the Committee of Experts to draft concise and sufficiently clear wording to be included in its reports by way of clarification of its mandate and the legal status of its views, starting with its 2014 report.

16. With regard to the supervisory role of the Committee of Experts, the Employer Vice-Chairperson recognized that the determination of whether there were divergences between national law and practice and the requirements of Conventions involved a certain degree of interpretation. However, the Employers considered that it was not the role or function of the Committee of Experts to act as a standard-setting body by adding further rules to Conventions by means of extensive interpretations or by filling in gaps or narrowing the flexibility of Conventions by providing restrictive interpretations. Standard setting was vested with the ILO constituents. Nor should the Committee of Experts act as a political body by using the supervision of particular Conventions to criticize general government policies, such as fiscal consolidation policies, or by making recommendations to ratify Conventions. These matters pertained to the Conference and the Governing Body. The Employers appreciated that the competent tripartite bodies on standards-related matters had a more proactive role to play and recalled their commitment to the standards review mechanism, which had been adopted by the Governing Body in principle, but not yet operationalized. It should also be recalled that, during the general discussion in the Conference Committee in 2013, the Employer members had made proposals to improve the effectiveness of the standards supervisory system, for example through addressing reporting failures, improving the focus of supervision by reducing the number of observations and measuring progress in compliance with ratified Conventions more meaningfully and reliably. The Employers were very sensitive to the very heavy workload of the Committee of Experts and would support any initiative to address this issue. They looked forward to a discussion of those proposals.

17. In conclusion, the Employers expressed deep appreciation of the work of the Committee of Experts in preparing its observations. It was their desire to reach meaningful conclusions on the basis of those observations. The Committee of Experts could be sure of the Employers' continued commitment to the functioning and reliability of the supervisory system. Their criticisms should be seen as a contribution to preserving the supervisory system and making it resilient for the future.

18. The Worker Vice-Chairperson emphasized the informal nature of the meeting between the Committee of Experts and the Vice-Chairpersons of the Conference Committee, adding that it was not an occasion for tripartite discussions, which lay within the competence of the Governing Body. In particular, it was the tripartite constituents' responsibility to address the issues arising from the report of the Conference Committee in June 2012. He reiterated the support of the Workers' group for the role and mandate of the Committee of Experts, whose independence and expertise they respected. He also recalled the complementarity of the respective roles of the Committee of Experts and the Conference Committee.

19. He recalled the position of his group that the recognition of the right to strike was based on a joint reading of Articles 3 and 10 of Convention No. 87. He did not agree with the view of the Employers concerning the sentence adopted in the conclusions of the Conference Committee in cases of the right to strike. He added that in the majority of ILO member States the right to collective action was already regulated, including through international and regional instruments. He also recalled that the Committee on Freedom of Association had already set a framework that was incontestable and as yet unchallenged. He expressed the fear that other matters of controversy might emerge relating to other Conventions, the application of which could be seen as an obstacle to enterprise competitiveness.

20. The Worker Vice-Chairperson referred to the six proposals made by the Employers' group during the general discussion at the Conference Committee in June and considered that the purpose of the six proposals, behind the apparent neutrality of the language, was to weaken the Committee of Experts.

21. With reference to the request by the Employers for a "disclaimer" or "caveat", intended to explain clearly the non-binding nature of the opinions of the Committee of Experts, he considered that this idea was without pertinence and that it would contribute to undermining the work of the Committee of Experts, which would automatically be suspected of partiality or a lack of objectivity. In his view, the articulation of the supervisory mechanisms on the application of standards, and even the role of the ILO, would be compromised. A "disclaimer" or "caveat" would amount to a denial of responsibility and would be inadequate in light of the mandate of the Committee of Experts and the evolving nature of the mandate which the Governing Body had entrusted to the Committee over the years. It would be contrary to the ILO Constitution which, in light of articles 19, 22 and 35, gave a specific value to the work of the Committee of Experts. He emphasized that the Committee of Experts itself considered that its analyses and conclusions could only become binding if a competent body, for example a judicial body, considered them as such. He called on the Committee of Experts not to modify its position and referred to the recent decision by the Governing Body, which had requested the Director-General to organize consultations as a matter of priority with all the groups with a view to submitting concrete proposals to its session in March 2014 for the resolution of the principal issues that were outstanding concerning the supervisory system.

22. With reference to the possibility of having recourse to article 37(1) of the ILO Constitution, even if his group did not wish to take that path, he acknowledged that it remained possible, and was perhaps inevitable. In fact, article 37(1) would be the only option. In addition, the Workers' group hoped that the Governing Body would be able to discuss the options and possible procedures for the implementation of article 37(2) of the ILO Constitution.

23. The Worker Vice-Chairperson reiterated the support of the Workers' group for the Committee of Experts and trusted that it would continue its work, in accordance with its mandate, with full confidence, based on the reports received.

24. In response, the Committee reaffirmed its technical role and stressed that it had no interest in extending its mandate nor the wish to do so. It would continue to fulfil the mandate it had been given by the Conference and the Governing Body. Recalling that the issues raised in relation to its mandate were fully addressed the previous year, the Committee therefore referred to its 2013 General Report, in particular paragraph 33, in which four principal factors were identified, that are summarized here:

– The examination of a range of reports and information in order to monitor the application of Conventions and Recommendations logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention.

– The Committee's approach to examining the meaning of Conventions emphasizes due regard to achieving equality of treatment for States and uniformity in practical application. This emphasis is essential to maintaining principles of legality and promoting a level of certainty.

– The Committee of Experts' views on the meaning of Conventions are broadly accepted because the Committee is composed of independent persons who have distinguished backgrounds in law and direct experience of the different national legal systems. This independence is also attributable to the means by which members are selected.

– If governments were to view the Committee's positions as somehow discounted or of less certain value, some would feel freer to ignore its requests or invitations to comply. This would inevitably undermine orderly monitoring or the predictable application of the standards. In addition, the Conference Committee, the Committee on Freedom of Association, and the Governing Body also rely on the Committee of Experts' framework of opinions about the meaning of the provisions of the Conventions in the course of the application process.

25. Concerning the right to strike in relation to Convention No. 87, the Committee appreciated the additional thoughts shared and arguments put forward by the two Vice-Chairpersons, as well as the extensive presentations by the IOE and the ITUC concerning the issue. The Committee had presented its views at considerable length in the past on why the right to strike was a part of this Convention. The Committee appreciated submissions from both sides on the need to examine situations in individual countries that involved the relationship between the right to strike and national law. These were helpful to the Committee when fulfilling its responsibilities.

26. The Committee noted that it had spent considerable time discussing the issues raised and preparing to communicate its positions. While this was obviously important work for the Committee, it also came at the expense of time the Committee would be spending reviewing reports from governments and related comments from the social partners. The Committee further noted that five of its members had returned to Geneva last February (an unprecedented activity for the Committee) in part to respond to questions from the tripartite constituencies. It had also made a series of adjustments to its working methods over the years, and would continue to do so, including by reviewing the proposals made during the June 2013 general discussion of the Conference Committee. Some adjustments had already been made this year, reflecting constructive suggestions from the social partners regarding the length of the Committee's observations and the possibility of shifting some informational queries into direct requests.

27. The Committee considered that it was for the International Labour Conference and the Conference Committee to decide whether its understanding of the matters at stake should be sustained or adjusted going forward. These were ultimately political decisions for the tripartite constituents to address and resolve. The Committee was not a political body.

28. The Employer Vice-Chairperson, in response to the discussion, expressed great appreciation of the commitment of the Committee of Experts to its role and of the amount of work that was carried out over a short period. She emphasized that there was no desire on the part of the Employers to weaken the role of the Committee of Experts, and that they wished to express their appreciation of its work very clearly. She was heartened by the clear statements by the members of the Committee of Experts acknowledging its role as a technical, and not a judicial body, and called on it to work within that mandate. In response to the statement made by the Worker Vice-Chairperson, she added that the Employers were not seeking a "disclaimer", but a "clarification" to be included in the report of the Committee of Experts which was intended to clarify the scope of its mandate. It should also be noted that the Employers had never taken the extreme view that the Committee of Experts could not engage in any interpretation, as its supervisory work logically involved a degree of interpretation.

29. The Worker Vice-Chairperson, in response to the discussion, recalled that the tripartite process was in the hands of the Governing Body. He was satisfied to note that nobody wanted to weaken the Committee of Experts, the mandate of which had been clearly defined by the tripartite constituents. In conclusion, he emphasized that there was no need for the Committee of Experts to clarify its own mandate.

30. This year, the Committee of Experts also held for the first time an informal information meeting with representatives of governments. The members of the Committee of Experts emphasized that the Committee's mandate was defined by the International Labour Conference and the Governing Body. They recalled that the Committee of Experts was a technical body and adhered to the principles of independence, objectivity and impartiality. The members of the Committee of Experts provided information on a number of aspects related to their work. These included: a succinct history of the Committee and the evolution of its composition and mandate; its role in the context of the ILO supervisory system, with particular emphasis on its relationship with the Conference Committee on the Application of Standards; the sources of information used in carrying out its work; the preparatory work and examination of comments during its plenary sittings; the types of comments made in its reports concerning the application of ratified Conventions in accordance with article 22 of the ILO Constitution; and the general surveys on the law and practice of member States in accordance with article 19 of the ILO Constitution. The Committee of Experts replied to the questions raised by Government representatives concerning its mandate, methods of work and approach. All the Government representatives who took the floor expressed appreciation for the holding of the informal meeting with the Committee of Experts and for the explanations provided. They believed that dialogue between the Committee of Experts and the constituents of the ILO was of great importance and, in this regard, hoped that such an informal meeting with Government representatives could continue.

Mandate

31. The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.

Document No. 106

GB.323/INS/5/Appendix I, The Standards Initiative, Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015

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Governing Body

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FIFTH ITEM ON THE AGENDA

The Standards Initiative – Appendix I

Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level

The tripartite constituents met in Geneva from 23 to 25 February 2015 in accordance with the decision GB.322/INS/5 adopted by the Governing Body at its 322nd Session (November 2014).

The meeting was conducted in a constructive atmosphere. The social partners presented a joint statement concerning a package of measures to find a possible way out of the existing deadlock in the supervisory system. The Government group expressed its common position on the right to strike in relation to freedom of association and also delivered a second statement in response to the social partners' joint statement. The two statements from the Government group and the Joint Statement from the Workers' and the Employers' Groups are attached to this document. All statements made during the Tripartite Meeting will be included in the report of the Meeting.

In preparing the document on the standards initiative for the 323rd Session of the Governing Body, in view of the developments during this tripartite meeting, the Office will take into account the aforementioned statements, in close consultation with the three groups.

Annex I

The ILO Standards Initiative – Joint Statement of Workers' & Employers' Groups
(23 February 2015)

A possible way forward

The right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation.

This international recognition by the International Labour Organisation requires the workers and employers groups to address:

- The mandate of the CEACR as defined in their 2015 report;
- An approach to the way in which the CAS list is elaborated and the role for the workers and the employers representatives of the Committee in drafting of conclusions is to be respected;
- Improvement in the way the supervisory procedures operate (CFA, Art 24, Art 26); and
- Agreement on the principles to guide the regular Standards Review Mechanism (SRM) and its subsequent establishment.

I. The Mandate of the CEACR

The parties recognise the mandate of the CEACR as defined in paragraph 29 of its report of 2015:

"The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions."

II. 2015 International Labour Conference

CAS Conclusions

- Involvement in discussion and drafting of conclusions by the Workers and Employers spokespersons is critical;

- CAS should adopt short, clear and straight forward conclusions. What is expected from governments to better apply ratified Conventions should be clear and unambiguous. Conclusions could also reflect concrete steps agreed with the governments to address compliance issues. The conclusions should reflect consensus recommendations. Where there is no consensus there will be no conclusions. Divergent views can be reflected in the CAS record of proceedings.

List of Cases

- Agreement between Workers and Employers on the number of cases to be discussed in the new ILC setting; realistically with the CAS to examine up to four cases per day over six days;
- A long list of 40 cases (12 cases proposed by Employer/12 cases proposed by Workers, plus double footnoted cases, and up to 10 additional cases as agreed by the employer and the worker spokespersons) to be published 30 days before the opening of the ILC;
- The list should be balanced between fundamental/technical conventions, geographical representation and level of development of the country;
- For the 2015 and 2016 ILCs and on a trial basis, and subject to review by the workers and employers group.
  - The short list will consist of up to three cases chosen by each group with special significance for the group; and
  - A reasonable number of double footnoted cases identified by the CEACR; and
  - The remaining cases reached through negotiation based on objective criteria;
  - The draft list should be established by Workers' and Employers' spokespersons by the Friday before the opening of the ILC. It becomes definitive after the adoption by the groups before the official adoption by the CAS.

III. Special Supervisory procedures (CFA, Art 24, Art 26)

- Clarification of the roles and mandates of the CFA and the Art. 24/26 procedures vis-à-vis regular standards supervision.
- Clear objective admissibility criteria, as set forth in the constitution and standing orders, will be re-affirmed with any additional criteria as agreed.
- Art 24 and 26 mechanisms are valuable tools where resolution of dispute is not possible. Representation and Complaints should be accompanied by an explanation of the measures that were taken at national level to resolve the issue(s) complained of, to the extent relevant, and indicating where pursuing such measures may have been futile. This does not impose any obligation to exhaust domestic remedies.
- Employer and Worker GB Vice Chairpersons (and where agreed employers and workers organisations) should make every effort to engage in bilateral discussions with a view to a potential resolution prior to the GB debate of cases.
- CFA process of review and clarification of the roles and mandates of the CFA is scheduled, and the parties recognise that the Committee report on these matters by March 2016.

IV. The Establishment of the SRM

Modalities of the SRM Objectives

Overall Objective: The ILO has a robust body of ILS that respond to the constantly changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

Common Principles for the Modalities of the SRM (November 2011 LILS discussion agreed on the establishment of the SRM)

- Create a coherent policy framework within ILO standards machinery;
- A clear, robust and up-to-date body of standards;
- For the purpose of the protection of workers and taking into account the needs of sustainable enterprises;
- Adopt decisions by consensus;
- Negotiate in good faith to have a clear, robust and up-to-date body of standards;
- The social partners agree to implement these commitments.

Framework: The framework for the SRM would be the principles contained in the ILO Declaration on Social Justice for a Fair Globalization

Overview and follow up to SRM decisions: By the Governing Body in its LILS section

Tripartite WG: the Governing Body should establish a tripartite working group

Scope: All ILS, except outdated, withdrawn, replaced or recently consolidated ILS, should be subject to discussion and if agreed, review. In a first instance, Standards not reviewed by the Cartier Working Party and adopted between 1985 and 2000, the instruments for which the Cartier Working Party had requested further information, those classified by the Cartier Working Party as having interim status, and those that remained to be revised could be the subject of review.

Composition: 24 members, 8 G, 8 E, 8 W

Working Methods: the working group will meet for three days in March and November every year.

This statement shall remain in force from the March 2015 Governing Body session until the November Governing Body session in 2016. It shall continue thereafter unless in the opinion of either the Workers' or Employers' Group, it is, as of November 2016, not working according to its intent when it shall then be reviewed in line with the ILO Constitution.

Annex II

Government Group Statement
(23 February 2015)

Mr Chairperson,

1. I speak on behalf of the Governments participating to this Tripartite Meeting.
2. At the outset, let me express on behalf of Governments, our strong commitment to make this meeting a tangible progress on unpacking the complex issue at hand. We will work, under your able leadership, in a constructive spirit and in good faith, so as to present to the Governing Body concrete views that will help it adopt an informed decision in March. Mr. Chairperson, you can count on the Governments' convinced support to make these three days of deliberations a success. We look forward to the same spirit by all the Members of the Tripartite Meeting.
3. Mr. Chairperson, the Government Group had the opportunity to thoroughly ponder on the question that is posed to us all, namely the relation between Convention 87 on Freedom of Association and the right to strike.
4. The Government Group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government Group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized.
5. However, we also note that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level. The document presented by the Office describes the multi-faceted regulations that States have adopted to frame the right to strike.
6. We are ready, right from this Tripartite Meeting, to consider discussing, in the forms and framework that will be considered suitable, the exercise of the right to strike. We believe that the complex body of recommendations and observations developed in the past 65 years of application of Convention 87 by the various components of the ILO supervisory system constitutes a valuable resource for such discussions, which will also be informed by the multi-faceted regulations that States and some regions have adopted to frame the right to strike.
7. Mr. Chairperson, in conclusion, Governments will spare no effort to achieve a tangible outcome in the days to come through sustained consultations and dialogue.

   Thank you Mr. Chairperson.

Annex III

Government Group Statement
(24 February 2015)

Mr Chairperson,

1. I take the floor on behalf of the Governments participating to this Tripartite Meeting.
2. We acknowledge the "Joint Statement of Workers and Employers groups on a possible way forward to the ILO standards initiative" which we received yesterday, just before entering the Plenary. We welcome the efforts and the progress made by the social partners in reaching a common position on an extremely complex issue. The supervisory system of this Organization was put in an impasse for the past three years. We therefore take note of the willingness of the social partners to revitalize their dialogue.
3. We underline that the Government Group seriously prepared for the original task that this Tripartite Meeting was given by the Governing Body. Our common position is expressed in a comprehensive and balanced statement that was delivered yesterday afternoon. We consider of the utmost importance that the statement be reflected in the outcome and report of this meeting and be taken into account in tripartite development of a durable solution in the GB
4. We observe, that the issues raised by the social partners' statement mainly pertain to the competence of the Governing Body and that they exceed the mandate of the current Tripartite Meeting. We therefore want to hold a comprehensive tripartite discussion at the next session of the Governing Body in March and we are ready to engage in a fruitful debate in that occasion. We want also to explore ways to advance the discussion in the weeks leading to the GB session.
5. We recall that, according to the ILO Constitution, Member States are responsible for the effective implementation and observance of labour standards. We have therefore a stake in the well-functioning of the supervisory system.
6. We look forward to a renewed, long lasting cooperation and to contributing in a tripartite way to a durable and effective solution to the issues related to the supervisory system, which is the pulsing heart of the Organization to which we all belong.

Document No. 107

GB.323/INS/5/Appendix II, The Standards Initiative, Final report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015

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The Standards Initiative – Appendix II

Final report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level

(Geneva, 23–25 February 2015)

Introduction

1. The Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level was held from 23 to 25 February 2015 at the International Labour Office in Geneva, in accordance with a decision taken by the Governing Body at its 322nd Session (November 2014). The Governing Body had decided that the Meeting, open to observers with speaking rights through their groups, would be composed of 32 Governments, 16 Employers and 16 Workers and would report to the 323rd Session (March 2015) of the Governing Body.

2. The Meeting had before it a background document which contained a Part I entitled: "ILO Convention No. 87 and the right to strike"; and a Part II entitled: "Modalities and practices of strike action at the national level". Its two appendices contained information on modalities and practices of strike action at the national level, as well as statistical data on strike action and lockouts extracted from the ILO statistical database. This document was widely acclaimed by participants as a useful basis for the discussions. [1]

[1] The document can be found in document GB.323/INS/5/Appendix III.

3. The Meeting was chaired by H.E. Mr Apolinário Jorge Correia, Ambassador, Permanent Mission of Angola, current Chairperson of the Governing Body. Mr Jorgen Rønnest (Denmark) and Mr Luc Cortebeeck (Belgium) were Employer and Worker spokespersons, respectively.

ILO Convention No. 87 and the right to strike

4. *The Clerk of the Meeting* said that, following group meetings held earlier in the day, a joint statement had been agreed by the Workers' and Employers' groups and another statement agreed by the Government group. [2]

5. *The Director-General* welcomed participants and expressed the hope that their combined efforts in the days ahead would enable the Governing Body to take decisions that would then permit agreement to be reached on the action to be taken on the overall package of interconnected issues that made up the standards initiative, as well as on how to ensure the sound and effective functioning of the Committee on the Application of Standards (CAS) and the ILO supervisory system as a whole.

6. *The Worker spokesperson* said that representatives of the Workers' and Employers' groups had continued discussions following the 322nd Session of the Governing Body, in order to find at least a partial resolution that would allow the supervisory system to function again. The joint statement agreed by the Workers' and Employers' groups included the following:

- Respect for the mandate of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).
- A functioning CAS in 2015.
- A proposal for the establishment of the lists of cases, to be implemented on a trial basis in 2015 and 2016, with increased involvement of the spokespersons in the elaboration of consensual conclusions.
- A review of the working methods of the Governing Body Committee on Freedom of Association (CFA), as already planned.
- A review of the use of procedures under articles 24 and 26 of the ILO Constitution.
- An agreement to proceed with the Standards Review Mechanism under guidelines to be agreed.

7. He hoped that the Governments recognized the important steps taken by the Workers and Employers and would lend them their support. The agreement would allow the ILO to resume its supervision of standards. It was of critical importance that the supervisory system functioned for the promotion of decent work everywhere. That would require a commitment to social dialogue, in order to address violations of standards when and where they occurred. While the Workers would spare no effort to ensure that the proposals contained in the joint statement worked, a review of the proposals was foreseen by the Governing Body at its 328th Session (November 2016).

[2] These statements are reproduced in full in document GB.323/INS/5/Appendix I.

8. The Workers' views on the right to strike had not changed. The right to strike was a foundation of democracy and a fundamental option for workers facing protracted opposition to collective bargaining, unsafe workplaces and exploitation. It was protected by Convention No. 87. He welcomed the Employers' commitment to restore mature industrial relations and acknowledged their recognition of the right to take industrial action, by workers and employers, in support of their legitimate interests. He asked for the joint statement agreed by the Workers' and Employers' groups, together with the observations of the Governments, to be transmitted to and acted upon at the next session of the Governing Body.

9. *The Employer spokesperson* said that he had believed social dialogue had not been exhausted at the conclusion of the 322nd Session of the Governing Body. Through the good offices of members of the Workers' group, discussions had been resumed and a common position had been reached that morning. It had not been possible to inform governments in advance but he trusted that their support would be forthcoming. Indeed, without active government involvement and contributions, the process would not be successful.

10. *Speaking on behalf of the Government group*, [3] a Government representative of Italy said that the group recognized that the right to strike was linked to freedom of association which was one of the ILO fundamental principles and rights at work. The group also recognized that, without protecting a right to strike, freedom of association, and in particular the right to organize activities for the purpose of promoting and protecting workers' interests, could not be fully realized. However, albeit part of the fundamental principles and rights at work of the ILO, the right to strike was not an absolute right: its scope and conditions were regulated at national level. The background document described the multifaceted regulations that States had adopted to frame that right. Governments were ready to consider discussing, in the forms and framework that would be considered suitable, the exercise of the right to strike. The complex body of 65 years of recommendations and observations on Convention No. 87 by the various components of the ILO supervisory system constituted a valuable resource for such discussions.

11. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of the Bolivarian Republic of Venezuela noted that the abundant information regarding the modalities and practice of strike action contained in studies on the Latin American region had not been included among the sources cited in the background document. He recalled that the Meeting was part of a broader package that included the question of the necessity or not for a request to the International Court of Justice (ICJ) to render an urgent advisory opinion, and the working methods of the CAS. The group understood that the right to strike existed in international law: it was an essential component of freedom of association and the right to organize. Countries in the region attached considerable importance to the International Covenant on Economic, Social and Cultural Rights and the Additional Protocol of the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador", both of which were legally binding documents that made specific reference to the right to strike. The right of a trade union to freely organize its activities and to formulate its programme of action, set out in Article 3 of Convention No. 87, would be limited if the trade union did not have the right to strike, to be exercised in conformity with the laws of the country. While freedom of association was neither exclusive to Convention No. 87, nor to the ILO, the Preamble to the ILO Constitution and the Declaration of Philadelphia both enshrined the concept of freedom of association, as did the ILO

[3] First statement of the Government group, reproduced in full in document GB.323/INS/5/Appendix I, Annex II.

Declaration on Fundamental Principles and Rights at Work. In the legal systems of the region, the right to strike was an inherent right directly linked to freedom of association. The issue that had arisen at the 101st Session of the International Labour Conference in 2012 had been rooted in the interpretation of the right to strike by the CEACR, rather than in the existence of the right to strike per se. The question to be considered by the Meeting was therefore how that right should be protected in the frame of competence of each body in the ILO supervisory system. Convention No. 87 could not be considered in isolation; in particular, due account should be taken of the provisions of article 19(8) of the ILO Constitution, whereby the adoption or ratification of any Convention could not be deemed to affect any law or agreement that ensured more favourable conditions to the workers concerned than those provided for in the Convention.

12. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe observed that over the years, the right to strike had become associated with Convention No. 87 owing to the position taken by the CEACR. He welcomed the statement agreed by the Workers' and Employers' groups and expressed his group's willingness to engage with other groups in finding a lasting solution to the problem.

13. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Latvia said that all 28 Member States of the EU had ratified Convention No. 87 and were bound by the Charter of Fundamental Rights of the European Union, which recognized the right to collective bargaining and strike action. The European Court of Justice stated that the right to collective action, including the right to strike, was a fundamental right, but the exercise of that right could be subject to restrictions. The dispute that began in 2012 regarding the interpretation of Convention No. 87 could be resolved by referring the matter to the ICJ or by appointing a tribunal, in accordance with article 37 of the Constitution of the International Labour Organisation. The EU and its Member States were ready to accept such referral to the ICJ as part of a six-point package, though hoped it might be avoided. The question before the present Meeting concerned Convention No. 87 in relation to the right to strike. Since its entry into force, Convention No. 87 had been supervised by the CEACR, the CAS and the CFA, without persistent objections from governments, but only some disagreement on specific findings. Article 19 of the ILO Constitution contained a minimum standard provision whereby ratified Conventions should not be deemed to affect any law, award, custom or agreement which ensured more favourable conditions for the workers concerned than those provided for in ILO Conventions. The United Nations International Covenant on Economic, Social and Cultural Rights, 1966, in its Article 8(d), protected the right to strike. Some 140 countries had ratified both the Covenant and Convention No. 87. The right to strike was thus a corollary of freedom of association, even though it was not mentioned explicitly in Convention No. 87. However it was not an absolute right, but could be governed by national law and practice. The Tripartite Meeting could be useful in achieving a better understanding of the right to strike in order to ensure a positive outcome at the 323rd Session of the Governing Body.

14. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of China believed that the dispute regarding the interpretation of Convention No. 87 in relation to the right to strike could be resolved through tripartite consultation. ASPAG welcomed the joint statement by the Employers' and Workers' groups. Strike action was a last resort once all other means had been exhausted. The right to strike was not however an absolute right. It was recognized in the national law of 150 countries, and was regulated according to national laws.

15. *Speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden)*, a Government representative of Norway supported the EU statement. The right to strike could be derived from Convention No. 87. However, the ILO and its supervisory

bodies did not exist in isolation from the rest of the world. An international instrument had to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation. The International Covenant on Economic, Social and Cultural Rights obliged its parties to respect the right to strike in accordance with national law. Some 141 of the 153 countries party to Convention No. 87 had ratified the Covenant. A general ban on strike action would considerably restrict trade unions from defending the interests of their members. In many countries employers could take action through lockouts. Based on a reading of previous statements up to 2012, the Nordic countries noted that almost all member States had recognized a right to strike. Similarly, the Employers seemed to have recognized that there was a general right to strike that could be derived from Convention No. 87, and their objections appeared to be related to the restrictions on this right. The CEACR's interpretation of Convention No. 87 was in accordance with Article 31 of the Vienna Convention. Strike action was a means whereby workers could apply pressure in defence of their interests; the meaning of the word "programmes" therefore naturally included such action. As the CEACR was permitted to interpret a general right to strike under Convention No. 87, so it should also be entitled to place restrictions on this right. The longer the time before a State actively objected to the CEACR's jurisprudence, the greater the weight of its interpretations. It appeared that most governments accepted the CEACR's recommendations and adopted measures accordingly. Several international treaties regulated the right to strike. It would be paradoxical if the International Labour Organization did not recognize the right to strike within its own Conventions. The CEACR should continue to evaluate its interpretation and application of instruments against a background of society and legislation in evolution. If an agreement regarding Convention No. 87 and the right to strike could not be reached during the Meeting, referral to the ICJ would be necessary.

16. *A Government representative of the United States* regretted that the CEACR's function had been called into question as it was an essential part of the ILO and had been supported by every United States Administration over the past 60 years. It was vital to address this issue in a way that would strengthen the ILO supervisory system. In the decades since the adoption of Convention No. 87, the CEACR and the CFA had provided observations and recommendations with regard to the right to strike. Convention No. 87 was meant to protect freedom of association rights of workers and employers, and the right to organize activities and formulate programmes. Working within their mandates through the examination of specific cases they had observed that freedom of association and particularly the right of workers to organize their activities for the purpose of promoting and protecting their interests could not be fully realized without protecting the right to strike. The same logic had prevailed in the United States, where the National Labor Relations Act protected workers' rights, and the Supreme Court of the United States had deemed strikes to be a protected activity. The CFA had confirmed and applied the relationship between the right to strike and the right to freedom of association in almost 3,000 cases without dissent. The United States concurred that the right to strike was protected under Convention No. 87, even though the right was not explicitly mentioned in the Convention. It lent its full support to the dedicated work of the CEACR and the CFA, which for more than 60 years had provided non-binding observations and recommendations addressing the protection, scope and parameters of the right to strike. The United States also welcomed the opportunity to discuss how countries could promote this right and hoped that interference with ILO supervisory organs would not continue.

17. *A Government representative of Germany* said that the right to strike was an essential part of Convention No. 87, and was reflected in his country's national legislation. It was an essential tool to establishing and maintaining negotiations, but was not an absolute right. It should be exercised in accordance with national circumstances, law and practice. The CEACR had upheld the right to strike over many years and calling into question this

interpretation would result in a challenge to the entire system of standards supervision and its impact in other jurisdictions.

18. *A Government representative of France* said that the debate regarding the interpretation of standards needed to be concluded so that the ILO could focus on its mandate of promoting decent work and establishing and monitoring international labour standards. The ILO should be equipped with instruments, accepted by all parties, which would settle any differences of interpretation that might arise. France considered strike action an essential part of fundamental freedoms, which was reflected in its Constitution. It welcomed signs of consensus, namely the recognition of the universal right to strike derived from Convention No. 87 and the implementation of a tripartite process for examining the modalities for the exercise of the right to strike.

19. *A Government representative of India* believed that the supervisory system was an integral part of the ILO, and that the ILO Constitution should govern every decision related to the functioning of the Organization. The International Labour Conference was the supreme forum for deciding the course of action for world of work matters. The right to strike was essential, and should be guided by national laws. It was not an absolute right, but restrictions and limitations should be kept to a minimum.

20. *A Government representative of Jordan* said that the present conflict should be resolved through dialogue among the social partners. Jordan was encouraged by the joint statement. It was convinced that tripartite constituents could resolve the problem without reverting to external bodies.

21. *A Government representative of Japan* said that this issue should be resolved through tripartite consultations. It was of utmost importance that the ILO supervisory organs resumed their normal functioning as soon as possible and examined individual cases with regard to the right to strike with due respect to tripartism and national laws and practices in each country, and therefore he welcomed the fact that the Employers and Workers had reached consensus.

22. *A Government representative of Mexico* said that Mexico placed great importance on freedom of association and the right to strike, which were protected under its Constitution since 1917. While the right to strike was not explicitly mentioned in Convention No. 87, it was protected under international law and should therefore be protected under the Convention. It was however a fundamental right, not an absolute right. The supervisory bodies of the ILO should have a solid legal basis on which to base their examination of cases concerning this right. The joint statement of the Employers and Workers was therefore welcome. The principles established by the CEACR and the CFA aided in attaining better protection of freedom of association rights, among others. The clarity, impartiality and transparency of the mandate of the CEACR and the way in which the supervisory procedures functioned were of particular importance to Mexico. By recognizing the right to strike as a right inherent to freedom of association, and achieving consensus on the legal framework protecting it and on the principles guiding the Standards Review Mechanism, the Organization could move forward with the improvement of its supervisory system.

23. *A Government representative of Italy* considered the right to strike as a fundamental labour right, as reflected in Italy's Constitution. Without it, freedom of association could not be recognized. Italy agreed with the ILO supervisory bodies' interpretation of Convention No. 87. As the ILO was the UN specialized agency devoted to promoting human and labour rights, the right to strike should have a place in the Organization. The Tripartite Meeting should expressly recognize that strike action was already protected under

Convention No. 87, and that member States were bound to respecting it as a fundamental principle and right at work.

24. *A Government representative of the Islamic Republic of Iran* said that it was imperative to remove any ambiguity by defining the scope of the right to strike. The consolidation of the related terms, concepts and definitions would also contribute to the reliability and international comparability of statistics on strike action over time and across countries. The right to strike had been considered on three occasions by the International Conference of Labour Statisticians. The last discussion yielded a resolution concerning strikes, lockouts and other actions related to labour disputes, which should be taken into consideration. The current issue concerned the whole standards system and the Office should therefore amplify its work on the design of a Standards Review Mechanism and set the stage for its implementation.

25. *A Government representative of Panama* said that the right to strike was upheld by public international law. Although not actually cited in Convention No. 87, it was protected thereunder. Panama agreed with the view of the CFA that the right to strike was an intrinsic corollary of freedom of association. It was also enshrined in other international instruments including the International Covenant on Economic, Social and Cultural Rights, the European Social Charter, the Inter-American Charter of Social Guarantees of 1948 and the Protocol of San Salvador of 1988. Under those instruments, States parties should guarantee the right to strike within their national legislations, or expressly recognize the right to strike in cases of conflict of interest, without prejudice to the conditions of relevant collective agreements. Panama had recognized the right to strike under section 69 of the national Constitution, and its legislation guaranteed its exercise. Any restrictions of the right to strike in the public service were consistent with ILO provisions in that regard.

26. *A Government representative of Argentina* said that the provisions of Convention No. 87 and the right to strike were enshrined in section 14bis of the national Constitution. The right to strike was not absolute but it was a human right and should only be restricted in the case of essential services or special conditions, which should be regulated by the proper independent commission. Furthermore, States were also bound by the limitation set out in Article 53 of the Vienna Convention. As the right to strike was a human right within Convention No. 87, this limitation was applicable to it as well.

27. *A Government representative of China* welcomed the joint statement by the social partners. China had ratified the International Covenant on Economic, Social and Cultural Rights and hoped that the current issue could be resolved through tripartite consultation.

28. *A Government representative of the Bolivarian Republic of Venezuela* thanked the Workers' and Employers' groups for their statement. He hoped that the Meeting would achieve tripartite consensus in line with the principles of the Governing Body. His Government continued to believe that the current problem should be addressed in accordance with article 37(1) of the ILO Constitution, referring the matter to the ICJ. That course of action would have avoided the high costs of the Tripartite Meeting. The Bolivarian Republic of Venezuela had ratified ILO Convention No. 87 and the right to strike was protected under the Constitution and legislation of the Bolivarian Republic of Venezuela. His Government identified with workers and was committed to workers' rights, in particular the right to strike. The crisis in the ILO since 2012 was greatly damaging to the Organization and its credibility in the world of work.

(The Meeting adjourned, to reconvene on the afternoon of Tuesday, 24 February.)

29. *Speaking on behalf of the Government group*, a Government representative of Italy delivered a second statement agreed by the group. [4] She acknowledged the joint statement by the social partners and their efforts to reach a common position. It was important that her group's two statements should be reflected in the outcome and/or report of the Meeting and taken into consideration in the tripartite development of a durable solution in the Governing Body. The issues raised by the social partners mainly pertained to the competence of the Governing Body and exceeded the Meeting's mandate. Comprehensive tripartite discussions should therefore be held at the next session of the Governing Body and ways to advance the discussion should be explored prior to that session. Under the ILO Constitution, member States were responsible for the effective implementation and observance of labour standards and therefore also had responsibility for the proper functioning of the supervisory system. The group looked forward to establishing long-lasting cooperation and to contributing in a tripartite manner to a durable and effective solution for the supervisory system.

30. *Speaking on behalf of GRULAC*, a Government representative of the Bolivarian Republic of Venezuela said that the Meeting should not stray from its original mandate as decided by the Governing Body at its 322nd Session (November 2014). GRULAC would react to the matters raised in the joint Employers' and Workers' statement at the Governing Body session in March 2015.

31. *Speaking on behalf of ASPAG*, a Government representative of China welcomed the joint statement by the social partners which indicated the renewal of social dialogue and consensus through consultation. The interpretation of Convention No. 87 should be addressed through in-house social dialogue and tripartite consultation.

32. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe observed that the dynamics had changed and that the joint statement provided a basis for resolving issues. His group wished to be part of an agreement, in the spirit of tripartism.

33. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United States said that the strength and authority of the ILO supervisory system was of fundamental importance for the Organization as a whole and in ensuring labour standards throughout the world. An effective and lasting solution was needed and it was hoped that the social partners' joint statement was a step in the right direction. It contained matters that required discussion in the Governing Body, and governments wished to be part of such a discussion.

34. *Speaking on behalf of the EU and its Member States*, a Government representative of Latvia noted that the joint statement was related mainly to issues of concern to all constituents that would be discussed at the next session of the Governing Body. He stressed that the Government group's first statement had recognized that the right to strike was linked to freedom of association, and that without protecting the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, could not be fully realized. It had noted, however, that the right to strike was not an absolute right and that the scope and conditions of that right were regulated at the national level. That consensus should be reflected in the outcome and report of the Meeting. States were responsible for implementation and application of Conventions and, in the event of dispute, solutions could be found under article 37 of the ILO's Constitution. The EU and its Member States attached great importance to the ILO's role in defending human rights and to its supervisory system.

[4] This statement is reproduced in full in document GB.323/INS/5/Appendix I, Annex III.

35. *A Government representative of Australia* welcomed the social partners' joint statement. The tripartite nature of the ILO continued to serve it well. His Government actively supported the CEACR and the CAS in their normal operations. In that respect, the joint statement cleared the way for the CAS to work effectively. His Government acknowledged the agreement on the mandate of the CEACR, namely that their opinions and recommendations were persuasive but non-binding, and considered that the joint statement should be discussed at the Governing Body session in March 2015. His Government was committed to collaborating with all parties to achieve an outcome which supported and strengthened the ILO supervisory system.

36. *A Government representative of Germany* welcomed the social partners' joint statement, considering it an important first step towards ensuring the effectiveness of the supervisory system. He also highlighted the importance of the consensus reached in the Government group and would be interested to hear the social partners' views on the Governments' statement that "the right to strike is linked to freedom of association" and that "without protecting the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized". In view of the tripartite structure of the ILO, government contributions to the discussions at the Governing Body in March 2015 were of great importance. Such contributions would help promote the social partners' temporary agreement to bring a durable solution with regard to Convention No. 87.

37. *A Government representative of Japan* said that his Government welcomed the efforts made by the social partners in reaching the joint statement. The package was a good starting point to improve the functioning of the ILO supervisory mechanisms, but many points remained to be discussed in order to make the package feasible. Discussions should continue at the next session of the Governing Body. The participation of governments in that discussion was of great importance as they were responsible for the effective implementation and observance of labour standards.

38. *The Employer spokesperson* agreed that all interventions should be reflected and taken into account in the Meeting outcome and report. His group also agreed that many of the subjects dealt with should be discussed by the Governing Body. He wished to clarify that the fundamental difference between the Employers and Workers concerning the interpretation of Convention No. 87 in relation to the right to strike remained unresolved, but that this should not prevent the re-establishment of a functioning ILO supervisory system to protect workers' rights. The groups had agreed on a way of deciding on a list of cases for 2015 and 2016, which could be revised in the event of its breakdown. However, they were committed to achieving a workable solution, as with regard to the conclusions and discussions of the CAS. The joint statement provided for tripartite participation to produce short and clear conclusions directed at governments. Furthermore, they expected the CFA to meet before the Governing Body to discuss cases. A discussion would later take place on the possibility of amending certain provisions relating to article 24 and 26 procedures and on establishing the Standards Review Mechanism. No guidelines or instructions had been mentioned for the CFA, considering that it was a matter for that Committee to deal with and report back to the Governing Body. If necessary, the Employers' group would be happy to engage with governments and regional groups to discuss the joint statement.

39. *The Worker spokesperson* apologized for the fact that the Governments had not had the time to respond properly to all the elements included in the Workers' and Employers' groups' joint statement; the statement was not intended as a proposal for conclusions, but set out joint priorities and demonstrated the social partners' commitment to moving out of the impasse. The Workers noted that the Governments' statement recognized the right to strike and its link to freedom of association; the Governments' position was not far distant

from that of the social partners. The functioning of the supervisory system that the Workers and Employers sought implied that the CEACR would continue to interpret Convention No. 87, as it had up to the present. It was true that the Workers and Employers had combined issues relating to the standards initiative with the right to strike in their joint statement; they believed that such an approach would provide useful building blocks for the upcoming Governing Body discussion, help the Office to prepare a document for presentation to the Governing Body and provide the groundwork for successful discussions of the CAS at the June 2015 International Labour Conference.

The modalities and practices of strike action at national level

40. *A Government representative of India* highlighted that political parties, trade unions, social and other organizations were essential to the democratic functioning of a society and the government. The national Constitution, adopted in 1950, guaranteed the fundamental rights to form and join associations or unions, freedom of speech and expression, as well as freedom of movement throughout the territory. While some restrictions might be imposed on these freedoms, they should be of a reasonable nature, meaning not arbitrary or beyond what was required in the interest of the public. The Trade Unions Act, 1926, and the Industrial Disputes Act, 1947, were the two main pieces of legislation in relation to the freedom of association and collective bargaining rights of workers in India. The Industrial Disputes Act provided for the protection of trade union leaders and members against acts of anti-union discrimination. It also provided that interference in union activities and victimization of workers participating in trade union activities and legal strikes would amount to unfair labour practices. While the law in India neither restricted nor promoted strikes, the provisions of the Industrial Disputes Act provided for a regulatory mechanism in the interest of industrial relations and public interest.

41. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe thanked the Office for the comprehensive and informative background document. The factual information contained therein had helped participants understand and appreciate the linkage between the right to strike and freedom of association and would provide a useful background for the discussions at the next session of the Governing Body. While the extent to which it was legislated differed from one country to another, the right to strike was enshrined in constitutions and/or labour legislation of a number of the African countries. Governments of other African countries, together with their social partners, were in the process of reviewing their labour legislation and, thus, addressing the right to strike.

42. *A Government representative of Panama* highlighted that, in his country, the right to strike was recognized by law and confirmed by case law. The 1941 Constitution recognized the right to strike, although prohibiting solidarity strikes and strikes in public services. Unlike the earlier Constitution, the Constitution of 1946 only limited the exercise of the right to strike for public services, as determined by law, thus allowing solidarity strikes. He added that, by judgment of 7 March 1950, section 321 of the Labour Code which prohibited strikes in public services was declared unconstitutional by the Supreme Court of Justice. The Court's reasoning was based on the fact that the legislator's office had exceeded its powers by developing provisions of the Constitution which did not prohibit the right to strike; rather it provided that the exercise of such right might be limited by law for the public services. Limitations to the right to strike did not annul the exercise of such right. These limitations only concerned public services established by law. The above considerations (legal framework) did not apply to the exercise of the right to strike by public employees of the Panama Canal Authority which had a special constitutional mandate to ensure the efficient and uninterrupted transit of vessels of all nations, pursuant to Title XIV of the Constitution. A judgment of 27 April of 2009 found that the provisions

of Act No. 19 of 1997 prohibiting strikes in the Authority of the Panama Canal were not unconstitutional. Moreover, the abovementioned Act had not been an impediment to the exercise of the right to strike in accordance with the legal standards regulating private employment relationships in the context of the Canal's extension. Case law had found that the protection of the right to strike was widespread, in so far as the Constitution did not provide for the prohibition of strikes in public services, but for its exercise under certain limits in public services fixed by law (judgment of the Supreme Court of 23 March 1999). The right to strike was linked to freedom of association and collective bargaining, as repeatedly found by case law. In its judgment of 2 October 2006, the Supreme Court of Justice, when examining the constitutionality of provisions of Decree Law No. 8 of 1998 regulating maritime labour, highlighted that collective agreements were tightly linked to freedom of association and the right to strike. Such a link had also been emphasized by the Supreme Court of Justice on other occasions (e.g. judgments of 22 July 1998 and 21 July 2009). Moreover, section 401 of the Labour Code stated that the employer should negotiate a collective agreement when so requested by a trade union. Finally, the right to strike could not be considered outside the context of labour relations; it was a fundamental right, although not an end in itself.

43. *A Government representative of Algeria* indicated that, in Algeria, the right to organize and the right to strike were fundamental rights granted to all workers and were protected by the Constitution. In this regard, article 56 of the Constitution stated that the right to organize was recognized for all citizens and article 57 provided that the right to strike was exercised within the framework of the law. These rights were reflected in national labour legislation through Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, and Act No. 90-14 of 2 June 1990 concerning the exercise of the right to organize. The provisions of these laws applied to all workers and employers, individuals or legal entities, excluding civilian and military personnel of the national defence services.

44. Strike action, however, was considered as a last resort after all channels of dialogue had been exhausted. As such, Act No. 90-02 of 6 February 1990, referred to above, had introduced the modalities and preventive measures aimed at avoiding, as much as possible, strike action and to promote consultation and dialogue between the social partners to resolve labour disputes. Conciliation mechanisms to try to resolve disputes without recourse to strike action were provided by the legislation. In the absence of conventional conciliation procedures, or in cases where the latter failed, the territorially competent labour inspection services were seized of the collective labour dispute by the employer or by the workers' representatives. In case of failure of the conciliation procedures on all or part of the issues relating to the collective labour dispute, the labour inspector established a report recording the failure to achieve conciliation. In this case, the parties could agree to use mediation or arbitration, as provided by legislation.

45. In the absence of issues being resolved, the higher authority convened a conciliation meeting with the parties to the collective labour dispute with representatives of the territorially competent authority responsible for the public service and labour inspection. During the conciliation meeting of the collective labour dispute, if it was found that the dispute touched upon the interpretation of laws or regulations, the public service authorities would then submit those issues to the joint council of the public service. If the dispute persisted after the exhaustion of conciliation and, secondarily, mediation procedures provided by legislation, and failing the resolution of other channels provided by agreement or agreement of the parties, the right of workers to resort to strike action could then be exercised in accordance with the conditions and modalities covered by the provisions of Act No. 90-02 of 6 February 1990. In this case, the workers' organization concerned would be convened (the employer would be informed) to a general meeting to be held at the usual places of work in order to provide information on the persistent issues

of disagreement and to decide on the possibility of a concerted and collective work stoppage. The workers' organization would then hear, at their request, representatives of the employer or the administrative authority concerned.

46. Strike action was approved by secret ballot by a majority of the workers in a general assembly, which should gather at least half of the workers of the group concerned. Once the strike was approved in accordance with the law, it took effect at the end of a notice period which ran from the date of its filing before the employer; the relevant labour inspection was also informed. The duration of the notice period was fixed by negotiation and could not be less than eight days from the date of its filing. The parties to the collective labour conflict were required during the notice period and after the outbreak of the strike, to continue their negotiations for the settlement of their disagreement, which was the subject of the conflict. Thus, the right to strike exercised in the prescribed manner was protected by law and strike action that took place under these conditions did not break the employment relationship. It suspended its effects for the duration of the collective work stoppage, except with respect to what the parties to the dispute had agreed through Conventions or agreements. No sanctions could be imposed against workers because of their participation in a strike that had been regularly triggered in accordance with the conditions set forth in the law. However, when the strike concerned activities whose complete interruption was likely to affect the continuity of essential public services, vital economic activities, supply of the population or the safeguarding of existing goods and facilities, the continuation of indispensable activities was organized in the form of a mandatory minimum service or resulting from negotiations, Conventions or agreements in accordance with the law. The mandatory minimum service was organized in a number of services, inter alia: hospital services for custody, emergencies and drug distribution; services related to the operation of the national telecommunications network, radio/television and radio broadcasting; services related to the production, transportation and distribution of electricity, gas, oil products and water, etc.

47. *A Government representative of Argentina* stated that the right to strike was fully effective in his country, in accordance with article 14bis of the national Constitution, and that the said right was recognized for both workers and their organizations. The regulation of strikes was only limited to essential services by virtue of Act No. 25877 which had been drafted following ILO principles. Exceptionally, if there was a need to qualify a new service as essential, in some activities or situations an independent committee of jurists would be established to do so. Regarding collective disputes, Act No. 14786 provided for two time-bound conciliation interventions with a view to ensuring the collaboration of the parties for the purposes of dispute resolution. Upon expiry of the time period, the administrative authority would allow the parties to resume in their conflict resolution capacity. Concerning collective bargaining in the private sector, parties were able to regulate their own disputes, including resorting to the right to strike. The speaker added that his country had ratified the two most important international treaties on the matter: the United Nations International Covenant on Economic, Social and Cultural Rights and the Protocol of San Salvador. Furthermore, article 11 of the Common Market of the Southern Cone (MERCOSUR)'s Social and Labour Declaration established that no national provision or regulation should impede the exercise of the right to strike.

48. *A Government representative of Germany* indicated that the right to strike was not explicitly mentioned in the German Constitution. In his country, the right to strike was derived from the jurisprudence of the courts in Germany, which recognized that for collective bargaining purposes, the right to strike was essential for workers as it placed them on an equal footing with employers.

49. *Speaking on behalf of the Nordic countries*, a Government representative of Norway indicated that, in the Nordic countries, the right to strike had been formalized through laws and collective agreements. In some Nordic countries, the right to take industrial action was protected constitutionally. The right to industrial action, including both the right to strike and the right to lockout, was a corollary of freedom of association and the right to collective bargaining. Strike was the ultimate tool that could be used after having exhausted all other available procedures. As long as a collective agreement remained in force, no industrial action could be undertaken to amend it. In the Nordic countries, sympathy action was permitted when it supported a lawful industrial action.

50. Referring to the situation in Norway, she explained that the focus on international law and the right to strike had been raised due to the individual complaints brought by the social partners to the CFA and the comments of the CEACR. She recalled that before the late 1980s, Norway prohibited strikes on a larger scale on the assumption that they were harmful to society. Following the reasoning of the CEACR according to which the consequences and damaging effects of a strike had to be clear and imminent, the Government had revised its practice. A bill to prohibit a strike could be submitted to Parliament only when it had been proven that the damaging effects of a conflict would be of such a nature so as to endanger the life, personal safety or health of the population. While Norway did not disagree with the interpretation of the CFA and the CEACR, sometimes it had a differing assessment of the damaging effects of a strike and situations where the prohibition of a strike or lockout was justifiable. For example, when strikes widened to a full hold in all oil and gas production, the consequences were of such dimensions that the authorities had considered it necessary to intervene. Nevertheless, the Government intended to study recent observations of the CEACR and recommendations of the CFA with a view to possible further adjustments.

51. Nordic countries respected their international obligations and the developments in jurisprudence in accordance with the Vienna Convention. There were no strong objections from the Governments to the interpretation made by the CEACR and CFA. She considered that the interpretation of international instruments had to be a living process. Since the situation concerning the right to strike varied, there would always be discussions on its limits and restrictions. Those limits and restrictions could not be written in stone and should remain flexible.

52. *A Government representative of the Bolivarian Republic of Venezuela* indicated that the right to strike was protected and guaranteed under article 97 of the national Constitution and that it was developed at great length by the Organic Labour Act. A definition of "strike" was provided for under section 486 of the said Act; it was worthy of mention that such provision had been omitted from the relevant footnote in Part II of the background document (footnote No. 12). The Bolivarian Republic of Venezuela had ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In accordance with national legislation, strikes were conceived as part of the right of workers and of trade union organizations for the best defence of their rights and interests, within the framework of the law. He reiterated that his Government had identified with the workers and was committed to trade union rights, particularly the right to strike. He added that his country had not been indifferent to workers' right to strike, in relation to Convention No. 87. His country's attentiveness was reflected in the background document, notwithstanding the fact that the references made came short of portraying the breadth of his country's legislation on the matter. He highlighted that the right to strike had existed in the Bolivarian Republic of Venezuela well before 1948, the year in which Convention No. 87 was adopted. Venezuelan freedom of association and right to strike were linked to the respect and observance of both national legislation and Convention No. 87.

53. The speaker, also speaking on behalf of the Cuban Government delegation which was an observer at the Meeting, added that both governments would reserve the opportunity to comment on all the questions concerning the standards initiative during the next Governing Body session. In his view, this was not the forum to address subject matters of such relevance to the Organization, nor should such matters be addressed in a bipartite manner with governments being excluded. The Governments of Cuba and of the Bolivarian Republic of Venezuela were cognizant of the fact that the ILO's essence was tripartism, with a view to reaching the agreements that might ensue in the context of consensus; only then would the world of work be able to reach real solutions that did not obey vested interests and, more importantly, did not constitute precarious solutions but lasting ones, under a tripartite approach.

54. *A Government representative of Angola* welcomed the background document, which clearly and objectively addressed the items on the agenda, and enabled a better understanding thereof. The modalities and practices of strike action at the national level were unquestionably linked to the recognition of the right to strike. The Republic of Angola considered that the right to strike was a fundamental right protected by article 51 of the Constitution. However, the right to strike was not absolute as it was regulated by laws which determined its regular exercise and its limits, in the framework of consultation and social dialogue. The right to strike was correlated to freedom of association and was one of the fundamental pillars of the ILO. The principle of this right was included in the legislation of a number of member States for the defence of workers' rights, while guaranteeing the right to freedom of enterprise in accordance with national laws and practices. The Republic of Angola considered that the right to strike was a legitimate right and promoted social dialogue with a view to ensuring social peace.

55. *A Government representative of Colombia* stated that, for her Government, the right to strike was inherent to the rights to freedom of association and collective bargaining and that these rights could not be separated from the exercise of the right to strike. The right to strike had been legally recognized and regulated in Colombia since 1919 and it was today enshrined in the national Constitution. This right was closely linked to the constitutional principles of solidarity, dignity and participation, as well as the realization of an equitable social order. The Constitutional Court of Colombia considered that the right to strike benefited from a double constitutional protection, both through its direct recognition by article 56 of the national Constitution and through its close relationship with freedom of association. The right to strike was comprehensively regulated by several provisions of the Labour Code that had given rise to jurisprudential developments. Strike action complying with the legal requirements was one of the most valuable rights enabling workers to settle collective labour disputes with their employer. Yet being a fundamental right, the right to strike was not absolute. According to national legislation, strike actions were only restricted in essential public services. Even though the right to strike could be limited in some situations in order to protect other fundamental rights, it was clear that workers' prerogatives could not be undermined. Following the guidance provided by ILO supervisory bodies, especially the CFA and the CEACR, Law 1210 of 2008 now granted to the courts the competence to declare the legality or illegality of strike actions.

56. *A Government representative of Uruguay*, referring to the statement made earlier by GRULAC, indicated that he shared the group's views on the absence of reference to Latin American regional studies. [5] The region's contribution consisted of important legal developments on freedom of association and the right to strike. Collective labour law had been conceived by a Latin American labour law scholar based on three essential and interdependent pillars: the right of association; the right to strike; and the right to collective

[5] See para. 11 above.

bargaining. The absence or weakening of one of these pillars would impede the functioning of the legal system. Similarly, the ILO, through the CEACR, the CAS and the CFA, had considered for many years that the right to strike was a part of trade union activities, as a component of their strategy to better defend the interests of workers. To understand freedom of association solely as the right to associate and to establish workers' and employers' organizations would not fully reflect its scope as a civil and political freedom. Freedom of association was more than the right to associate; it was the right to organize trade union activities, including strikes.

57. The speaker highlighted that the Constitution of his country established the right to strike as a trade union right and the same provision provided that the law would promote the creation of trade unions. The constitutional framework had, since 1934, closely linked freedom of association and the right to strike. Labour administration also recognized the autonomy of organizations of workers and employers to interact without restriction in exercising their freedom of association, except in the case of essential services or by reason of public policy provisions. The absence of definition and of legal regulation of strikes constituted one of the singularities within the Uruguayan labour relations system. The Government of Uruguay safeguarded the tradition of respect for the independence and autonomy of trade unions and employers' organizations to organize their activities and formulate their programmes in accordance with Convention No. 87, also promoting conciliation and mediation.

58. *A Government representative of Ghana* noted that the Meeting had been marked by the reprise of social dialogue which, as demonstrated by the social partners' joint statement, had already begun to yield dividends and would ensure that the Organization continued to exercise its standards supervisory mandate. Ghana was among the many ILO Members that recognised the right to strike in its national Constitution and that this right gave workers a means to defend their interests. Nevertheless, that right had to be exercised within the confines of national laws in accordance with national circumstances. The issue that the ILO had been facing over the previous three years was not about the legitimacy of the right to strike but rather whether that right was enshrined in Convention No. 87. Her delegation welcomed the proposal to initiate the standards review mechanism as an opportunity to address this concern. Her delegation also looked forward to the full functioning of the CAS during the 104th Session of the International Labour Conference (2015).

The way forward

59. The Office circulated a text presenting the outcome of the Meeting to participants, which read as follows:

> The tripartite constituents met in Geneva from 23 to 25 February 2015. The Meeting was conducted in a very constructive atmosphere. In view of the positive progress made during the discussions, the Office was requested to prepare, in close consultation with the three groups, a document addressing all outstanding issues in the standards initiative for the 323rd Session of the Governing Body.
>
> The joint statement from the Workers' and the Employers' groups and the two statements from the Government group are attached to this document. All statements made during the Tripartite Meeting will be included in the report of the Meeting.

60. *The Chairperson* explained that the text was intended to provide a short, factual introduction to the outcome document together with some indication of the preparations for the discussion at the March session of the Governing Body. The joint Employers' and Workers' statement and the two Government group statements would be annexed to the document.

61. *Speaking on behalf of the Government group*, a Government representative of Italy proposed some amendments to the text, agreed by the group, as follows:

> The tripartite constituents met in Geneva from 23 to 25 February 2015 in accordance with the decision GB.322/INS/5 adopted by the Governing Body at its 322nd Session (November 2014).
>
> The Meeting was conducted in a constructive atmosphere. The social partners presented a joint statement concerning a package of measures to find a possible way out of the existing deadlock in the supervisory system. The Government group expressed its common position on the right to strike in relation to freedom of association and also delivered a second statement in response to the social partners' joint statement. The two statements from the Government group and the joint statement from the Workers' and the Employers' groups are attached to this document. All statements made during the Tripartite Meeting will be included in the report of the Meeting.
>
> In preparing the document on the standards initiative for the 323rd Session of the Governing Body, in view of the developments made during this Tripartite Meeting, the Office will take into account the aforementioned statements, in close consultation with the three groups.

These were reformulations of the elements that the text already contained, and she hoped that they would meet with the social partners' approval. The amendment to the first paragraph was intended to place the Meeting in the context of the other Governing Body procedures aimed at breaking the impasse. The amendment to the second paragraph was intended to give a factual account of what had happened over the course of the Meeting, for clarity and for the benefit of those who had not been present. The third paragraph was a rewording to deal with a procedural concern: the group did not feel that the present Meeting had a mandate to request the Office to prepare a document for the Governing Body. This request had already been covered by the Governing Body decision of November 2014.

62. *The Employer and Worker spokespersons* supported the text with the amendments proposed by the Government group.

(The outcome document was adopted.)

63. *Speaking on behalf of GRULAC*, a Government representative of the Bolivarian Republic of Venezuela thanked the governments that had shared their national experiences, in line with the mandate conferred on the Meeting by the Governing Body of November 2014. He welcomed the efforts made by the social partners on this issue of great importance to the ILO, and highlighted the importance of the consensus reached within the Government group on the link between freedom of association and the right to strike. He hoped that the outcome of the Meeting would provide a useful foundation for the work of the Governing Body.

64. *The Director-General* said that the current Meeting had been convened by the Governing Body in November 2014 in difficult circumstances and in the hope that it would break the impasse, which had been having negative consequences for the Organization's work in several ways. The Meeting had in fact exceeded the hopes vested in it by the Governing Body. The constructive working atmosphere, mentioned in the outcome document, had required participants to be flexible and accommodating, and to make real compromises in order to reach solutions. Coordination in and between groups had been remarkable. The immediate effect of the three days' work was to open up new positive perspectives for the upcoming Governing Body session, which would address issues related to all the interconnected elements of the standards initiative. The tripartite constituents could look forward to the next Governing Body session with confidence.

65. In its preparation of the documentation for the March 2015 Governing Body session, the Office would take full account of the outcome document and papers adopted at the present Meeting, and would work in close consultation with the three groups which had been involved. If the Organization was to reach solutions and move ahead it would be with full tripartite consensus. The Meeting had provided momentum for the next steps.

66. *The Chairperson* said that the Meeting had resulted in significant advances which should lead the Organization forward with newfound confidence in dialogue and tripartism, and he did not doubt that the same constructive attitude would characterize discussions on the CAS at the next Governing Body session.

Document No. 108

GB.323/INS/5/Appendix III, The Standards Initiative, Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised) (Geneva, 23–25 February 2015), March 2015

INTERNATIONAL LABOUR OFFICE

Governing Body
323rd Session, Geneva, 12–27 March 2015

GB.323/INS/5/Appendix III

Institutional Section

INS

Date: 13 March 2015
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FIFTH ITEM ON THE AGENDA

The Standards Initiative – Appendix III

Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised) (Geneva, 23–25 February 2015)

Contents

Introduction

This document is set out in two parts and has been prepared in the context of the follow-up to the decision taken by the Governing Body at its 322nd Session (30 October–13 November 2014) which is reproduced below. It is intended to assist the tripartite constituents and to facilitate the discussion at the meeting in the context of point 1 of the decision.

Decision on the fifth item on the agenda:
The standards initiative: Follow-up to the 2012 ILC
Committee on the Application of Standards

Further to the wide-ranging discussion held under the fifth item on the agenda of the Institutional Section, the Governing Body decided to:

(1) convene a three-day tripartite meeting in February 2015, open to observers with speaking rights through their group, to be chaired by the Chairperson of the Governing Body and composed of 32 Governments, 16 Employers and 16 Workers with a view to reporting to the 323rd Session (March 2015) of the Governing Body on:

- the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike; and
- the modalities and practices of strike action at national level;

(2) place on the agenda of its 323rd Session, the outcome and report from this meeting on the basis of which the Governing Body will take a decision on the necessity or not for a request to the International Court of Justice to render an urgent advisory opinion concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike;

(3) take the necessary steps to ensure the effective functioning of the Committee on the Application of Standards at the 104th Session of the International Labour Conference, and to this end reconvene the Working Group on the Working Methods of the Conference Committee on the Application of Standards to prepare recommendations to the 323rd Session of the Governing Body in March 2015, in particular with regard to the establishment of the list of cases and the adoption of conclusions;

(4) defer at this stage further consideration of the possible establishment of a tribunal in accordance with article 37(2) of the Constitution;

(5) as part of this package, refer to the 323rd Session of the Governing Body the following:

(a) the launch of the Standards Review Mechanism (SRM), and to this effect establish a tripartite working party composed of 16 Governments, eight Employers and eight Workers to make proposals to the 323rd Session of the Governing Body in March 2015 on the modalities, scope and timetable of the implementation of the SRM;

(b) a request to the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.

(Document GB.322/INS/5(Add.2), paragraph 1, as amended according to the discussion.)

Part I of the document provides a factual background on Convention No. 87 and the right to strike starting from the circumstances of its adoption and subsequent experience in its supervision. It then presents relevant elements of the rules of international law on treaty interpretation, in particular the 1969 Vienna Convention on the Law of Treaties.

Part II provides a broad overview of modalities concerning strike action at the national level in both law and practice.

The tripartite constituents will be keenly aware of the importance for the ILO of the issues under consideration, and of the tripartite discussions that have taken place in the International Labour Conference and in the Governing Body since June 2012. [1]

The document does not contain any concrete proposals on the possible options for action. It is however hoped that the factual information would assist constituents in identifying solutions to the issues that have arisen: they are urgently needed.

[1] *Provisional Record No. 19, Part 1(Rev.)*, International Labour Conference, 101st Session, Geneva, 2012; GB.315/INS/4; GB.315/PV, para. 75; GB.316/INS/5/4; GB.316/PV(&Corr.), para. 115; GB.317/INS/4/1; GB/317/PV, paras 52–76; Discussion at the 319th Session, item LILS/4 (no document submitted) in GB.319/PV, paras 548–567; GB.320/LILS/4; GB320/PV, paras 572–599; *Provisional Record No. 13, Part 1*, International Labour Conference, 103rd Session, Geneva, 2014; GB.321/PV, paras 59–68; GB.322/INS/5; GB.322/INS/5(Add.); GB.322/INS/5(Add.1); GB.322/INS/5(Add.2); GB.322/INS/5(Add.3); GB.322/PV/Draft, paras 47–210.

Part I. ILO Convention No. 87 and the right to strike

I. Introduction

1. The term "strike" is generally understood to cover a refusal to work decided by an organized body of employees as a form of protest, typically in an attempt to gain a concession from their employer. Although this form of action is recognized in the Constitution and/or regulated in the labour legislation of many countries, international labour Conventions, including Convention No. 87, do not contain any express provisions on the right to strike. However, two of the ILO's supervisory organs, the Governing Body Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have consistently considered that Convention No. 87 covered the right to strike and have developed over the years a body of detailed principles in relation to the scope and limits of that right. Recently, some questions have been raised concerning the legal basis for inferring a right to strike from Convention No. 87 as well as the competence of the Committee of Experts to interpret the provisions of ILO Conventions in general. [1]

2. This paper contextualizes in a strictly factual and descriptive manner the ongoing debate around the status and legal value of the ILO principles on the right to strike in the light of the provisions of Convention No. 87. The paper first provides a brief account on the preparatory work that led to the adoption of Convention No. 87 as well as on a few related developments after its adoption. It then reviews the main findings of the ILO supervisory organs in the last 50 years with respect to the scope of the right to strike and the conditions for its legitimate exercise. The paper also offers brief explanations on the rules of international law governing treaty interpretation.

3. The review of the practice of the ILO supervisory organs in the field of the right to strike proceeds in chronological order. Given the extent of such practice, no attempt is made for an exhaustive coverage but instead a summary overview is proposed through key citations and sample references.

II. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

II.1. Negotiating history prior to the adoption of the Convention

4. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), is one of the eight fundamental Conventions adopted by the ILO and ranks among the most ratified ILO Conventions. [2]

[1] For ease of reference, all relevant background documents, or extracts thereof, have been numbered consecutively and may be accessed at: https://www.ilo.org/public/english/bureau/leg/c87interpret.htm. Accordingly, all document references contained in this paper follow the numbering of the web-posted documents.

[2] As of 3 February 2015, Convention No. 87 has been ratified by 153 member States. The ratification status is found at: www.ilo.org/normlex.

5. The question of the adoption of international labour standards on freedom of association and industrial relations came before the ILO at the request of the Economic and Social Council of the United Nations, which in March 1947 adopted a resolution requesting that the item "Guarantees for the exercise and development of trade unions rights" be placed on the agenda of the Organization and considered at the next session of the International Labour Conference. The Council had been called upon by the World Federation of Trade Unions and the American Federation of Labor to consider the problem of trade unions rights with reference to a series of questions, including one as "to what extent is the right of workers and their organizations to resort to strikes recognized and protected".

6. At the request of the Governing Body, the Office prepared a report on "Freedom of Association and Industrial Relations" which was submitted to the 30th Session of the Conference in June 1947 (doc. 3). Together with a survey of legislation and practice, the report contained a proposed resolution concerning freedom of association and industrial relations as well as a list of points which would form the basis for discussion at the Conference (ibid., pp. 127–135). Apart from freedom of association, the report also addressed other important aspects of the so-called "problem of association", namely the protection of the right to organize and to bargain collectively; collective agreements; voluntary conciliation and arbitration; and cooperation between the public authorities and employers' and workers' organizations. While the right to strike was discussed in some length under the topic of voluntary conciliation and arbitration, no reference to it was made in the proposed resolution and the related list of points.

7. In introducing the first paragraph of the proposed resolution on the principles of freedom of association, the Office report noted that while there should be no distinction between workers, public or private, as regards freedom of association, "the recognition of the right of association of public servants in no way prejudges the question of the right of such officials to strike, which is something quite apart from the question under consideration" (ibid., p. 109). This explanation echoes the conclusions that the report draws from the survey of domestic laws and practices on this issue. The report noted that while several legal systems excluded civil servants from the application of the right of association, "the legislature actually intended to debar them from the right to strike and not from the right of association" (ibid., p. 46).

8. In 1947, during the discussions of the Conference Committee on Freedom of Association, an amendment was moved by the Government representative of India with a view to excluding the police and armed forces from "the field of application of freedom of association, because they were not authorised to take part in collective negotiations and had not the right to strike". The Worker member of France opposed the amendment on the ground that "public employees should enjoy full freedom of association" and "a restrictive Convention could not serve as a model for less advanced countries" and the amendment was eventually rejected (doc. 4, p. 570).

9. In the event, the Conference adopted a resolution concerning freedom of association and the right to organize and to bargain collectively without making any specific reference to the right to strike. The Conference also decided to place on the agenda of its 31st Session the questions of freedom of association and the protection of the right to organize with a view to their consideration under the single-discussion procedure and to this end, a questionnaire was drafted for the consultation of governments (docs 6 and 9).

10. The questionnaire asked, inter alia, whether "it would be desirable to provide that the recognition of the right of association of public officials by international regulation should in no way prejudge the question of the right of such officials to strike". Most governments replied in the affirmative stressing that the recognition of the right of association of public officials is without prejudice to the question of the right to strike (docs 10 and 11). In analysing the replies of governments, the Office noted that "several Governments have

emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference" (doc. 11, p. 87). [3]

11. On the basis of the replies from the governments, a final report containing the text of a proposed Convention was placed before the 1948 session of the Conference for final discussion and decision. The discussions at the Conference Committee on Freedom of Association and Industrial Relations did not address the right to strike, and the text of the proposed Convention was adopted with no substantive changes. Only the Government of Portugal recalled that in their replies to the questionnaire, several governments stated more or less explicitly that the drafting of the Convention should not imply the idea that public servants are granted the right to strike, and associated itself to these reservations (doc. 13, p. 232).

II.2. Related developments after the adoption of the Convention

12. In 1955, a member of the Governing Body Committee on Standing Orders and the Application of Conventions and Recommendations suggested that the report form used for the purposes of regular reporting on the application of Convention No. 87 could be supplemented by including two additional questions relating to provisions in national legislation restricting the right to strike and to provisions applicable with regard to freedom of association for public employees. The Committee noted, in this respect, that "the Freedom of Association and Protection of the Right to Organise Convention does not cover the right to strike" and considered that "it would not be advisable to include in the form of annual report a question which would go beyond the obligations accepted by ratifying States" (doc. 14, p. 188).

13. Reference to the right to strike in relation to Convention No. 87 was also made in two resolutions adopted by the International Labour Conference. The *Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation*, adopted in 1957, makes express reference to Convention No. 87 in its preamble and calls upon member States to ensure "the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers" (doc. 15). The *Resolution concerning Trade Union Rights and Their Relation to Civil Liberties*, adopted in 1970, recalls that Convention No. 87 lays down "basic standards of freedom of association for trade union purposes", "reaffirms the ILO's specific competence in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties" and invites the Governing Body to instruct the Director-General "to prepare reports on law and practice in matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO", giving particular attention to a series of questions, including the right to strike (doc. 16). [4] In contrast, the *Resolution concerning the 40th anniversary of the adoption of*

[3] In 1948, the Office submitted a report to the Conference on the other aspects of industrial relations. In relation to conciliation and arbitration, the report included a survey on domestic law and practice concerning "temporary legal restrictions of strikes and lockouts" (doc. 12, pp. 111–118).

[4] In yet another *Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea-Bissau*, adopted in 1972, the Conference referred to "Portuguese trade union legislation which is in open and flagrant contradiction with the letter and the spirit of ILO standards", in particular Convention No. 87, and considered that the workers of Angola, Mozambique and Guinea-Bissau were "denied basic trade union rights including, above all, the right to set up free and democratic

the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), adopted in 1987 with a view to recall the fundamental principles enshrined in the Convention and launch an appeal for its ratification, contains no reference to the right to strike (docs 17 and 18).

14. Mention should also be made of at least one initiative suggesting that standard-setting action should be undertaken with regard to the right to strike. In October 1991, the Government of Colombia requested the Director-General "to include the question of a Convention on the right to strike on the agenda" of the Conference. The Governing Body discussed this proposal in two consecutive sessions and whereas several voices were raised in favour of an international instrument, or at least a general discussion on the subject, it finally decided not to place an item concerning the right to strike on the agenda of the Conference (docs 19 and 20).

III. Supervision of obligations arising under or relating to Conventions

III.1. Committee of Experts on the Application of Conventions and Recommendations

15. The Committee of Experts evaluates the conformity of national legislation on the basis of regular reports received from member States and prepares country-specific comments. The Committee is also responsible for carrying out on an annual basis a General Survey of national laws and practices relating to a specific Convention or group of Conventions, chosen by the Governing Body. In fulfilling its functions over the years, the Committee has commented extensively on the duties and obligations arising out of Convention No. 87, including with regard to the protection of the right to strike. [5]

16. To date, the Committee of Experts has prepared five General Surveys on Convention No. 87. In the 1959 General Survey, the Committee of Experts reviewed state practice as regards legal restrictions on the right to strike and indicated that:

> the problem of the prohibition of strikes by workers other than public officials acting in the name of the public powers raises questions which are often complex and delicate. It is certain that such a prohibition may sometimes constitute a considerable restriction of the potential activities of trade unions. … there is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), according to which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for" in the Convention, and especially the freedom of action of trade union organisations in defence of their occupational interests; it is therefore necessary that, in every case in which certain

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trade unions and to join them, the right of assembly, the right to elect their officers freely and the right to strike".

[5] The Committee of Experts was established in 1926 as a distinguished body of 20 independent authorities appointed by the Governing Body to serve in their personal capacities. The Committee draws up two types of comments: observations in cases of serious failure to comply with obligations under a Convention, and direct requests which deal with technical issues or maters of secondary importance. General Surveys are established mainly on the basis of reports submitted by all member States under article 19 of the Constitution (whether or not they have ratified the concerned Conventions) and information communicated by employers' and workers' organizations. These surveys allow the Committee of Experts to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding their application, and to identify means of overcoming these obstacles.

workers are prohibited from striking, adequate guarantees should be accorded to such workers in order fully to safeguard their interests (doc. 21, para. 68).

17. In the General Survey of 1973, the Committee of Experts elaborated further on the various types of restrictions applicable to the right to strike in different countries and concluded that "a general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities (Article 3)" (doc. 22, para. 107). Turning to special categories of workers, especially public servants and workers in essential services, the Committee stated that:

> with regard to the former, it may be considered that the recognition of the principle of freedom of association does not necessarily imply the right to strike. … Strikes in essential services are also forbidden in a number of countries … . The Committee on Freedom of Association has called attention to the abuses that might arise out of an excessively wide definition in the law of the term "essential services" and has suggested that the prohibition of strikes should be confined to services which are essential in the strict sense of the term. (ibid., para. 109).

The Committee of Experts concluded that "in all the cases where strikes may be prohibited for certain workers, particularly civil servants and persons engaged in essential services, it is important that sufficient guarantees should be accorded to these workers in order to safeguard their interests" (ibid., para. 111).

18. In the 1983 General Survey, the Committee of Experts expressed the view that "the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests" (doc. 23, para. 200). After making reference to Article 8 of the International Covenant on Economic, Social and Cultural Rights [6] and the European Social Charter as recognizing explicitly the right to strike at the international and regional levels respectively, the Committee of Experts

[6] Article 8 of the Covenant reads as follows:

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

reiterated its position that "a general ban on strikes seriously limits the means at the disposal of trade unions to further and defend the interests of their members (Article 10 of the Convention) and their right to organize their activities (Article 3) and is, therefore, not compatible with the principles of freedom of association" (ibid., para. 205). Reviewing national laws imposing specific restrictions on strike action, the Committee reaffirmed that "the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi-public or private, would become meaningless if the legislation defined the public service or essential services too broadly" (ibid., para. 214) and also suggested that "restrictions relating to the objectives of a strike and to the methods used should be sufficiently reasonable as not to result in practice in a total prohibition or an excessive limitation of the exercise of the right to strike" (ibid., para. 226).

19. The General Survey of 1994 contained an entire chapter on the right to strike. For the first time, the Committee of Experts' analysis is preceded by some general observations on the process which has led the Committee to establish certain principles on this subject. The Committee observed, in this connection, that "although the right to strike is not explicitly stated in the ILO Constitution or in the Declaration of Philadelphia, nor specifically recognized in Conventions Nos 87 and 98, it seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87" and added that "during the discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted" (doc. 24, para. 142). The Committee went on to say that "in the absence of an express provision on the right to strike in the basic texts, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject" (ibid., para. 145), and recalled its views expressed in the three previous General Surveys on the compatibility of a general prohibition of strikes with Convention No. 87 by stating that its "reasoning is based on the recognized right of workers' and employers' organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87)." (ibid., para. 147). Referring specifically to Article 3, the Committee expressed the opinion that "the ordinary meaning of the word 'programmes' includes strike action" and also that strike action is "an activity of workers' organizations within the meaning of Article 3" (ibid., paras 148–149). In concluding its general observations, the Committee confirmed "its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87", but added that "the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by provisions laying down conditions for, or restrictions on, the exercise of this fundamental right" (ibid., para. 151).

20. In the 2012 General Survey, the Committee of Experts explained at the outset that:

> it was mainly on the basis of Article 3 of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and Article 10, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association) (doc. 25, para. 117).

The Committee observed that the "absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose" and while recognizing the preparatory work as an important supplementary interpretative source, drew attention to "other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years" (ibid., para. 118). The Committee reaffirmed that "the right to strike derives from the Convention", and took the view that

"the principles developed over time on a tripartite basis should give rise to little controversy" as they only sought to ensure that this right was duly recognized and protected in practice (ibid., para. 119).

21. A large number of observations that the Committee of Experts addresses every year on the application of standards related to freedom of association contain comments on a broad spectrum of issues concerning the scope and purpose as well as the conditions for the legitimate exercise of the right to strike. These comments by and large draw upon the conclusions of the Committee on Freedom of Association on a number of issues outlined in paragraphs 45–48 below.

22. Generally speaking, the Committee of Experts' recommendations in matters related to the exercise of the right to strike meet with the acceptance of the governments concerned, as shown by the steps undertaken by many, which are often acknowledged with satisfaction by the Committee. However, at times, governments express their disagreement with specific findings of the Committee of Experts concerning compliance with Convention No. 87 with respect to the right to strike.

23. Finally, reference should be made to the clarifications provided by the Committee of Experts in its 2011 report (doc. 26, para. 12, p. 9) concerning the methods followed when expressing its views on the meaning of the provisions of Conventions. The Committee indicated, in this respect, that:

> it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention, giving equal consideration to the two authentic languages of ILO Conventions, namely the English and French versions (Article 33). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting. [7]

III.2. Conference Committee on the Application of Standards

24. As an essential component of the ILO supervisory system, the Conference Committee on the Application of Standards complements the work of the Committee of Experts by adding its tripartite and political authority to the independent appraisal undertaken by the Committee of Experts. [8] Following the technical examination of government reports carried out by the experts, the parliamentary function of the Conference Committee offers the opportunity for a broader exchange on issues related to compliance with international

[7] For more on the interpretative functions of the ILO supervisory bodies in general, see *Non-paper on interpretation of international labour Conventions*, Feb. 2010, pp. 11–24 (doc. 54). For an overview of the employers' and workers' views, see Alfred Wisskirchen: "The standard-setting and monitoring activity of the ILO: Legal questions and practical experience", in *International Labour Review*, Vol. 144, 2005, pp. 253–289, and International Trade Union Confederation (ITUC): *The right to strike and the ILO: The legal foundations*, Mar. 2014, both available at: https://www.ilo.org/public/english/bureau/leg/c87interpret.htm.

[8] The Conference Committee, set up under article 7 of the Standing Orders of the International Labour Conference, is a standing tripartite body which examines every year the report published by the Committee of Experts. The Conference Committee examines every year 25 individual cases among the most serious cases of failure to implement ratified Conventions and adopts conclusions.

labour standards. The Conference Committee also discusses on an annual basis the general surveys prepared by the Committee of Experts, thus engaging in a multifaceted debate on topical matters of law and policy. The different General Surveys prepared by the experts on Convention No. 87, in particular the views expressed on the right to strike, have progressively given rise to strong arguments that eventually led to the current controversy.

25. In the context of the examination of the 1973 General Survey on Convention No. 87, the Worker members indicated that "while it was often stated that the right to strike was not protected by international labour Conventions, Convention No. 87 did provide for the right of trade unions to organize their activities and formulate their programmes, and thus implicitly guaranteed the right to strike". For their part, the Government members of Japan and Switzerland, referring specifically to the right to organize of public servants, took the view that the Convention did not cover the right to strike in the public sector (doc. 27, p. 544).

26. At the time of the Conference Committee discussion of the 1983 General Survey on Convention No. 87, the Worker members "welcomed the fact that the Committee of Experts had considered that the right to strike constituted one of the essential means at the disposal of the workers for the defence and promotion of their interests". The Government member of Tunisia expressed disagreement with the interpretation which the Committee of Experts had given to the concept of essential services and called for a better definition of the difficult concept of the right to strike and the adoption of a specific international Convention on this subject (doc. 28, pp. 31/13–31/14).

27. In 1989, several Employer members, while acknowledging that the Committee of Experts' report was the very basis of the Conference Committee's work, indicated that they could not share all the opinions and evaluations of the Committee of Experts, especially as "the jurisprudence of the Committee of Experts was sometimes unstable, evolving and variable". They noted that "the report of the Committee of Experts unfortunately contained a number of over-interpretations especially regarding basic human rights Conventions and in particular Convention No. 87" and observed in this respect that a Convention had to be interpreted in line with the principles laid down in the Vienna Convention on the Law of Treaties while the role of the International Court of Justice as the ultimate arbiter should always be borne in mind. The Worker members objected to what they considered a dangerous stance, particularly with respect to Convention No. 87. The Worker members also observed that it was only normal that the doctrine of the Committee of Experts had evolved but this did not imply incoherencies (doc. 29, p. 26/6, paras 21–22).

28. At the Conference Committee discussion of 1990, the Employer members recalled that they had a "different interpretation" from the Committee of Experts on the question of the right to strike. They drew attention to the fact that "the Experts had progressively deduced from Convention No. 87 a right to strike which was hardly limited", which they could not accept "not only because they considered the Experts' opinion questionable in law but also because the issue touched directly on employers' interests". The Employers members referred to the general rules of interpretation under Article 31 of the Vienna Convention on the Law of Treaties (ordinary meaning of the terms used, object and intent of a provision, and subsequent practice by the parties) and noticed that despite the considerably diversity in state practice regarding the regulation of the right to strike, the Committee of Experts "had given a very narrow interpretation of the acceptable legal limits on this right, which had resulted in an enormous gap between the practical application of Convention No. 87 by member States and its interpretation by the Committee of Experts" (doc. 30, p. 27/6, paras 23–24).

29. The same point was raised again in 1992, when the Employer members pointed to the "expansive application of the right to strike [by the Committee of Experts] even though the legislative history of Convention No. 87 did not relate to it". They stated that "from 1960

through the 1980s the Committee of Experts had concluded that those Conventions [Conventions Nos 87 and 98] contain an ever-widening right to strike, including sympathy, political and solidarity strikes, [while] they applied a narrower and narrower definition of essential services", which made the Employer members wonder "at what moment evolving Committee of Experts' interpretations became 'valid and generally recognised'" (doc. 31, p. 27/5, para. 22). In contrast, the Worker members expressed "their support for the principles applied by the Experts as a whole, including the right to strike" and observed that "a State which does not agree with the Committee of Experts' views may take the matter to the International Court of Justice but it should not expect the Conference Committee to contradict the Committee of Experts on points of law" (ibid., p. 27/5, paras 23–24).

30. At the Conference Committee discussion of 1993, the Employer members reiterated that Convention No. 87 did not regulate the right to strike since "the text of the Convention did not mention it, and the preparatory work showed the Conference had reached no consensus on the matter" (doc. 32, p. 25/9, para. 58). For the Employer Vice-Chairman of the Conference Committee:

> the only measuring rod for the interpretation of Conventions is international customary law as well as international law in the written form set forth in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. … none of the interpretation methods that are relevant under international law allows for the "creation" of an extremely broad right to strike to be derived from Convention No. 87, such has been gradually developed by the Committee of Experts. Neither the text nor any discernible agreement between the signatory States or their subsequent conduct allow for such an interpretation. On the contrary, in the drafting of Conventions Nos 87 and 98, it was clear that issues of the right to strike were not to be dealt with. … Implicitly, the right to strike developed by the Committee of Experts is virtually unlimited and the regulatory scope of the member States therefore tends to be non-existent. The formulae developed by the Committee of Experts, which allow almost any type of strike and proscribe almost any restriction as being contrary to international law, cannot be justified on the basis of any interpretation instrument derived from Convention No. 87 (ibid., p. 28/11).

31. For their part, the Worker members "strongly supported the views of the Committee of Experts with regard to the right to strike, which were in accord with the case law of the Committee on Freedom of Association". Considering the Employers' criticism as politically rather than legally motivated, they stated that "the right to strike was inseparable from the notion of freedom of association" and recalled that "the Committee of Experts' interpretation of the right to strike in Convention No. 87 had been accepted over many years" (ibid., p. 25/10, para. 61).

32. This last point was raised again at the plenary discussion of the Conference Committee report, where the Worker members argued that according to Article 31 of the Vienna Convention, "it matters not whether all the contracting parties have explicitly agreed to the interpretation of the Convention concerned. On the contrary, silence can be taken as consent. … it is necessary to take into account any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. For many years, there has been absolutely no contradiction by the Employers on the Conference Committee as regards the existing case law" (ibid., p. 28/16). Reacting to this argument, the Employer members referred to the momentous change in world relations, particularly the demise of the struggle between east and west, and indicated that "disagreements that the Employers have always had with just a few interpretations by the Experts, particularly concerning the right to strike, were muted in a show of solidarity to preserve the supervisory machinery. … For the most part the Conference Committee follows the findings and interpretations of the Experts, but this does not mean that the Conference Committee is a rubber stamp for the Experts" (ibid., p. 28/17).

33. In 1994, during the discussion of the Committee of Experts' General Survey on Conventions Nos 87 and 98, several Government members expressed general agreement with the Committee of Experts' position on strikes as an indispensable corollary of freedom of association, and emphasized moreover that the Committee had explained that this was not an absolute right. The Government member of Venezuela, in particular, took the view that the Experts had adopted a more flexible and dynamic interpretation to a literal and dogmatic one, taking into account not only the text, but also its precedents, in the context of its adoption and the changes which had occurred. The Government members of Belarus and of Portugal, however, expressed some doubts about certain principles on the exercise of the right to strike put forward by the Committee of Experts as rules of international law. The Employer members stressed that they absolutely could not accept that the Committee of Experts deduced from the text of the Convention a right so universal, explicit and detailed. Referring to the preparatory work that led to the adoption of Convention No. 87, and rejecting the experts' axiomatic and unconditional acceptance of the right to strike despite the absence of explicit and concrete provisions on the subject, the Employer members considered that "the interpretation of the Committee of Experts was creating and developing law". They added that "they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike". The Employer members recognized that an extensive right to strike did indeed exist in some countries, but this was a matter of national law and not a right established by ILO instruments or derived from them. They also drew attention to the fact that the experts gradually expanded their views on the matter from one paragraph in the General Survey of 1959 to an entire chapter and no less than 44 paragraphs in 1994. In these circumstances, they suggested that it would seem reasonable to submit the question of the right to strike to the legislator of the ILO, that is, the International Labour Conference, with a view to adopting after sufficient preparation specific regulations. The Worker members found that a new discussion at the Conference of an essential aspect of a fundamental Convention dealing with human rights as Convention No. 87 was not a good idea as it might paralyse tripartism and the ILO (doc. 33, paras 85, 115–148).

34. At the Conference Committee discussion of 1997, in response to an observation made by the Worker members that the Employer members have started openly criticizing the tripartite Committee on Freedom of Association for its approach to the right to strike, the Employer members acknowledged that "the principle of industrial action, including the right to strike and lockouts, formed part of the principles of freedom of association as set out in Convention No. 87" but clarified that "their criticisms were aimed at all the detailed jurisprudence developed over the years on the basis of these principles" (doc. 34, p. 19/35, paras 99–100). In 2001, in the context of the Conference Committee examination of an individual case, the Government member of Germany stated that "contrary to the position taken by the Employer members, the right to strike was an essential component of freedom of association, despite the fact that it was not expressly covered under Convention No. 87. Accordingly, it was the right of the Committee of Experts and the Conference Committee to address this issue, and the Committee should urge the Government to conduct a comprehensive review of the national legislation that unacceptably limited trade union activities" (doc. 35, p. 2/23).

35. In 2012, the General Survey on the fundamental Conventions concerning rights at work in light of the 2008 Social Justice Declaration came up for discussion before the Conference Committee on the Application of Standards. The Employer members, while acknowledging that a right to strike existed at the national level in many jurisdictions, "did not at all accept that the comments on the right to strike contained in the General Survey were the politically accepted views of the ILO's tripartite constituents" and "fundamentally objected to the Experts' opinions concerning the right to strike being received or promoted as soft law jurisprudence". They considered that the situation was particularly important since General Surveys were published and distributed worldwide without any prior

approval by the Conference Committee and also because the fundamental Conventions were embedded in many international instruments such as the UN Global Compact and the *OECD Guidelines for Multinational Enterprises* (doc. 36, para. 82). The Employer members recalled that the mandate of the Committee of Experts was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87, and also objected to the use of the Committee on Freedom of Association cases by the Committee of Experts when interpreting the right to strike as this added to the confusion and lack of certainty of the supervisory system (ibid., para. 147).

36. For their part, the Worker members reaffirmed their position that "the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87". They also recalled that "the Committee of Experts was a technical body which followed the principles of independence, objectivity and impartiality [and] it would be wrong to think that it should modify its case law on the basis of a divergence of opinions among the constituents" (ibid., para. 85). The Worker members indicated that "without that right, workers would not be in a position to exert any influence in collective bargaining" and stressed that "questioning the right to strike as an integral part of freedom of association would mean that other rights and freedoms were meaningless in practice" (ibid., para. 86).

37. With a view to clarifying the mandate of the Committee of Experts with regard to the General Survey, the Employers proposed that the following clarification be inserted in the General Survey before publication: "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents" (ibid., para. 150). The Worker members indicated that they "could not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the Committee of Experts" (ibid., para. 186), and eventually negotiations on this proposal broke down. The two groups being unable to draw up a list of individual cases, the Committee on the Application of Standards failed, for the first time since its creation in 1926, to complete its work with respect to article 22 of the Constitution.

38. During the general discussion of the Conference Committee, the Government member of the United States "expressed appreciation of the Committee of Experts for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike", while the Government member of Norway stated that Norway "fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87" (ibid., para. 90).

39. In 2013, to prevent any recurrence of the failure of 2012, the Employers' and Workers' groups reached a compromise to address their disagreement on the question as to whether the right to strike was included in Convention No. 87 with the inclusion in the conclusions of cases that involved the issue of the right to strike of the following sentence: "The Committee did not address the right to strike in this case, as the employers do not agree that there is a right to strike recognized in Convention No. 87" (doc. 37, para. 232). In their plenary statements, the two groups explained how they interpreted this compromise solution. For the Employers' group, although this phrase is not perfect, it makes two things transparent: first, there is no agreement in the Committee that Convention No. 87 recognizes a right to strike, and second, in the absence of consensus on this issue, the Committee is not in a position to ask governments to change their internal laws and practices with regard to strike issues (ibid., p. 19/3). For the Workers' group, the sole objective of this concession was to avoid the failures of 2012 and, in this sense, this approach would not be repeated. They reiterated that:

> seeking to have the right to strike legislated for at the national level alone places the government of the member State concerned in an unequal balance of power in which the main

> weight falls to its advantage. … By taking this line, the Employers are simply repudiating texts such as Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights, Article 6.4 of the European Social Charter of 1961 and also the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (ibid., p. 19/6).

40. At the 103rd Session of the International Labour Conference, in June 2014, the Employer members indicated that the divergence in views between the Conference Committee and the Committee of Experts on the question of the interpretation of the right to strike needed to be addressed and proposed "a fresh tripartite examination of this subject in light of the overall current industrial relations in member States". In the meantime, the Employer members were favourable to the inclusion of the same sentence that had been agreed upon by the social partners the previous year (doc. 38, paras 50–51). The Worker members refused to submit conclusions that became non-consensual as soon as it concerned the interpretation of Convention No. 87, and considered that "accepting once again the reservations put forward by the Employer members on the cases concerning Convention No. 87 would give the impression that a tacit jurisprudence in relation to freedom of association cases was creeping into the Committee" (ibid., para. 209).

III.3. Complaints as to the infringement of freedom of association

III.3.1. Governing Body Committee on Freedom of Association

41. The Governing Body Committee on Freedom of Association has developed over the years a body of detailed principles relating to trade union rights, including the right to strike – a body of principles that have often been reflected in positions taken by the Committee of Experts with respect to the right to strike (doc. 39, pp. 109–136). [9] As early as the first year of its operation, the Governing Body Committee on Freedom of Association [10] propounded the principle that "the right to strike and that of organising trade union meetings are essential elements of trade union rights" (Case No. 28, United Kingdom–Jamaica, 1952,

[9] For an overview of the principles regarding the right to strike laid down by the Committee on Freedom of Association, see B. Gernigon, A. Odero and H. Guido: "ILO principles concerning the right to strike", in *International Labour Review*, Vol. 137, 1998, pp. 441–481; J. Hodges-Aeberhard and A. Odero: "Principles of the Committee on Freedom of Association concerning strikes" in *International Labour Review*, Vol. 126, 1987, pp. 543–563. See also A. Odero and M.M. Travieso: "Le Comité de la liberté syndicale", in J.-C. Javillier and B. Gernigon (eds): *Les normes internationales du travail: un patrimoine pour l'avenir – Mélanges en l'honneur de Nicolas Valticos*, 2004, pp. 159–216. These articles may be accessed at: https://www.ilo.org/public/english/bureau/leg/c87interpret.htm.

[10] The Committee on Freedom of Association was set up in 1951 for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions Nos 87 and 98. Complaints may be brought against a member State by employers' and workers' organizations. The Committee on Freedom of Association is composed of an independent chairperson and six representatives each from the Government group, the Employers' group and the Workers' group. When the Committee on Freedom of Association decides to receive a case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. The Committee on Freedom of Association often transmits legislative aspects to the Committee of Experts when the relevant Convention has been ratified. In over 60 years of operation, the Committee on Freedom of Association has examined approximately 3,000 cases.

para. 68). [11] In 1956, the Committee on Freedom of Association reaffirmed that the right to strike "is generally regarded as an integral part of the general right of workers and their organisations to defend their economic interests" (Case No. 111, USSR, 1956, para. 227), while in the years that followed, the Committee further stressed that freedom of association and the right to strike were linked by arguing that "allegations relating to prohibitions of the right to strike are not outside its competence when the question of freedom of association is involved" (Case No. 163, Myanmar, 1958, para. 51; Case No. 169, Turkey, 1958, para. 297).

42. These early findings of the Committee on Freedom of Association met with the opposition of the representative speaking on behalf of the Employers who felt bound to "oppose any attempt by the Committee to depart from the field of freedom of association proper and encroach on that of the right to strike". He pointed out that "there were no provisions concerning the right to strike either in the Constitution or in any of the Conventions adopted by the International Labour Conference" and considered it important to "define the position of the Employers in respect of freedom of association because the ILO was opening up a new and particularly delicate branch of its activities in this field and was making an experiment which [had to] be conducted with great caution" (doc. 40, p. 38).

43. Ever since, the Committee has consistently taken the view that the right to strike is "an intrinsic corollary to the right to organize protected by Convention No. 87", that it constitutes "a fundamental right of workers and of their organizations", and also that it is "an essential" or "legitimate" means of defending their economic and social interests. [12]

44. Beyond the basic finding that the right to strike derives from the broad provisions on freedom of association set out in Convention No. 87, the Committee on Freedom of Association has developed numerous principles on the scope of the right to strike, the conditions for its exercise and permissible restrictions.

45. Concerning preconditions for the exercise of the right to strike, for instance, the Committee has indicated that compulsory arbitration may be an acceptable alternative to industrial action only with good reason, such as in the public service, essential services or in the event of an acute national crisis (see, for instance, Case No. 2329, Turkey, 2005, para. 1275).

46. As regards the permissible objectives of strike action, the Committee on Freedom of Association has recognized that strikes that are purely political in character do not fall within the scope of freedom of association (see, for instance, Case No. 1067, Argentina, 1982, para. 208), that trade unions should be able to have recourse to protest strikes (see, for instance: Case No. 2094, Slovakia, 2002, para. 135; Case No. 2251, Russian Federation, 2004, para. 985), that a general prohibition of sympathy strikes could lead to abuse (see, for instance, Case No. 2326, Australia, 2005, para. 445), and that strikes with mixed economic and political objectives may under certain circumstances be regarded as legitimate (see, for instance: Case No. 1793, Nigeria, 1994, para. 603; Case No. 1884, Swaziland, 1997, para. 684).

[11] In some early cases, the Committee on Freedom of Association concluded, however, that in so far as the right to strike was not specifically dealt with in Convention No. 87, no opinion could be given on the question as to how far the right to strike in general should be regarded as constituting a trade union right; see Case No. 60, Japan, 1954, para. 53; Case No. 102, South Africa, 1955, para. 154.

[12] For recent reaffirmation of those findings in the Committee's extensive case law, see Case No. 2258, Cuba, 2003, para. 522; Case No. 2305, Canada, 2004, para. 505; Case No. 2340, Nepal, 2005, para. 645; Case No. 2365, Zimbabwe, 2005, para. 1665.

47. With respect to implications of strike action on public welfare, the Committee on Freedom of Association has observed that the right to strike may only be restricted or prohibited in the following narrowly defined and carefully circumscribed situations: in the public service only for public servants exercising authority in the name of the State; in essential services in the strict sense, that is, in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; in the event of an acute national emergency for a limited period of time (see, for instance: Case No. 1581, Thailand, 2002, para. 111; Case No. 2257, Canada, 2004, para. 466; Case No. 2244, Russian Federation, 2005, para. 1268; Case No. 2340, Nepal, 2005, para. 645; Case No. 2383, United Kingdom, 2005, para. 759).

48. In relation to the penalties that may be imposed to workers for participating in a legitimate strike, the Committee on Freedom of Association has found that although pay deductions proportionate to the length of the strike may be acceptable, workers should not suffer dismissal on grounds of their participation or organization of a legitimate strike (see, for instance: Case No. 2141, Chile, 2002, para. 324; Case No. 2281, Mauritius, 2004, para. 633), nor should they be subject to any other discriminatory practices (see, for instance, Case No. 2096, Pakistan, 2001, para. 446). The Committee has also expressed the view that all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence (see, for instance, Case No. 2363, Colombia, 2005, para. 734), while arbitrary arrests, detention, the use of torture and the imposition of compulsory labour are all unacceptable violations of civil liberties (see, for instance: Case No. 2048, Morocco, 2000, para. 392; Case No. 1831, Bolivia, 1995, para. 396).

III.3.2. Fact-Finding and Conciliation Commission on Freedom of Association

49. In 1964, a Fact-Finding and Conciliation Commission on Freedom of Association [13] was appointed to examine the case concerning persons employed in the public sector in Japan. The Commission "noting that there is no decision of the International Labour Conference defining the extent of the right to strike in public services, endorsed the principles established by the Governing Body Committee on Freedom of Association", in particular that, with respect to limitations of the right to strike, the relevant legislation should distinguish between publicly owned undertakings that are genuinely essential because their interruption may cause serious public hardship and those which are not, and also that where strikes in essential services are restricted or prohibited, adequate guarantees should be provided to safeguard to the full the interests of the workers thus deprived of an essential means of defending occupational interests (doc. 41, p. 516).

50. Another Fact-Finding and Conciliation Commission on Freedom of Association was appointed in 1991 to examine a complaint of infringements of trade union rights in South Africa. In its report, the Commission described the situation concerning the coverage of the right to strike by international labour standards as follows: "While in international law the right to strike is explicitly recognized in certain texts adopted at the international and regional levels, the ILO instruments do not make such a specific reference. Article 3 of Convention No. 87, providing as it does for the right of workers' organizations "to organise their administration and activities and to formulate their programmes", has been the basis on which the supervisory bodies have developed a vast jurisprudence relating to

[13] The Fact-Finding and Conciliation Commission on Freedom of Association was established in 1950 at the request of the Economic and Social Council of the United Nations. It is a neutral body composed of nine independent persons. Unlike the Committee on Freedom of Association, this mechanism may only be activated with the consent of the government concerned, and therefore has been rarely used in practice. To date, only six complaints have been examined by Fact-Finding and Conciliation Commissions.

industrial action. In particular, they have stated as the basic principle that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. The exercise of this right without hindrance by legislative or other measures has been consistently protected by the ILO principles. At the same time certain restrictions have been seen as acceptable in the circumstances of modern industrial relations" (doc. 42, para. 303). As a result, in formulating its conclusions, the Commission drew on the principles refined by both the Committee of Experts and the Committee on Freedom of Association on a number of issues, including the recourse to protest strikes (ibid., para. 647), the limitations of strikes in essential services in the strict sense (ibid., para. 654), the imposition of criminal sanctions and the dismissal of trade unionists for exercising the right to strike (ibid., paras 667–668), as well as the limits of strike action in the public sector (ibid., para. 730).

III.4. Article 24 representations and article 26 complaints as to the observance of ratified Conventions

51. As indicated above, the Constitution provides for two special supervisory procedures; the representation procedure, set out in articles 24 and 25, grants an industrial association of employers or of workers the right to present to the Governing Body a representation against any member State which, in its view, has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party. In addition, under articles 26–34 of the Constitution, a complaint may be filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, a delegate to the International Labour Conference or the Governing Body in its own capacity.

52. Representations concerning the application of Conventions Nos 87 and 98 are generally referred for examination to the Committee on Freedom of Association. There have been 20 Article 24 representations on Convention No. 87, of which four referred to the right to strike. In adopting its conclusions, the Committee on Freedom of Association has often reaffirmed that "[it] considers the right to strike to be a legitimate means of defending the workers' interests" (doc. 44, para. 140), and that "it deems strike action to be legitimate only when exercised peacefully and without intimidation or physical constraint" (ibid., para. 141). The Committee has recalled that "the right to strike may be restricted or prohibited: (1) in the public service only or public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)" (doc. 46, para. 55). It has also considered that "nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organizing or participating in a peaceful strike" (doc. 43, para. 99), and further specified that sanctions for strike action could only be imposed "solely in cases in which the action is not in conformity with the principles of freedom of association and should not be disproportionate with the severity of the offence involved" (doc. 45, para. 62).

53. Article 26 complaints may give rise to the appointment of a Commission of Inquiry, composed of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken. In a Commission of Inquiry report adopted in 1968, it was stated that while "Convention No. 87 contains no specific guarantee of the right to strike. … an absolute prohibition of strikes would constitute a serious limitation of the right of organisations to further and defend the interest of their members (Article 10 of the Convention) and could be contrary to Article 8, paragraph 2, of the Convention, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", including the right of unions to

organize their activities in full freedom (Article 3)" (doc. 47, para. 261). In another complaint examined in 1982, the Commission of Inquiry came to the conclusion that even though "Convention No. 87 provides no specific guarantee concerning strikes, the supervisory bodies of the ILO have always taken the view – which is shared by the Commission – that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members" (doc. 48, para. 517). Finally, the Commission of Inquiry appointed in 2010 to examine the observance of Conventions Nos 87 and 98 by another member State confirmed that "the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87" (doc. 50, para. 575). There have been six article 26 complaints, of which five referred to the right to strike.

IV. Rules of international law on treaty interpretation

54. The significance of the information provided in respect of the circumstances of the adoption of Convention No. 87, and of the positions taken by the supervisory system in relation to the right to strike, may be assessed in the light of the principles and rules of international law applicable to treaty interpretation, in particular the 1969 Vienna Convention on the Law of Treaties (doc. 51).

55. The ILO's supervisory bodies have no authority to interpret authoritatively international labour Conventions – such authority being vested exclusively with the International Court of Justice. At the same time, it is generally acknowledged that, in discharging their responsibilities, supervisory mechanisms may, as a matter of necessity, carry out some degree of functional interpretation. As the scope and limits of such interpretative function are not clearly established, it becomes important to consider the methods of interpretation used by supervisory bodies in the light of the generally applicable international rules on treaty interpretation.

56. According to Article 31 of the Vienna Convention, the principal method of interpretation is to seek to establish in good faith the ordinary meaning of the terms of the treaty in their context and in the light of the object and purpose of the treaty, while taking also into account any subsequent agreement between the parties, any subsequent practice reflecting an agreement on interpretation, and any relevant rules of international law applicable in the relations between the parties. Article 31 seems therefore to give precedence to a *textual approach* (focus on the natural meaning of the words employed), which incorporates however the *principle of effectiveness* (aim towards effective achievement of the declared or apparent object and purpose of the treaty) and also takes into consideration *subsequent practice* (how the treaty is applied or operated by parties and authorized organs). [14] In affirming that the right to strike is an intrinsic corollary of the right to organize, the Committee of Experts has opted for a dynamic, or teleological, interpretation of Articles 3 and 10 of Convention No. 87, which consists in adopting an interpretative approach that effectively responds to the object and purpose of these provisions.

[14] See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary,* 2012, pp. 541–560. The principle of effectiveness brings a teleological element in the general rule of interpretation in that a treaty is to be interpreted in a manner that advances the latter's aims *(ut res magis valeat quam pereat)*, which implies *a contrario* that any interpretation that would render the provisions of a treaty inoperative or diminish their practical effect is to be avoided. As regards subsequent practice, the consistent jurisprudence or practice of organs set up to monitor the application of a treaty carry significant weight in interpreting that treaty. As the International Court of Justice has held in the *Diallo* case, for the sake of clarity, legal security and consistency, great weight should be ascribed to the interpretation adopted by the independent body that was established specifically to supervise the application of the treaty concerned; see *Ahmadou Sadio Diallo (Rep. of Guinea* v. *Democratic Rep. of the Congo),* Judgment (2010), para. 66.

57. Article 32 of the Vienna Convention provides that as supplementary means of interpretation, the preparatory work and circumstances of adoption may be used to determine the meaning of the terms of a treaty when the result of an interpretation in accordance with the preceding general rule leaves the meaning ambiguous or obscure, or leads to an absurd or unreasonable result. Being a "supplementary means" of interpretation, recourse to preparatory work may not be used as an autonomous or alternative method of interpretation, distinct from the general rule, and may therefore have only a subsidiary value. [15] These rules are widely recognized today as being part of customary international law. [16]

58. However, according to Article 5 of the Vienna Convention, these basic rules of interpretation are without prejudice to any specific rules applicable to treaties adopted within international organizations. Such specific rules may include not only written rules but also unwritten practices and procedures of an organization. The function of Article 5 is that of a general reservation clause, in the sense that the relevant rules of the organization *(lex specialis)* prevail, in cases of conflict, over the general rules set out in the Convention *(lex generalis)*. [17] Such specific rules of the organization may, in the case of the ILO, include the principle of the inadmissibility of reservations to international labour Conventions due to the tripartite process of their adoption. It is recalled that Wilfred Jenks – then Principal Deputy Director-General and former Legal Adviser of the ILO – participating as an observer at the Vienna Conference, had asked for "a clear recognition that an international organization might have a *lex specialis* that could be modified by regular procedures, in accordance with established constitutional processes" noting that "the principle that Conventions adopted within an international organization might be subject to a *lex specialis* was of long-term as well as immediate importance" (doc. 52, pp. 36–37). [18] Jenks had also drawn attention to the fact that contrary to the secondary reference to preparatory work under Article 32 of the Vienna Convention, such material

[15] See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary*, 2012, pp. 571–572. Article 32 is activated only where the application of the general rule leads to a manifestly absurd or unreasonable result, which in itself may be a matter of subjective interpretation, especially since the absurdity has to be "manifest".

[16] As the International Court of Justice stated for the first time in 1991: "Articles 31 and 32 of the Vienna Convention may in many respects be considered as a codification of existing customary international law on the point"; see *Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal)*, Judgment, 1991, para. 48. For subsequent affirmations to the same effect, see: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, para. 94; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Judgment (2007), para. 160; *Dispute Regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)*, Judgment (2009), para. 47; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, Judgment (2010), para. 65. Therefore, to the extent that the rules laid down in Articles 31 and 32 of the Vienna Convention are universally binding as customary international law, they apply to all treaties outside the scope of the Convention, namely treaties concluded before the Convention and also treaties between States that are not all parties to the Convention.

[17] See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary*, 2012, p. 89. See also O. Corten and P. Klein (eds): *The Vienna Conventions on the Law of Treaties – A Commentary*, 2011, Vol. I, pp. 97–98.

[18] For more on the ILO's role in shaping Article 5 of the Vienna Convention, see A. Trebilcock: The International Labour Organization's approach to modern treaty law", in M.J. Bowman, and D. Kritsiotis (eds): *Conceptual and contextual perspectives on the modern law of treaties* (forthcoming).

had been a primary source for the "informal opinions" prepared by the Office. [19] In his oral statement to the Vienna Conference, he mentioned that "ILO practice on interpretation had involved greater recourse to preparatory work than that envisaged" in the draft Convention.

59. An illustration of the interpretation of treaties applied to ILO Conventions, including consideration of ILO specificities, is provided by the 1932 advisory opinion of the Permanent Court of International Justice on the interpretation of Article 3 of the Night Work (Women) Convention, 1919 (No. 4), to date the only interpretation of a Convention requested pursuant to article 37 of the ILO Constitution (doc. 53). [20]

[19] Until 2002, Memoranda of the Office containing informal opinions or clarifications on the meaning of provisions of Conventions were published in the *Official Bulletin*. Informal opinions are provided in response to requests from member States subject to the standard reservation that the ILO Constitution confers no competence to the Office to give an authentic interpretation of the provisions of international labour Conventions adopted by the Conference. It is worth noting, in this respect, that under the 1952 and 1968 Office Instructions on the procedure concerning requests for interpretations of Conventions and Recommendations, the Office should not "give any opinion on requests for the interpretation of Convention No. 87 and Convention No. 98 in view of the special procedure instituted by the Governing Body for dealing with complaints in the matter of freedom of association". These Instructions have been superseded by a 1987 Circular which no longer makes reference to Conventions Nos 87 and 98, yet the Office still refrains from expressing an opinion on interpretation of freedom of association-related standards.

[20] Faced with the question whether the Convention applies to women who hold positions of supervision or management and are not ordinarily engaged in manual work, the Court indicated that the wording of the provision "considered by itself gives rise to no difficulty: it is general in its terms and free from ambiguity or obscurity" and added that "it is necessary to find some valid ground for interpreting the provision otherwise than in accordance with the natural sense of the words". The Court used, in fact, other means of interpretation, such as the ILO Constitution, its own advisory opinions concerning the interpretation of the ILO Constitution and the preparatory work leading to the adoption of the Convention before concluding that an examination of the preparatory work also confirmed the textual interpretation and therefore "there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words".

Part II. Modalities and practices of strike action at the national level

60. The following highlights the main elements of the information provided in Appendix I on national law and practice respecting the modalities and practices of strike action. [1] Where reference is made to legislation in this document, the relevant provisions are indicated in Appendix I [in the original or in another official language of the ILO]. Appendix II contains statistical data on strike action and lockouts over certain periods of time, countries and regions for which information was available.

I. Legal and constitutional protection of strike action at the national level

1. National legal frameworks for strike action: Constitutions, general legislation, specific legislation, common law recognition

61. *Constitutional framework* – At least 97 ILO member States have an explicit protection of strike action in their national Constitutions, leaving it to the legislator to regulate its exercise in practice. [2]

[1] This section of the report is mainly based on the information collected by the International Labour Office from its constituents. It also draws on other sources, in particular: R. Blanpain: *Comparative labour law and industrial relations in industrialized market economies*, 2010; B. Waas: *The right to strike: A comparative view* (Wolters Kluwer, 2014); R. Blanpain: *The Laval and Viking cases: Freedom of services and establishment v. industrial conflict in the European Economic Area and Russia* (Wolters Kluwer, 2009); S. Van der Velden et al.: *Strikes around the world 1968–2005: Case-studies of 15 countries* (Amsterdam AKSANT, 2007); E. Tucker: "Can worker voice strike back? Law and the decline and uncertain future of strikes", in A. Bogg and T. Novitz (eds): *Voices at work: Continuity and change in the common law world* (Oxford University Press, 2014). The Waas book on the right to strike contains contributions from a variety of scholars around the world: Effrosyni Bakirzi, Hadara Bar-Mor, Florian Burger, Tankut Centel, Charles Chapman Lopez, Charles Craver, Darcy du Toit, Flor Espinoza Huacón, Hugo Fernández Brignoni, Piotr Grzebyk, Michael Horovitz, Mijke Houwerzijl, Petr Hürka, Caroline Johansson, Edit Kajtár, Anthony Kerr, Francis Kessler, Polonca Koncar, Attila Kun, Yumiko Kuwamura, Johannes Lamminen, Kwang-Taek Lee, Nikita Lyutov, Jonas Malmber, Emilio Morgado-Valenzuela, Richard Naughton, Magdalena Nogueira Guastavino, Carlos Mariano Núñez, Paolo Pascucci, Daiva Petrylaitè, Marilyn Pittard, Jeremias Prassé, Willemijn Roozendaal, Alejandro Sánchez Sánchez, Sharifah Suhanan Binti Syed Ahmad, Mirna Wilches Navarro. In reply to comments during the Meeting, the Office is also compiling a bibliography of major scholars who have written on the right to strike.

[2] This is the case in **Albania**, **Algeria**, **Angola**, **Argentina**, **Armenia**, **Azerbaijan**, **Belarus**, **Benin**, **Plurinational State of Bolivia**, **Bosnia and Herzegovina** (through a reference to the rights protected in the International Covenant on Economic, Social and Cultural Rights), **Brazil**, **Bulgaria**, **Burkina Faso**, **Burundi**, **Cabo Verde**, **Cambodia**, **Cameroon** (Preamble of the Constitution), **Central African Republic**, **Chad**, **Chile** (the Constitution establishes the prohibition of strike action for certain workers of the public sector, thereby indirectly recognizing the right to strike of the other categories of workers), **Colombia**, **Congo**, **Czech Republic**, **Costa Rica**, **Côte d'Ivoire**, **Croatia**, **Cyprus**, **Democratic Republic of the Congo**, **Djibouti**, **Dominican Republic**, **Ecuador**, **El Salvador, Equatorial Guinea**, **Estonia**, **Ethiopia**, **France** (Preamble to the Constitution), **Georgia**, **Greece**, **Guatemala**, **Guinea, Guinea-Bissau, Guyana** (*freedom* to strike), **Haiti**, **Honduras**, **Hungary**, **Italy**, **Kazakhstan**, **Kenya**, **Republic of Korea** (*collective action*), **Kyrgyzstan**, **Latvia**, **Lithuania**, **Luxembourg**, **Madagascar**, **Republic of Maldives** (*freedom* to strike), **Mali**, **Mauritania**, **Mexico**, **Republic of Moldova**, **Montenegro**, **Morocco**, **Mozambique**,

62. In other countries, the guarantee of a constitutional right to strike has been recognized by the courts based on the rights of organization, association and collective bargaining. This is the case, for instance, in **Finland**, [3] **Germany** [4] and **Japan**. [5] In both **India** and **Pakistan**, [6] the supreme courts have ruled that constitutional protection of the freedom to form unions does *not* in itself imply a right to strike that carries the status of constitutional protection. The Indian Supreme Court found that "the right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation". [7] In a judgment dated 30 January 2015, the Supreme Court of **Canada** found that the right to strike is protected under section 2(d) of the Charter of Rights and Freedoms by virtue of its unique role in the collective bargaining process. [8]

63. *Legal framework* – In many ILO member States, the regulation of strike action is relatively detailed and specified in statutes. However, in others the legislation is more limited. More than 150 countries have included regulation of the modalities of strike action in their general legislation (e.g. labour laws, industrial relations and employment relations legislation, laws on the public service, criminal codes, etc.). About 50 countries have adopted specific legislative measures on the issue (e.g. "legislation on strikes", "essential services legislation", etc.). However, the absence of explicit recognition of strike action in the legislation does not mean that strikes cannot be exercised in practice. *For a list of legislative measures on strike action adopted by each country, see Appendix I.*

64. While most civil law countries provide for a *right* to strike (see Appendix I), common law countries do not generally provide specifically for such a right (exceptions include **Kenya**, **Namibia** and **South Africa**, where the *right* to strike is explicitly guaranteed by the Constitution). However, common law countries do provide for a *freedom* to strike, that is, a freedom to act collectively to pursue common interests, under which strikers are not liable under the common law, notably for breach of contract, and are given immunity from civil law proceedings. In common law countries, participation in collective bargaining is assumed to be the principal means by which workers pursue their interests, and the ability to take strike action is conceived as an essential corollary of collective bargaining. In **Guyana** and the **Republic of Maldives**, the national Constitutions enshrine the *freedom* to strike. In **Australia**, the legal system defines protected industrial action and the corresponding immunities. In the **United States**, the law allows employees to engage in concerted activities, such as strikes and peaceful picketing, in support of lawful bargaining

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Namibia, **Nicaragua**, **Niger**, **Panama**, **Paraguay**, **Peru**, **Philippines**, **Poland**, **Portugal**, **Romania**, **Russian Federation**, **Rwanda**, **San Marino**, **Sao Tome and Principe**, **Senegal**, **Serbia**, **Seychelles**, **Slovakia**, **Slovenia**, **Somalia**, **South Africa**, **Spain**, **Suriname**, **Sweden** (*industrial action*), **Switzerland**, **Syrian Arab Republic**, **the former Yugoslav Republic of Macedonia**, **Timor-Leste**, **Togo**, **Tunisia**, **Turkey**, **Ukraine**, **Uruguay, Bolivarian Republic of Venezuela,** and **Zimbabwe.**

[3] In a 2003 opinion, the Finnish Parliament's Constitutional Law Committee found that the right to strike falls within the scope of the Constitution's freedom of association rights (article 13 specifies that a member has the right to "participate in the activities of an association").

[4] Based on article 9 of the Basic Law for the Federal Republic.

[5] Based on article 28 of the Constitution.

[6] *Civil Aviation Authority, Islamabad* v. *Union of Civil Aviation Employees* (1997).

[7] *All India Bank Employees* v. *National Industrial Tribunal* (1961).

[8] *Saskatchewan Federation of Labour* v. *Saskatchewan* (2015), SCC 4, paras 75–77.

objectives or to protest against unfair labour practices. [9] The situation in **India** tends to be based on the granting of immunity for lawful strike action.

65. *Regulation by the courts in judicial decisions* – In certain countries where the statutory rules on strike action are not detailed, the regulation of industrial conflict is left to the courts. In these countries, legal principles, such as proportionality or *ultima ratio*, play an important role in assessing the lawfulness of strikes. [10] In **Japan**, although the law includes a number of provisions regarding the right to strike, court decisions have largely substantiated the statutory rules.

66. *Regulation by the social partners* – In some countries, the social partners can autonomously regulate strike action to a considerable extent, notably in relation to the provision of minimum services. Various aspects of strike action can be regulated in the by-laws of trade unions. In **Malaysia**, for instance, the law provides that the taking of decisions by secret ballot on all matters relating to strikes or lockouts is among the issues "for which provision must be made in the rules of every registered trade union". In **Sweden**, the constitutional right to strike can be restricted both by statute and by collective agreement (and thus by the social partners). [11]

67. Finally, in some countries the statutory protection of strike action remains under debate. In **China**, the standard interpretation of the current legal status of the right to strike (in the national legislation, including the Constitution, the Trade Union Law, the Labour Law and the Labour Contract Law) is that it is "neither denied nor granted". The amended 2001 Trade Union Law mentions "work stoppage" and includes a reference to the possibility, in such circumstances, for trade unions to hold consultations with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forth proposals for solutions. The Guangdong People's Congress has recently (December 2014) adopted a provincial regulation on collective bargaining, which touches upon strike action.

2. National definitions of strike action

Main elements of definitions of strike action at the national level

68. *Definitions* – Most countries have included a definition of strike action (or "industrial action") in national legislative measures. [12] Although the definitions differ slightly, they

[9] P. Shea, and E. LaRuffa: "United States", in E.C. Collins (ed): *The Employment Law Review* (Law Business Research Ltd, fifth ed., 2014), p. 818.

[10] This is the case, for instance, in **Belgium**, **Denmark**, **France**, **Germany**, **Greece**, **Ireland**, **Israel**, **Italy**, **Luxembourg**, **Netherlands** and **Colombia** (Constitutional Court, Ruling No. C-201/02 concerning the lawfulness of strike action).

[11] J. Malmberg and C. Johansson: "The right to strike: Sweden", in B. Waas: op. cit., 2014, p. 525.

[12] See, for example, the various definitions of strike in the national legislation of the following countries: **Afghanistan**, **Antigua and Barbuda**, **Australia**, **Bahrain**, **Barbados**, **Belize**, **Botswana**, **Brunei Darussalam**, **Burkina Faso**, **Burundi**, **Cambodia**, **Cameroon**, **Canada**, **Chad**, **Colombia**, **Comoros**, **Congo**, **Côte d'Ivoire**, **Czech Republic**, **Djibouti**, **Dominica**, **Eritrea**, **Estonia**, **Ethiopia**, **Fiji**, **Grenada**, **Guatemala**, **India**, **Indonesia**, **Ireland**, **Jamaica**, **Kazakhstan**, **Kenya**, **Kiribati**, **Republic of Korea**, **Lesotho**, **Madagascar**, **Malawi**, **Malaysia**, **Mauritania**, **Mexico**, **Mongolia**, **Montenegro**, **Mozambique**, **Myanmar**, **Namibia**, **New Zealand**, **Niger**, **Pakistan**, **Philippines**, **Romania**, **Russian Federation**, **Rwanda**, **Saint Lucia**, **Seychelles**, **Singapore**, **Slovakia**, **Solomon Islands**, **United Republic of Tanzania**, **Thailand**, **Timor-Leste**, **Togo**, **Turkey**, **Tuvalu**, **Ukraine**, **Viet Nam** and **Zimbabwe**.

often comprise a stoppage of work (or other forms of interruption of normal work); a concerted action; and a purpose linked to obtaining satisfaction of workers' demands, such as remedying a grievance or resolving a dispute in respect of a matter of mutual interest. However, in **Canada**, **India**, **Pakistan** and **United States**, a strike is defined simply as a cessation (or stoppage, retardation, etc.) of work, without any explicit specification that the definition includes a reason for such cessation connected with the employment of those involved.

69. Definitions are quite convergent in civil law countries. For instance, in **Burkina Faso**, the law defines strike action as a concerted and collective cessation of work to support professional claims and ensure the defence of the material and moral interests of workers. In **Cambodia**, a strike means a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining satisfaction of their demand from the employer. In **Cameroon**, the legislation refers to a collective and concerted refusal by all or part of the workers of an establishment to respect *the normal rules of work*.

70. In common law countries, such as **Nigeria**, the legislation specifies that "cessation" of work includes working at less than the usual speed or with less than usual efficiency. The **South African** definition includes a partial refusal to work or the retardation or obstruction of work. The **United Republic of Tanzania** defines a strike as a total or partial stoppage of work. In the **United States**, the definition includes a stoppage, slowdown or other interruption of work. In **Pakistan**, a "go-slow" is defined separately from strike action and is explicitly excluded from protection.

71. In some countries, in the absence of a legislative definition, the definition of strike action falls to the courts (e.g. **Austria, Finland, Germany, Hungary, Israel, Italy, Spain** and **Uruguay**). In some cases, the courts have referred the matter back to the legislator. For instance, in **Colombia**, the Constitutional Court has repeatedly stressed that only the legislator can limit the right to strike and only if certain requirements are met. [13]

72. *Forms of action* – With regard to types of concerted action, strikes may take various forms. Alongside "traditional" forms of work stoppage, there are other forms of action, such as a refusal to work overtime hours, a slowdown in work (a "go-slow" strike), the strict application of work rules ("work-to-rule"), etc. [14] In some countries, the legislation explicitly prohibits certain of these forms of strike action, or removes the protection afforded to regular strikes. For instance, in **Angola**, any reduction or change in working time or methods decided upon collectively which does not result in a refusal to work is not considered to be a strike and is therefore liable to disciplinary action. Similarly, go-slow strikes are prohibited in **Pakistan** under penalty of dismissal from trade union office and disqualification from trade union functions during the unexpired term of the mandate. [15] In India, go-slows are defined as an unfair labour practice, punishable by law. Case law in **Ireland** also seems to establish that the protections extended to strike action do not necessarily cover other forms of industrial action. [16]

[13] B. Waas: op. cit., 2014, p. 6.

[14] ILO: *The right to strike: Document for the use of the Committee on Freedom of Association*, 2006, para. 118.

[15] ibid., para. 120.

[16] *Crowley* v. *Ireland and others* (1980); *Talbot (Ireland) Ltd* v. *Merrigan and others* (1981).

73. *Bearers of the right to strike* – In many countries, *individual workers* are seen as the bearers of the right to strike, although this right may only be exercised collectively (e.g. **Colombia**, **Finland**, **Ireland**, **Italy** and **Uruguay**). In **Burundi**, the law provides that the right to strike belongs to all workers, whether or not they are organized. In practice, if the right to strike is an individual right, then "wildcat" strikes are theoretically legal, in contrast with the situation in countries where the right to call a strike is reserved for trade unions. [17]

74. In other countries, strike action is a *collective right* which belongs to the unions (or in many Latin American countries, to *gremios*). [18]

75. In other member States, the right to strike can be exercised by *both workers and their representative bodies*. This is the case, for instance, in **Argentina**, **Ecuador**, **Estonia**, **Hungary** and **Kazakhstan**. In **Benin**, the law provides that all workers may defend their rights and interests under the conditions provided by law, either individually or collectively or through trade union action. In the **United States**, work stoppages may be initiated by employees who act alone or by a representative labour union. [19] In **Ireland**, non-unionized bodies, as well as workers themselves, may call or launch strikes (though some of the immunities provided by statutory law are only applicable to members and officials of trade unions). [20] In **Finland**, strikes can also be organized by a group of workers or a trade union (although workers who strike in response to a call to strike by a trade union enjoy better protection from dismissal). [21]

76. *Rights of federations and confederations* – In many countries, federations and confederations are entitled to take strike action. However in some countries, trade union federations cannot call a strike. This is the case, for instance, in **Honduras**, **Ecuador** *(implicit ban)* and **Panama**. In **Colombia**, the Constitutional Court has expressly held that the decision to call a strike must be linked to the workers at the given company, because it is only at that level that the economic and legal effects of a strike and its impact on employment contracts can be assessed. [22] According to the Government of **Nigeria**, *in practice* trade union federations go on strike or protest against national socio-economic policies without sanctions. [23]

Purpose of the strike: Collective bargaining, political strikes, protest action, solidarity and sympathy strikes

77. In some countries with a tradition of little state intervention in industrial conflicts, strike action has almost no limitations and can therefore take various forms (e.g. **Austria** and **Uruguay**). In other countries, strike action is limited to the area of collective bargaining or

[17] ILO: op. cit., 2006, para. 23.

[18] This is the case, for instance, in **Belarus**, **Croatia**, **Cyprus**, **Czech Republic**, **Denmark**, **Germany** (only unions that enjoy the "capacity to bargain collectively"), **Iceland**, **Lithuania**, **Mauritania**, **Portugal**, **Slovakia**, **Trinidad and Tobago**, and **France** (in relation to public services).

[19] B. Waas: op. cit., 2014, p. 15

[20] ibid.

[21] ibid.

[22] ibid., p. 16.

[23] CEACR, observation, 2013, Convention No. 87.

to the framework of collective negotiations, and strikes cannot take place during the period of validity of a collective agreement and are generally only possible as a means of pressure for the adoption of a first collective agreement or its renewal. In these countries, the right to strike is provided as a means to induce employers to conclude collective agreements. This system prevails, for instance, in **Australia**, **Chile**, **Czech Republic**, **Germany**, **Japan**, **New Zealand**, **Turkey** and **United States**. *On the issue of restrictions on strikes during the term of a collective agreement (i.e. the "social peace obligation"), see paragraphs 112–116 below.*

78. Similarly, certain countries distinguish between strike action taken to pursue disputes over rights and that taken in relation to disputes of interest. [24] Disputes of rights concern the interpretation or application of existing rights, whether statutory rights or rights arising from collective agreements. Disputes of interest concern the content of collective agreements under negotiation. In **Hungary**, **South Africa**, **United Republic of Tanzania** **Turkey** and **Viet Nam**, for example, lawful strike action cannot usually be taken in pursuit of disputes over rights.

79. *Political strikes* – In many countries, political strikes, understood as non-work related industrial action, constitute a "grey zone" where a gap exists between law and practice. It is often difficult to distinguish between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers, in particular regarding employment, social protection and standards of living. [25]

80. **South Africa** and the **United Republic of Tanzania** have similar legislation which *extends the protection* normally afforded to lawful strike action to political or protest strikes. In both cases, this kind of action is defined as strike action taken with the purpose of "promoting or defending the socio-economic interests of workers". Such strike action (excluding the normal definition of a strike) is legal, provided that it is called by a registered union or union federation which has given appropriate notice to the relevant government agency and explored in good faith the possibilities for alternative means of resolving the issue in question. It is also subject to criteria of reasonableness and proportionality. In **Turkey**, a recently adopted law has eliminated restrictions on politically motivated strikes, solidarity strikes, the occupation of work premises and go-slows to bring the legislation into line with the 2010 constitutional amendments. [26]

81. *Explicit prohibition* of political strikes is included, for instance, in the national legislations in **Belarus**, **Congo** and **Gabon** (with respect to "purely" political strikes).

82. *Inferences relating to the limitation of lawful action* may also be drawn from the legislation of **Paraguay**, which provides that the sole purpose of the strike must be directly and exclusively linked to the workers' occupational interests. Similarly, the Constitution of **Guatemala** provides that the right to strike can be exercised only for reasons of a socio-economic nature. In **Djibouti**, the law defines restrictively the possible purposes of a strike when defining strike action (i.e. requesting a change in working conditions or in remuneration).

[24] B. Waas: *Strike as a fundamental right of the workers and its risks of conflicting with other fundamental rights of the citizens*, General Report III, ISLSSL, XX World Congress, Santiago de Chile, Sept. 2012, p. 20.

[25] ILO: op. cit., 2006, para. 102.

[26] Law On Trade Unions And Collective Labour Agreements (Law No. 6356, 2012).

83. In other countries, an effective prohibition of political strikes arises from the restriction of lawful strike action to the sphere of collective bargaining. This is the case, for instance, in **Australia**, **Chile**, **Germany**, [27] **Japan**, [28] **Mongolia** and **Panama**. In certain other common law jurisdictions, the possibility of taking lawful or protected strike action is limited to disputes between workers and their employer or other employers, known in law as trade or industrial disputes. Precisely what constitutes a trade dispute is frequently contested in the courts and interpretations vary. In the **United Kingdom**, for example, case law has defined "trade dispute" in such a way as to exclude most political or protest strikes from legal protection. In **Indonesia**, strike action is considered to be a fundamental right of workers only *if it results from failed negotiation*. Interestingly, political strikes are in principle permitted in **Finland** and do not violate the peace obligation that is part of every collective agreement.

84. In other countries, although political strikes would appear to be prohibited, court decisions have introduced some nuances (e.g. **Netherlands** and **Spain**). In **Israel**, the assumption is that a political strike is not protected, since it does not involve improvement of the economic situation of workers: however, recognition has been given to "quasi-political strikes", which are launched against the sovereign power, but also pertain to the economic conditions of workers who have been harmed by changes in national policy. [29]

85. *Solidarity/secondary/sympathy strikes* – Solidarity, secondary and sympathy strikes are a form of industrial action in support of a strike initiated by workers in a separate undertaking. Definitions vary slightly. In the **Czech Republic**, the law defines solidarity strikes as strikes in support of the demands of striking employees in a dispute over the conclusion of another collective agreement.

86. A number of countries recognize the lawfulness of solidarity strikes. That is the case, for instance, in **Belgium**, **Croatia**, **Ecuador**, **Finland**, [30] **Greece, Hungary**, **Republic of Moldova**, **Panama**, **Poland**, **Romania** and **Bolivarian Republic of Venezuela**. If the primary strike is lawful, solidarity strikes are also considered legal in **Albania**, **Benin**, **Denmark**, **France** and **Sweden**. [31] In the **United States**, outside certain limited exceptions, secondary action is not lawful. In **Ireland**, where there is no statutory exclusion of secondary action, this definition has been held by the courts to permit secondary industrial action. In **Finland**, "sympathetic action" is only legal if it does not affect the participants' own terms of employment and is not directed towards modifying their own collective agreement. [32] In **South Africa**, secondary action is lawful on condition that it can be shown that the nature and extent of the action is reasonable and proportionate, taking into account the effect the action will have on the primary employer. Similarly, in the **United Republic of Tanzania**, lawful secondary strike action is possible where a connection can be established between that action and the resolution of a dispute with the primary employer and where the action is "proportional" in light of the effect of the strike on the secondary employer and the likely contribution of the strike to resolving the primary dispute. In **Ghana**, the law protects legal sympathy strikes, subject to certain conditions. In **Croatia**, notice has to be given to the employer and the strike cannot

[27] B. Waas: op. cit., 2014, p. 14.

[28] Supreme Court Grand Bench Judgment of 25 April 1973.

[29] **Israel**: High Court of Justice, HCJ 1181/03, points 78–79.

[30] R. Blanpain: op. cit., 2010, p. 676.

[31] ibid., p. 676.

[32] J. Lamminen:"The right to strike: Finland", in B. Waas: op. cit., 2014, p. 195.

commence before the procedure for the conciliation of the initial strike has been followed, nor within a period of two days of the initial strike.

87. In contrast, in other countries, sympathy strikes that have the objective of putting pressure on a secondary employer are almost always considered unlawful (e.g. **Canada, Lithuania, Romania, Switzerland** and **United Kingdom**). [33] **Kenyan** law expressly defines "sympathetic" strikes as unlawful, where a "sympathetic strike" is any strike against an employer who is not a party to the trade dispute. In **Congo**, solidarity strikes are considered to be illegal if the solidarity strikers are not concerned *at all* by the purpose of the strike. In the **Plurinational State of Bolivia**, the law prohibits solidarity strikes under threat of penal sanctions. In **Viet Nam**, strike action cannot be utilized for the sake of solidarity. In the **Russian Federation**, this form of strike action is unlawful because the underlying demands are not addressed to the actual employer. [34] **Burundi** prohibits sympathy strikes by public servants. Moreover, solidarity or sympathy strikes are not permitted in many countries where strike action is limited to the sphere of collective bargaining. In **Japan**, solidarity or sympathy strikes are not forbidden, but the courts have not accepted that these types of strikes are covered by the protection of the right to strike. [35]

88. In many countries, there are no specific legal provisions on the subject, either authorizing or prohibiting these forms of strikes, and it is left to the courts to decide. [36] However, in **Germany**, following a recent change, the courts have approved sympathy strikes on condition that they remain "proportional". [37] In **Italy**, the Constitutional Court has extended the right to strike to include interests that are common to entire categories of workers. [38] Similarly in **Colombia**, the Constitutional Court has declared that solidarity strikes shall enjoy constitutional protection. [39]

II. Scope and restrictions of strike action at the national level

1. Categories of workers excluded

89. In most ILO member States, the right to strike may be restricted in certain circumstances, or even prohibited. These restrictions can relate to the rights and freedoms of others. For instance, both the Constitution of **Mexico** and the law in **Honduras** provide that strikes are legal "provided they have as their purpose the attaining of equilibrium between the various factors of production, by harmonizing the rights of labour with those of capital". In **Togo**, the law provides that under certain conditions workers can go on strike on condition that they respect the freedom to work of non-strikers and that they abstain from destroying

[33] R. Blanpain: op. cit., 2010, p. 676.

[34] B. Waas: op. cit., 2014, p. 49.

[35] **Japan**: Supreme Court Grand Bench Judgment, 26 Oct. 1966; Supreme Court 2nd Petty Bench Judgment, 25 Sept. 1992.

[36] ILO: op. cit., 2006, para. 107.

[37] B. Waas: op. cit., 2014, p. 50.

[38] **Italy**: Constitutional Court, Ruling No. 123/1962.

[39] **Colombia**: Supreme Court of Justice, Ruling No. C-201/02.

property, committing assault and sequestering the employer, his or her subordinates, or the administrative authority.

90. Moreover, restrictions on strike action also often concern certain categories of public servants (in particular the armed forces and the police), workers in essential services, or certain situations of national crisis. Compensatory guarantees may be provided for workers who are deprived of the right to strike. In some countries, the law provides that strike action can be prohibited on the grounds of its possible economic consequences (e.g. **Algeria**, **Australia**, **Benin** and **Chile**). In other countries (**Philippines**, **Senegal** and **Swaziland**), reference is made to the prejudice caused to public order, the general or national interest, for the prohibition of strikes. [40] In practice, it is the responsibility of the national authorities (executive, legislative and judicial) to ensure that the conditions established for limiting the right to strike are strictly observed on the ground.

Workers in the public sector

91. In various countries, the right to strike of workers in the public sector is limited, or even prohibited. A number of countries have adopted *specific legislative measures* regarding strike action in the public sector. [41] In others, the regulation of strike action in the public sector is included in the general public service regulations. [42] Identifying those workers who may face restrictions with respect to strike action is a matter of degree, which is in practice often left to the interpretation of the courts.

92. In some countries, nearly all workers in the public sector enjoy the right to strike, with the only restriction concerning members of the police and the armed forces (e.g. **Congo**, **Croatia**, **Ireland** and **Uruguay**). In **Slovenia**, all persons in the public service (including judges) in principle enjoy the right to strike, irrespective of the type and nature of the activity involved. [43] In **Sweden**, employees who exercise public authority may only strike, but not engage in other forms of industrial action; sympathy actions are restricted to the benefit of employees in the public sector. [44]

93. The Constitution of **Guatemala** explicitly protects the right to strike of state workers and of workers of decentralized and autonomous entities, provided that essential services are maintained. The national Constitutions of **Côte d'Ivoire** and the **Bolivarian Republic of Venezuela** protect the right to strike of workers in both the public and private sectors, leaving it to the legislator to establish its limits. The Constitutions of **Ethiopia** and the **Republic of Korea** explicitly state that government employees who can enjoy the right to strike shall be determined by law. However, under the laws of the **Republic of Korea**, public officials do not enjoy the right to strike. In **Mexico**, the Constitution refers to the need to give a ten-day notice period before strike action in public services.

[40] ILO: op. cit., 2006, para. 60.

[41] For example, in **Canada (Quebec)**, **Central African Republic**, **Chad**, **Côte d'Ivoire**, **France**, **Guatemala**, **Italy**, **Mali**, **Niger** and **Togo**.

[42] For example, **Algeria**, **Bulgaria**, **Central African Republic**, **Chad, Comoros**, **Gabon** and **Togo**.

[43] B. Waas: op. cit., 2014, p. 42.

[44] ibid., p. 44.

94. In other countries, there are numerous restrictions on strike action in the public sector. [45] In **India**, the law provides that no government servant shall resort to any form of strike in connection with any matter pertaining to his or her service or the service of any government servant. In **Denmark**, civil servants employed under the Civil Service Act are denied the right to strike. In **Bulgaria**, the right to strike of public servants is limited to wearing or displaying signs, armbands, badges or protest banners, without any interruption of public duties. In **Hungary**, strikes are prohibited for public servants who fulfil a fundamental function (according to the Government, those exercising managerial functions, that is, with the power to appoint and dismiss staff and initiate disciplinary proceedings). [46] In **Viet Nam**, state officials and public servants are excluded from the right to strike as they are not technically regarded as employees under the Labour Code; strikes are also prohibited in a number of specified enterprises, while the provincial authorities may also stay or suspend a strike if it poses a danger of serious detriment to the national economy or public interest. Where a strike is alleged to violate any of these restrictions, the employer may request a court to declare the strike unlawful and order compensation. In **Chile** and **El Salvador**, the national Constitutions prohibit strike action for certain workers in the public sector.

95. *Armed forces and the police* – In many countries, strike action is statutorily prohibited for members of the armed forces and the police. In some countries, this prohibition is even included in the national Constitution. [47]

96. *Other restrictions* – In some countries, the national Constitution prohibits (or limits) the right to strike, not only in the armed forces and the police, but also in certain other public services. [48] In **Greece**, the Constitution extends this limitation to judicial employees. In **Slovakia**, the constitutional prohibition of the right to strike also covers judges, prosecutors, and members and employees of the fire and rescue services. In **Tunisia**, the Constitution extends it to customs officers. Other national Constitutions refer to the possibility of limiting the right to strike for the purpose of ensuring the continuity of certain public services (e.g. **Honduras**, **Madagascar** and **Panama**). In **France**, police and prison officers, judges, military personnel and some categories of employees in air navigation do not enjoy the right to strike. [49] In **Poland**, the law provides that strikes shall be prohibited at the internal security agency, the intelligence agency, in units of the police, armed forces, prison services, frontier guards, customs services, as well as fire brigades.

97. In some countries, in order to assess who can engage in industrial action, a distinction is made between two categories of workers in the public sector, namely employees and civil servants. For example, in **Germany**, "civil servants" *(Beamte)* are denied the right to strike, while workers in the public sector enjoy the right [50] (see the 2014 ruling of the

[45] ILO: op. cit., 2006, para. 48. This is the case, for instance, in **Albania**, **Chile**, **Dominican Republic**, **El Salvador**, **Estonia**, **India**, **Japan**, **Kazakhstan**, **Republic of Korea**, **Lesotho**, **Panama**, **Poland** and **United States** (most public servants).

[46] ibid., para. 46.

[47] For example, in **Algeria**, **Azerbaijan**, **Burundi**, **Congo**, **Croatia**, **Cyprus**, **Democratic Republic of the Congo**, **Greece**, **Montenegro**, **Paraguay**, **Slovakia**, **the former Yugoslav Republic of Macedonia** and **Tunisia**.

[48] For example, in **Algeria**, **Croatia**, **Cyprus**, **Democratic Republic of the Congo**, **Montenegro**, **Paraguay** and **the former Yugoslav Republic of Macedonia**.

[49] See F. Kessler: "The right to strike: France", in B. Waas: op. cit., 2014, p. 213.

[50] B. Waas: op. cit., 2014, p. 44.

Federal Administrative Court on the constitutional strike ban for civil servants) [51]. In **Kazakhstan**, the prohibition to strike concerns only "civil servants" and excludes "administrative civil servants" and "public servants" (teachers, doctors, bank employees, etc.).

98. In **Mexico**, the legislation recognizes the right to strike of state employees (including employees in the banking sector and those of many decentralized public bodies, such as the national lottery or the housing institute) only in the event of a *general and systematic violation of their rights*. In **Switzerland**, the situation has changed: although all federal public servants were previously denied the right to strike, since 2002 the prohibition has been limited to public servants *exercising authority in the name of the State*. In some other countries, including **Lithuania** and **Norway**, [52] the right to strike in the public sector is recognized, except for certain categories of senior civil servants.

Workers in essential services

99. In many countries, in addition to the situation of civil servants *as such*, strike action is also restricted, or prohibited, for workers involved in "essential services". What is meant by essential services varies from country to country and is often linked to considerations relating to the particular circumstances prevailing in the country. Essential services may refer to services performed either by civil servants only, by workers/employees in the private sector or both. Several countries also define situations where a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope.

100. In certain countries, the national Constitution explicitly refers to limitations on strike action for workers in certain specific services that are considered to be of vital importance. [53]

101. The situation varies at the statutory level. In some countries, the legislation provides for a definition of essential services, without listing the services. Examples include **Bahrain** (the list is to be issued by order of the Prime Minister), **Egypt** (the list is to be issued by the Prime Minister), **Ghana** (the list is to be issued by the Minister) and **Poland**. In other countries, the legislation includes both a definition of essential services and a list (long or short) of these services. Elsewhere, national legislative measures only provide for the determination of a list (long or short), without defining the services. Specific national legislation on essential services has been adopted, for instance, in **Belize**, **Nigeria** and **Solomon Islands**.

[51] BVerwG 27.2.2014 – 2 C 1/13.

[52] ILO: *Manual on collective bargaining and dispute resolution in the public service*, 2011, p. 125.

[53] This is the case, for instance, in **Albania**, **Algeria**, **Angola**, **Brazil**, **Chile**, **Colombia**, **Croatia**, **Cyprus**, **Czech Republic**, **Democratic Republic of the Congo**, **Dominican Republic**, **Ecuador**, **El Salvador**, **Georgia**, **Greece**, **Guatemala, Guinea-Bissau**, **Honduras**, **Madagascar**, **Montenegro**, **Mozambique**, **Panama**, **Paraguay**, **Portugal**, **Romania**, **Spain**, **the former Yugoslav Republic of Macedonia, Timor-Leste,** and **Zimbabwe**.

102. *Definition and list of essential services* – Examples of countries where national legislative measures include both a definition and a list of essential services (which is not in all cases exhaustive) include: **Albania** (services of vital importance where the interruption of work would jeopardize the life, personal security, or the health of a part or the entire population), **Algeria** (services the interruption of which may endanger the life, personal safety or health of the citizens, or where strike action is liable to give rise to a serious economic crisis), **Armenia** (services required for meeting the essential (vital) needs of society, the absence of which may endanger human life, health and safety), **Azerbaijan** (certain service sectors that are vital to human health and safety), **Bahamas** (any service declared by the Governor-General by order to be an essential service), **Benin** (establishments where the full cessation of work could bring serious harm to the safety and health of the populations), **Burkina Faso** (services indispensable for the safety of persons and assets, the maintenance of public order, the continuity of the public service or the satisfaction of the basic needs of the community), **Chad** (services the complete interruption of which would endanger the life, safety or health of the whole or part of the population), **Dominican Republic** (services the interruption of which may endanger the life, personal safety or health of the whole or part of the population), **Eritrea** (undertakings that render indispensable services to the public in general), **Ethiopia** (services rendered by undertakings to the general public), **Fiji** (services that are vital to the success of the national economy or gross domestic product, or those in which the Government has a majority and essential interest, and which are declared essential by the minister) and **Indonesia** (enterprises that serve the public interest and/or whose types of activities, when interrupted by a strike, will lead to the endangering of human life). In **Argentina**, the law explicitly refers to the criteria established by the supervisory bodies of the ILO when addressing the issue of the determination of essential services and the establishment of minimum services.

103. *Only a list of essential services* – Examples of countries where national legislative measures set out a list of essential services include: **Antigua and Barbuda**, **Argentina** (however an activity that is not in the list may exceptionally be deemed an essential service by an independent commission), **Belize**, **Botswana**, **Brazil**, **Brunei Darussalam**, **Cabo Verde**, **Czech Republic**, **Democratic Republic of the Congo**, **Djibouti**, **Dominica**, **Ecuador**, **Grenada**, **Guatemala**, **Kenya** and **Turkey**.

104. Depending on the country, the (restricted or broad) list of services in which strike action can be limited or prohibited at the national level has included, for instance: air traffic control services; telephone services; services responsible for dealing with the consequences of natural disasters; firefighting services; health and ambulance services; prison services; security forces; water and electricity services; meteorological services; social security services; administration of justice; the banking sector; railways; transport services; air transport services and civil aviation; teachers and the public education service; the agricultural sector; fuel distribution services and the hydrocarbon; natural gas and petrochemical sector; coal production; maintenance of ports and airports; port services; postal services; municipal services; services for the loading and unloading of animals and of perishable foodstuffs; export processing zones; government printing services; road cleaning and refuse collection; radio and television; hotel services and construction.

105. Both **Canada** and the **United States** have separate systems of labour law for government and private sector employees. In **Canada**, the Labour Code and the National Industrial Relations Act apply mainly to private sector workers, with certain exclusions, including agricultural workers in both of the laws. In neither case does the concept of essential services apply to private sector workers. In the **United States**, the concept of essential services does not exist in the public sector either, but employees of the federal Government whose employment is regulated by the Federal Service Labor–Management Relations Statute cannot lawfully take strike action. In **Canada**, in contrast, employees falling under the authority of the Public Service Labour Relations Act (the vast majority of federal government employees) have the right to strike unless their work has been designated an

essential service. The federal Government has broad powers to specify the positions within a public sector bargaining unit that it deems to be essential. Workers who occupy these positions cannot lawfully take strike action.

106. **Kenya**, **South Africa** and the **United Republic of Tanzania** share the basic elements in their approach to essential services. Strikes in essential services are unlawful but, unlike in **Canada**, essential services may be in either the public or private sectors. What counts as an essential service is designated either by a dedicated advisory body (**South Africa** and **United Republic of Tanzania**) or by the labour ministry in consultation with a general industrial relations advisory body (**Kenya**). Disputes in essential services are ultimately resolved through compulsory arbitration. In **South Africa**, if employers and unions in bargaining units that are deemed to be essential services can agree on the definition of a minimum service, workers who are not involved in providing this service may lawfully take strike action. Elsewhere, practice varies. The concept of essential services does not exist in the labour law of the **United Kingdom**, although the police and the armed forces are not allowed to strike. In **Ireland**, codes of practice on dispute resolution in essential public services (defined as including health, energy supplies, water and sewage services, emergency services and certain transport services) were introduced in 2003, but remain voluntary. The armed forces and the police are not permitted to strike.

107. In **India**, "government servants" are not allowed to strike in accordance with the rules of the Central Civil Service. Workers employed in a "public utility service" can take strike action but must respect a six-week notice requirement. Public utility services are defined broadly as including transport, communications, energy, water and sanitation, but also those parts of any industrial organization concerned with safety and maintenance. The Government also has broad powers to designate new public utility services. In **Nigeria**, strikes in essential services are unlawful, and all public services are defined as falling into this category, together with a long list of industrial sectors and types of activity that can be carried out by private enterprises on behalf of the Government or for the general good of the community.

2. Determination of essential services at the national level

108. *Mechanisms for the determination of essential services* – In some countries, the law leaves discretion to the authorities to declare a service essential (e.g. **Bahamas**, **Bahrain**, **Central African Republic**, **Chile** (each year in July, a joint resolution of various ministers should establish a list of services) and **Zimbabwe**). Ministerial decrees on essential services have also been adopted in **Mali** and **Rwanda**. In the **Bolivarian Republic of Venezuela**, the law provides that, in the event of a collective labour dispute, the Minister of People's Power, within 120 hours following the admission of petitions, can issue a motivated resolution indicating the areas or activities which cannot be paralysed by the exercise of the right to strike. In **Canada**, the *employer in the public sector* has the exclusive right to determine whether any government service, facility or activity is essential because it is, or will be, necessary for the safety or security of the public or a segment of the public.

109. Elsewhere, this issue is left to the higher judicial authorities. For instance, in **Colombia**, the Supreme Court of Justice has considered that the Constitutional Court will examine in each individual case referred to it, even where there may exist a legislative definition of the classification of a public service as essential, whether or not a particular activity, taking into account its material content, corresponds to an essential service.

110. *Specialized bodies for the determination of essential services* – In other countries, specialized bodies have been established for the determination of essential services. In **South Africa**, an Essential Services Committee has been created with the function of

investigating whether or not the whole or a part of any service is an essential service, and then deciding whether or not to designate the whole or a part of that service as an essential service. Similarly, in **Namibia**, an Essential Services Committee has been established to recommend to the Labour Advisory Council all or part of a service as an essential service. In the **United Republic of Tanzania**, the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it. In **Argentina**, the law envisages the possibility that, in addition to the essential services listed in the law, another activity may be exceptionally qualified as an essential service by the independent tripartite Guarantees Committee.

111. *Agreement by the social partners* – In other countries, the determination of the services which should be considered as essential can be the outcome of a joint decision by the social partners, who are required to find solutions for the specific needs of essential services. In **Cyprus**, for instance, a tripartite agreement on the procedure for resolving labour disputes in essential services (2004) defines the notion of essential services and provides a list thereof. In **France**, under a recent law relating to the right to strike in passenger air transport, the employer and the representative trade unions are encouraged to hold negotiations with a view to signing a framework agreement that establishes a dispute prevention procedure and promotes the development of social dialogue. Under this agreement, strike action is only possible after negotiations between the employer and the trade unions have been unsuccessful. The framework agreement also lays down rules for determining the structure and operation of negotiations prior to any dispute.

3. Restrictions on strikes during the term of a collective agreement

112. In various countries, collective agreements are viewed as "social peace treaties" for a certain period during which strikes and lock-outs are prohibited, with workers and employers having access in compensation to arbitration machinery. Under these systems, industrial action is illegal during the period of validity of the collective agreement if it is directed against the collective agreement as a whole, or part of it. Strikes are generally only possible as a means of pressure with a view to the adoption of a first collective agreement or its renewal. The obligation of social peace may be set out explicitly in law (e.g. **Egypt**), in a general agreement between confederations of workers and employers at the central level (e.g. **Denmark**), in an explicit clause contained in the collective agreements concluded by the parties or by case law (e.g. **Austria**, **Germany** and **Switzerland**). [54]

113. In **Canada** and the **United States**, unless a dispute concerns the immediate safety of workers or certain other unfair labour practices, collective agreements must have expired, or the appropriate notice of intent to open negotiations for the revision of a collective agreement must have been given, before the existence of a dispute can be registered and conciliation procedures embarked upon. Conciliation is compulsory in **Canada**, but voluntary in the **United States**, where most collective agreements contain no-strike clauses.

114. In many other countries, strike action for the purpose of *enforcing* a collective agreement is considered illegal because it is regarded as a violation of the peace obligation (e.g. **Chile**, **Czech Republic**, **Finland** and **Turkey**). In **Germany**, a strike is only lawful if its underlying objective is to *reach* a collective bargaining agreement. [55] In **Australia**, the law

[54] ILO: op. cit., 2006, para. 90.

[55] B. Waas: op. cit., 2014, p. 10.

provides for immunity against tort and other legal actions for workers engaging in industrial action in certain limited circumstances. In particular, the industrial action must only be in relation to the negotiation of a collective agreement at a single enterprise (and not at the industry level); it is unlawful to take industrial action during the period of validity of a collective agreement, unless the expiry date has passed, and the bargaining representatives of the workers must be genuinely trying to reach agreement. In **Sweden**, collective action aimed at the conclusion of a collective agreement is allowed. However, collective action to enforce a collective agreement is prohibited, with the exception of collective action to recover unpaid wages. [56] In **Israel**, the law defines "unprotected strikes" as strike action by employees in a public service where a collective agreement applies, except a strike unconnected with wages or social conditions and declared or approved by the central national governing body of the authorized employees' organization.

115. Major differences exist regarding the consequences of violations of the peace obligation. In **Germany**, for instance, as in many countries, a strike that violates the peace obligation is illegal. In **Japan**, on the other hand, it is far from clear whether such a violation impacts on the lawfulness of the strike as such, or whether it should be regarded as a mere breach of contract. [57]

116. In other countries, no peace obligation exists, either relative or absolute. This is the case, for instance, in **Slovenia**, where even if a no-strike clause is agreed by the parties to a collective agreement, such a clause could not prevent workers from striking. [58]

4. Declaring a strike unlawful or postponing strike action

117. In most countries, the decision to declare strikes unlawful is left to the courts or, in some cases, to specialized independent bodies. However, in certain countries this power lies with the administrative authorities, such as in the **Plurinational State of Bolivia** (General Directorate of Labour) and **Fiji** (Minister of Labour). [59] In various countries, strike action can also be ended through compulsory arbitration, either automatically, at the discretion of the public authorities or at the request of one of the parties (see section V below).

118. Without going as far as a decision to end a strike, the law may provide for the *suspension of strikes* for a certain period. This is the case in **Albania** (in exceptional situations) and **Angola** (in situations affecting public order or in the event of public calamities). [60] In **Romania**, the employer can request the courts to order the postponement or suspension of a strike for a maximum period of 30 days. [61] In **Finland**, the Ministry of Employment and the Economy can postpone a planned strike for a maximum of two weeks at the request of the conciliator if the strike would have an effect on essential services and would cause unreasonable harm. An additional seven days' postponement applies in the case of disputes

[56] J. Malmberg and C. Johansson: op. cit., 2014, p. 528.

[57] Y. Kuwamura: "The right to strike: Japan", in B. Waas: op. cit., 2014, pp. 355–356.

[58] ibid., p. 38.

[59] ILO: op. cit., 2006, para. 114.

[60] ibid., para. 116.

[61] ibid., para. 115.

covering public servants. These postponements allow the parties to explore avenues of agreement. [62]

5. Compensatory guarantees

119. When the right to strike is restricted or prohibited in certain enterprises or services that are considered essential, or for certain public servants, some national systems provide for compensatory guarantees for the workers that are deprived of the right to strike. Such compensation may include, for example, impartial conciliation, and possibly arbitration procedures. In **Kenya**, **Namibia** and **South Africa**, the law provides that any party to a dispute of interest that is prohibited from participating in a strike or a lockout, because that party is engaged in an essential service, may refer the dispute to the Labour Commissioner, who may refer it to an arbitrator.

III. Modalities of strike action at the national level

1. Prerequisites

120. The requirement of the prior notification of strikes to the administrative authorities or the employer and the obligation to have recourse to conciliation and arbitration procedures in collective disputes before calling a strike exist in a significant number of member States. [63] In some countries, the requirement to enter into and to continue negotiations before strike action is relatively weak. In **Japan**, for instance, strikes do not need to be a means of last resort. Once negotiations have started, it is up to the union to decide at what stage it will resort to strike action, even while negotiations are still in progress (yet a principle of fair play applies, resulting from the faithfulness principle in union-management relations). [64] However, in many other countries, a principle of *ultima ratio* applies to strike action.

Exhaustion of prior procedures (conciliation, mediation and/or voluntary arbitration)

121. Since strike action is, almost by definition, a means employed when negotiations fail, many countries establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called. In many cases, these provisions are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, and therefore as a way of encouraging and promoting the development of voluntary bargaining.

122. In **Argentina**, the Constitution sets out various steps to be followed before strike action, including conciliation and arbitration. In **Switzerland**, the Constitution refers to the need to attempt mediation and conciliation before resorting to strike action. The law in **Poland** explicitly states that "a strike shall be a means of last resort". The legislation of **El Salvador** is also very clear on the various steps to be undertaken before going on strike.

[62] ILO: op. cit., 2011, p. 135.

[63] ILO: op. cit., 2006., para. 69.

[64] B. Waas: op. cit., 2014, p. 354.

123. Various other national legislations also provide that strike action must be preceded by serious negotiations, conciliation and mediation attempts. [65] In **Viet Nam**, under the 2012 Labour Code, a strike can take place only after failure to resolve the dispute through the conciliation and arbitration procedures set forth by law. In **Kenya**, **Nigeria**, **Pakistan**, **South Africa** and **United Republic of Tanzania** official conciliation procedures must have been exhausted without resolution of the dispute for lawful strike action to be possible. However, no such requirement exists in **India**, **Ireland** or the **United Kingdom**.

124. In many countries, including **Croatia**, **Djibouti**, **Jordan** and **Mali**, no worker may go on strike while proceedings concerning a dispute are pending before a conciliation board. In **Togo**, the parties are requested by law to pursue negotiations during the strike. In some cases, such as in the **United Republic of Tanzania**, although the law foresees a number of steps that have to be taken before strike action can be declared, it also specifies that the social partners can decide to agree on their own strike procedure in a collective agreement, in which case the provisions in the law do not apply.

125. *Specialized bodies for the prevention of strike action* – In practice, various countries have adopted institutional arrangements for the prevention of collective disputes, either by creating a dedicated dispute-handling unit within the labour administration, or by establishing independent and autonomous statutory dispute resolution bodies. Their objective is to ensure that, wherever possible, the parties to the dispute resolve it through a consensus-based process, such as conciliation and mediation, before reverting to arbitration and/or adjudication through a tribunal or labour court. [66]

Advance notice and cooling-off periods

126. *Advance notice* – A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer. [67]

127. In **Papua New Guinea**, an employer or an industrial organization that is a party to, or is involved in, an industrial dispute which gives rise, or *seems likely to give rise*, to a strike or lockout must immediately notify the departmental head or an officer of the department. In the **United Kingdom**, notice is required not just of strike action, but of the intention to hold a strike ballot. A minimum of seven days must elapse between the decision to hold a ballot and the ballot, and a further minimum notice period of seven days must be given before strike action can begin after a vote in favour.

[65] For instance in **Burundi**, **Cameroon**, **Chile**, **Czech Republic**, **Ethiopia**, **Honduras**, **Ghana**, **Lao People's Democratic Republic**, **Libya**, **Lithuania**, **Kazakhstan**, **Mali**, **Mauritania**, **Namibia**, **Senegal** and **Turkey**.

[66] Examples of dispute resolution agencies include: **Cambodia** – Cambodia's Arbitration Council (CAC); **Ireland** – Law Reform Commission (LRC); **Japan** – Central Labour Relations Commission; **Republic of Korea** – National Labour Relations Commission (NLRC); **South Africa** – Commission for Conciliation, Mediation and Arbitration (CCMA); **United Kingdom** – Advisory, Conciliation and Arbitration Service (ACAS); **United States** – Federal Mediation Conciliation and Arbitration Service (FMCA).

[67] This is the case, for instance, in **Algeria**, **Armenia**, **Australia**, **Bahamas**, **Benin**, **Bulgaria**, **Canada**, **Chad**, **Chile**, **Comoros**, **Croatia**, **Czech Republic**, **Estonia**, **Ethiopia**, **Finland**, **Ghana**, **Hungary**, **Indonesia**, **Ireland**, **Jordan**, **Kenya**, **Latvia**, **Lithuania**, **Madagascar**, **Mauritania**, **Mauritius**, **Mexico**, **Morocco**, **Pakistan**, **Poland**, **Romania**, **Russian Federation**, **Senegal**, **Seychelles**, **Slovakia**, **Slovenia**, **South Africa**, **Spain**, **Swaziland**, **United Republic of Tanzania**, **Thailand**, **Togo**, **Turkey**, **United States** and **Yemen**; ILO: op. cit., 2006, para. 77.

128. Among the national systems which do not include compulsory cooling-off periods are those in **Belgium**, **France** (except for the public sector) and **Italy** (where such provisions have been included in collective agreements). In **Germany**, there are no official provisions requiring a cooling-off period, although such requirements have nevertheless been established through case law in accordance with the rule of proportionality between the action taken and the damages incurred. This also applies in the **Netherlands**, where strikes are legal only where all possibilities of negotiation have been exhausted. [68] In some cases, the cooling-off period can be quite long. This is the case, for instance, in **Seychelles** and the **United Republic of Tanzania** (public sector), where the cooling-off period is 60 days. [69]

129. *Public sector* – Many systems require additional notice to be given in the case of strike action in the public sector. For instance, in **South Africa**, 48-hours notice of industrial action is required for private sector industrial disputes, and seven-days notice where the State is the employer. [70] Similarly, in **Jordan**, no worker shall go on strike without giving the employer notice thereof at least 14 days before the date set for the strike; where work is related to a public service, the notice period shall be double. In **Italy**, notice should be given only for strikes in essential services (ten-days notice).

130. *Duration of strikes* – In certain cases, the notice has to be accompanied by notification of the length of the strike. This is the case, for instance, in **Benin** (where, according to the Government, strikes may however continue beyond the period notified), **Bulgaria**, **Burundi** (for civil servants), **Chad**, **Egypt**, **Georgia**, **Mongolia**, **Tajikistan**, **Tunisia** and **Yemen**. [71]

2. Strike ballot requirements

131. Another type of prerequisite for calling a strike consists of making the exercise of the right to strike conditional upon approval by a certain percentage of the workers. Many national legislative measures provide that to be able to call a strike, it must be so decided by a certain percentage of workers, members or those present and voting, for instance *more than the half* (**Bulgaria**, **Burundi**, **Canada**, **Chile**, **Costa Rica** (60 per cent), **Dominican Republic**, **El Salvador**, **Eritrea**, **Ethiopia** (quorum of two-thirds and the decision by the majority), **Ireland**, **Kyrgyzstan** (quorum of two-thirds and the decision by the majority), **Latvia**, **Lithuania**, **Mauritius**, **Nigeria**, **Peru**, **United Republic of Tanzania**, **Trinidad and Tobago**, **Turkey**, **United Kingdom** and **Zimbabwe**); or *by two-thirds* (**Angola**, **Armenia**, **Guatemala**, **Honduras**, **Kiribati**, **Malaysia**, **Mexico**, **Russian Federation**, **Seychelles** and **Tajikistan,**): or *three-quarters* (**Bangladesh** and **Plurinational State of Bolivia**). The legislation in **Chile** specifies the day when the voting should take place.

132. In some countries, account is taken only of the votes cast, while in others this distinction is not applied. For instance, in **Turkey**, if one fourth of the workers employed in a workplace call for a vote on strike action, the strike can take place if the absolute majority of all the workers employed (not only the members of the trade union) vote in favour. In addition, national systems vary with respect to the consequences of the vote (in cases where the required threshold has or has not been reached).

[68] ibid., para. 76.

[69] ibid., para. 78.

[70] ILO: op. cit., 2011, p. 135.

[71] ILO: op. cit., 2006, para. 81.

133. The requirement that strike action must be explicitly authorized by union members via a ballot held before any action is not present in all common law jurisdictions. A ballot is not among the requirements for lawful industrial action in **India** or **Pakistan**. In **South Africa**, although unions are required to provide for the holding of pre-strike ballots in their Constitutions, the absence of a ballot does not in itself make strike action unlawful. In **Kenya**, while there is no explicit provision in the Labour Relations Act that lawful strike action must be authorized in a ballot, it requires unions to include in their Constitutions provision for taking decisions on strike action via secret ballots. In the **United States**, although strike balloting is commonplace, it is not required by law and employers are not allowed to require the presence of pre-strike ballot clauses in collective agreements. [72]

134. *Ballot modalities* – Another distinction relates to whether the modalities for ballots are established by law, or whether it is left to trade unions to adopt rules. Some countries have established a comprehensive set of rules concerning strike ballots, including requirements for union by-laws (e.g. **Australia**, **Ireland** and **United Kingdom**). In others, such as **Poland**, this issue is essentially considered an internal matter for trade unions. In **Germany**, most trade unions have established guidelines in this respect. [73] In practice, most trade union rules require a direct secret vote before starting a strike.

135. In some countries, the national legislation requires the prior approval of the strike by a higher-level trade union organization (e.g. **Egypt**, **Myanmar** and **Tunisia**). Some countries provide for the supervision of the strike ballot by the administrative authority (e.g. **Angola**, **Bahamas**, **Swaziland** and **United Republic of Tanzania**).

3. Minimum service: Conditions, modalities and mechanisms for determining the minimum service

136. Many countries provide for the possibility in limited cases of introducing a negotiated minimum service as a possible alternative to a total prohibition of strikes. [74] The national Constitutions of **Portugal** and **Timor-Leste** explicitly refer to minimum services. Some countries have adopted legislative provisions on the participation of the organizations concerned in the definition of minimum services. Elsewhere, the issue has been resolved by joint decision of the parties.

137. In other countries, the national legislation determines unilaterally the level at which a minimum service is to be provided and specifies a specific percentage. This is the case, for instance, in **Bulgaria** (50 per cent for railways), **Ecuador** (20 per cent) and **Panama** (50 per cent for essential public services). In **Romania**, medical services, social assistance and public transport must operate at least at one third of their normal level and be able to respond to the vital needs of the community. [75] In **Hungary**, the level of service deemed sufficient and the related requirements may be defined by an act of Parliament; if there is none, they shall be agreed upon by the parties during the pre-strike negotiations; or, failing such agreement, they shall be determined by final decision of the court of public administration and labour.

[72] *NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 US 342, 78 S. Ct. 718 (1958).

[73] B.Waas: op.cit., 2014, p. 26.

[74] For example, in **Albania**, **Armenia**, **Cabo Verde**, **Gabon**, **Italy**, **Mauritius**, **Slovakia**, **Solomon Islands**, **United Republic of Tanzania**, **Tuvalu**, **Vanuatu** and **Bolivarian Republic of Venezuela**; ibid., para. 136.

[75] ILO: op. cit., 2006, para. 126.

138. Elsewhere, the social partners play an important role in defining minimum services. For instance, in **Cyprus**, the social partners signed an agreement in 2004 on the procedure for resolving labour disputes in essential services, including the provision of negotiated minimum services. [76] In **Germany**, the guidelines on industrial action of the umbrella trade union organization oblige unions to ensure the establishment of minimum services in case of emergency. [77] In **Canada**, all employers and trade unions involved in a dispute are obliged to "continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public". What this minimum service involves in practice must either be defined in a collective agreement or will be determined by the Canada Industrial Relations Board.

139. In many countries, the legislation requires the *parties to the dispute (the employer and workers)* to strive together to find an agreement on the modalities of the minimum services to be provided during a strike. If an agreement cannot be found, depending on the country, either an administrative authority or a specific body can decide on the matter (**Albania** and **Ecuador**). For instance, in **Togo** the parties to the dispute are obliged to meet during the notice period to continue negotiations and organize a minimum service in the company in order to avoid accidents and ensure the protection of facilities and equipment. If an agreement cannot be reached, the labour inspector can determine the minimum service. In **Peru**, in the case of disagreement on the number and occupation of the workers who are to continue working, the labour authority shall designate an independent body for their determination. **Guatemala** introduced the possibility of a minimum service in essential public services that is determined with the participation of the parties and the judicial authorities. **Argentina** has established an independent tripartite Guarantees Committee which is entrusted with advising on minimum services. In **Croatia**, at the proposal of the employer, the trade union and the employer must agree on the provision of those services which must not be interrupted during a strike. If they do not reach agreement, the employer or the trade union may request that these assignments be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson.

140. In **South Africa**, the legislation gives the parties concerned space to negotiate "minimum services" agreements in respect of services designated as essential. Where the parties can so agree, and where their agreement has been ratified by the Essential Services Committee: (i) the minimum services then become the only strike-free zone; and (ii) the broader prohibition on strike action in the balance of the services previously designated as essential and the obligatory reference to arbitration of unresolved disputes then fall. The act also provides for services to be declared "maintenance services", that is, services which, if interrupted, would have "the effect of material physical destruction to any working area, plant or machinery". Disputes in such services must generally be directed towards arbitration, and industrial action is not permitted in such cases. In the **United Republic of Tanzania**, a person engaged in an essential service may engage in a strike or lockout if there is a collective agreement providing for minimum services during a strike or lockout, and if that agreement has been approved by the Essential Services Committee. In **France**, the legislator entrusts the social partners with signing a "collective agreement of predictability" identifying the functions necessary to ensure the levels of service and work organization in the event of a strike in the area of land transport for passengers.

141. In **Cabo Verde**, the minimum service is determined by the employer after consultation with workers' representatives with a view to meeting essential social needs. In **Montenegro**, the amended Law on Strikes now provides that, when determining the

[76] ibid., para. 65.

[77] B. Waas: op. cit., 2014, p. 14.

minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees. In **Bosnia and Herzegovina** *(Republika Srpska),* the employer is authorized to determine the minimum service to be maintained, taking into consideration the opinion of the trade union. If the employer does not provide such a minimum service, it is for the public authorities to establish the conditions for its effective provision and to engage workers from outside the enterprise if the work cannot be performed otherwise. [78] In **Chad**, the minister has discretion to determine minimum services and the number of officials and employees who will ensure that such services are maintained in the event of a strike in the essential services enumerated in the law.

IV. The course of the strike

1. Picketing, occupation of the workplace, access to the enterprise/prohibition of violence and freedom to work of non-striking workers

142. In some countries, strike action is accompanied by the presence, at the entry to the workplace, of strike pickets aiming to ensure the success of the strike by persuading the workers concerned to stay away from work. The ordinary or specialized courts are generally responsible for resolving problems which may arise in this respect. In practice, while certain countries establish general rules that are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets or the occupation of the workplace during a strike.

143. For instance, in **Malaysia**, the law refers to the concept of intimidation in limiting strike pickets. In **Burkina Faso** and **Senegal**, the law provides that the exercise of the right to strike shall on no account be accompanied by the occupation of the workplace or immediate surroundings, subject to penal sanctions. In **Belarus**, the law on picketing provides that during the course of picketing it is prohibited, inter alia, to impede traffic, pitch tents or other temporary structures, influence in any form employees for the purposes of impeding the fulfilment of the service, use posters and other means containing calls for a change of the constitutional order by force, or flags not registered in the established order. In **Panama**, the law provides that the owners, directors, managing director and staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence production activities. It should be noted that the free access of non-striking workers is not provided for in the event of a strike.

144. In common law jurisdictions, there is a general presumption that if an act would be unlawful or illegal when carried out by an individual, it is not protected by industrial relations law. This includes violence and the sequestration of any individual. Sometimes provisions to this effect are included explicitly in the law (for example in **Nigeria**). Practices such as *gherao*, an **Indian** form of "bossnapping" in which managers are barred by workers from leaving the workplace, are almost always unlawful, whether or not they involve violence. Peaceful picketing, on the other hand, is generally protected either specifically in the legislation or through constitutional protections of freedom of assembly and/or expression. One exception is the **United Republic of Tanzania**, where picketing is expressly forbidden by law. In **Australia**, the definition of industrial action does not include picketing, which is therefore unlawful if it is obstructive.

[78] ILO: op. cit., 2006, para. 127.

145. In **Ireland**, picketing is expressly permitted in circumstances in which strike action is lawful. In **Nigeria**, picketing, whether of a primary or secondary employer, is legal provided that it is in contemplation or furtherance of a trade dispute. In **South Africa**, if strike action would qualify as protected, then picketing is permitted in pursuit of the resolution of the dispute. In the **United Kingdom**, picketing is permitted if carried out in contemplation or furtherance of a trade dispute, but is governed by a detailed code of practice which, among other provisions, specifies that the maximum number of people allowed to picket any one workplace is six. Secondary picketing is not allowed. Pickets are not allowed to block access to the workplace or to obstruct roads nearby. In the **United States**, picketing is allowed under certain circumstances. The most notable exclusions are secondary and mass picketing, and picketing in connection with a recognition dispute. In **Namibia**, peaceful picketing is authorized at or near the workplace to inform and persuade other workers not to work. [79] In **Botswana**, a code of good practice on picketing was adopted in 2002 which provides practical guidance on picketing in support of a protected strike. It seeks to guide the exercise of this right and to assist employers, employees and their organizations to agree picketing rules and to assist mediators in determining them.

146. While in some countries strike pickets are merely a means of information, ruling out any possibility of preventing non-strikers from entering the workplace, in other countries they may be regarded as a form of the right to strike, and the occupation of the workplace as their natural extension, and are rarely questioned in practice, except in extreme cases of violence against persons or damage to property. In **Japan**, the Supreme Court has considered that picketing is lawful, on condition that it remains within the confines of peaceful verbal persuasion. [80]

2. Requisitioning of strikers and hiring of external replacement workers

147. In many countries, the replacement of striking workers is prohibited or, in any event, restricted. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike, other countries limit powers of requisitioning to cases in which the right to strike may be limited or prohibited. In **Cambodia**, for instance, the law provides that during a strike the employer is prohibited from recruiting new workers to replace strikers, except to maintain a minimum service; any violation of this rule places the employer under the obligation to pay the salaries of the striking workers for the duration of the strike. In the **United Republic of Tanzania**, there is a general prohibition on hiring replacement workers during lawful strikes. In **Canada**, employers are permitted to hire replacement workers during a lawful strike, but they cannot be used "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives". [81] In **South Africa**, the hiring of replacement workers is in general legal, but is excluded when the service in question has been designated a maintenance service.

148. Examples of national legislation which prohibit employers from hiring external workers to ensure continued production or services include **Botswana** (except in the absence of agreement on a minimum service, in which case replacement is possible after 14 days of strike), **Chile** (except under certain limited conditions), **Greece**, **Republic of Korea**, **Madagascar** (except in cases of problems of public order and in which the life, personal

[79] ILO: op. cit., 2006, para. 133.

[80] **Japan**: Supreme Court 2nd Petty Bench Judgment; 2 Oct. 1992; Supreme Court (Grand Bench), *Asahi Shinbunsha* case of 22 Oct. 1952; Y. Kuwamura: op. cit., 2014, p. 358.

[81] Canada Labour Code, 94.2.1.

safety or health of the whole or part of the population is endangered), **Montenegro** (except to ensure the safety of persons or property), **Namibia** (except where the work is necessary to prevent danger to the life, personal safety or health of any individual) and **Turkey**. In **Slovenia**, any enterprise or association which, during a strike, hires new employees to replace striking workers is liable to a fine. An employer cannot hire other employees to replace strikers under the law in **Argentina**, **Czech Republic**, **Greece**, **Hungary** and **Lithuania** (except in certain cases linked to vital public needs). [82]

149. The national legislation in other countries, such as **Djibouti**, **Mali** and **Togo**, prohibits recourse to private employment agencies to replace striking workers. In the **United Kingdom**, employers are not allowed to take on temporary agency workers to replace strikers.

150. In contrast, in other countries, such as **India**, **Ireland**, **Kenya**, **Nigeria**, **Pakistan** and **United States**, there are no restrictions on taking on replacement workers during lawful strikes. In the **Russian Federation**, striking workers can be replaced and temporary agency workers may also be used. [83]

151. The law also allows the requisitioning of striking workers in certain circumstances in **Angola**, **Central African Republic** (where so required by the general interest), **Ghana** (minimum maintenance services), **Madagascar** (in the event of a state of national necessity or a threat to a sector of national life or a part of the population), **Sao Tome and Principe** (essential services) [84] and **Senegal** (for workers in the public and private sectors engaged in jobs considered to be essential for the safety of persons and property, the maintenance of public order, the continuation of the public service and the satisfaction of the essential needs of the country). In **France**, striking workers may only be requisitioned in an emergency, when required by a real or foreseeable breach of the peace, public health, public order and public safety and when the means at the prefect's disposal no longer allow the latter to pursue the objectives for which he or she has powers of enforcement.

152. In **Benin**, **Djibouti** and **Niger**, the possibility of requisitioning is restricted to public servants. The same applies in **Mexico** in certain public services when the national economy could be affected. [85] In **Burkina Faso**, a specific decree regulates the modalities for the requisitioning of workers.

V. Compulsory arbitration

Conditions, mechanisms and requirements for compulsory binding arbitration

153. In some countries, binding compulsory arbitration is provided for in order to bring an end to strike action. In such cases, collective labour disputes and strikes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued.

[82] B. Waas: op. cit., 2014, p. 61.

[83] B. Waas: op. cit., 2014, p. 61.

[84] ILO: op. cit., 2006, para. 138.

[85] ILO: op. cit., 2006, para. 139.

154. Some countries authorize recourse to compulsory arbitration, either automatically, at the discretion of the public authorities, [86] or at the request of one of the parties.

155. In some cases, compulsory arbitration can take place only in *essential services* (e.g. **Côte d'Ivoire** (in essential services or cases of acute national crisis), **Dominica**, **Ghana**, **Grenada**, **Guyana** (in some public services) and **Mozambique**), or in situations of acute national crisis. In **Australia**, compulsory arbitration was formerly widely available, but now only occurs when the Fair Work Commission or the Minister of Labour issues an order prohibiting strike action (e.g. because of a risk to public safety or significant economic harm to the employer, the employees, the Australian economy or a third party). In that case, the Commission can arbitrate the claims and make a "workplace determination", which has essentially the same effect as a collective agreement. In **Singapore**, an issue can be referred by either the employer or the union to compulsory arbitration by the Industrial Arbitration Court, which renders continuation of a strike unlawful.

156. Some countries authorize recourse to compulsory arbitration in situations that are not limited to essential services or situations of acute national crisis, or in cases in which disputes continue for more than a certain period. This is the case in **Ghana**, **Nicaragua**, **Peru** and **Spain** (exceptionally after a certain duration of the strike). In certain instances, compulsory arbitration is also used, particularly through the adoption of return to work laws by Parliament to bring an end to collective disputes in the public service. Examples include **Canada** and **Norway**. [87]

VI. Consequences of strike action at the national level

1. Breach or suspension of contract

157. The provision of the right to strike in law means that there is no breach of contract on the part of a worker who participates in a lawful strike. In most civil law systems, the employment relationship is maintained during strike action; the contract is suspended, and modalities vary with respect to the payment of wages. [88]

158. In **Denmark**, there is a long-standing customary rule (the so-called "no detriment rule") which ensures that the broken employment relationship is re-established after an industrial dispute, and that all striking workers are therefore reinstated at the end of a strike. [89] In **Mauritius**, the suspension of the contract applies to all lawful strikes, but it is also extended if the worker participates *for the first time* in a strike that is unlawful.

159. There are a number of common law countries in which taking lawful strike action does not amount to breach of contract. In the **United Republic of Tanzania**, for example, the law provides that "notwithstanding the provisions of any law, including the common law, a

[86] This is the case, for example, in **Denmark** (at the request of the Public Mediator), **Guatemala**, **Kenya** (public sector), **Madagascar**, **Mauritania** and **Panama** (private transport enterprises).

[87] ILO: op. cit., 2006, para. 51.

[88] For example, in **Albania**, **Argentina**, **Bahrain**, **Burundi**, **Cambodia**, **Chad**, **Chile**, **Colombia**, **Comoros**, **Congo**, **Democratic Republic of the Congo**, **Djibouti**, **Guatemala**, **Honduras**, **Madagascar**, **Mali**, **Panama**, **Poland**, **Senegal**, **Togo**, **Turkey**, **Uruguay**, **Viet Nam** and **Yemen**.

[89] Conclusions of the European Committee of Social Rights, Conclusions XIX-3 (2010).

lawful strike or lawful lock-out" shall not be a breach of contract, a tort or a criminal offence. The situation is similar in **Kenya**, **Namibia** and **South Africa**: by taking part in a lawful strike, a person does not commit a delict or a breach of contract. In **Grenada**, any period during which an employee is absent from work because of participation in a strike shall not interrupt the continuity of employment, but nor shall it count for the purposes of calculating the length of continuous employment. In **Canada**, employers are obliged to reinstate workers who have taken lawful strike action.

160. In some other common law countries, a lawful strike action is regarded as a breach of the employment contract and in certain circumstances can give rise to dismissal. In **Ireland**, the fact that a strike is lawful does not affect the employers' right to dismiss strikers, but they cannot be dismissed selectively. Either or all strikers are dismissed, or none. In the **United Kingdom**, workers taking lawful strike action are protected from dismissal, but only for a period of 12 weeks. Where industrial action lasts longer than this, and where an employer has made good faith efforts to settle the dispute, workers may be dismissed, on condition that all those taking action are dismissed.

161. In the **United States**, an employer that has hired permanent replacement workers is not obliged to rehire former strikers in the case of economic strikes, but has to give preference to these workers in any subsequent hiring process. In case of strikes called in response to unfair labour practices, the employer is obliged to rehire former strikers. [90]

2. Wage deductions

162. National legislation that addresses the question of wage deductions for strike days normally provides that the employer is not under the obligation to pay wages during a strike. Some countries ban the payment of wages during the strike period. [91] Non-payment of wages corresponding to the strike period is considered in most cases as a mere consequence of the absence from work, and not a sanction. For instance, in **Albania**, **Botswana**, **Cambodia**, **Jordan**, **Latvia**, **Madagascar**, **Mauritius**, **Namibia**, **Togo** and **Trinidad and Tobago** an employer is not obliged to remunerate an employee for services that the employee does not render during a strike. In **Viet Nam**, the payment of wages depends on whether or not the strike is lawful and on the responsibility of the employer. Where the strike is lawful and the employer is at fault, wages are to be paid in full. Where the employer is not at fault, payment can be negotiated. In the event of an unlawful strike, in a situation in which the employer is at fault, the wages are to be paid in a proportion of between 50 and 70 per cent. Wages are not paid in the event of an unlawful strike where the employer is not at fault. [92] In **Ecuador**, the law provides that workers are entitled to their remuneration during strike days, except in three cases: when the court so decides unanimously; when the ruling rejects all the claims; and where the strike was called outside the cases indicated in section 497 of the Code, or was maintained after the ruling. In these cases, strikers do not benefit from the related guarantees.

163. In practice, in many countries, the issue of wage deductions is a matter that is often resolved by the parties themselves in the context of the agreement signed at the end of the strike. Moreover, many trade unions have strike funds to support striking workers whose salaries have been suspended. In **South Africa** and the **United Republic of Tanzania**, employers are obliged to carry on with any agreed payments in kind (for example food) and are not allowed to evict strikers from company lodgings. Equivalent costs may be

[90] *NLRB* v. *Mackay Radio & Telegraph Co.,* 304 U.S. 333 (1938).

[91] For example, Australia.

[92] ILO: op. cit., 2006, para. 145.

recovered once the strike is over. However, in the **United Republic of Tanzania**, the law adds that nothing shall prevent a trade union or employer or employers' association from concluding a collective agreement that regulates such matters differently. Conversely, in **Turkey**, the law provides that the employer shall not pay any wages or social benefits to workers whose contracts of employment are suspended for the period of a strike, and that this period shall not be taken into account for the calculation of severance pay. The law adds that collective labour agreements or contracts of employment *may not* include any clause contrary to these provisions.

164. With respect to other social security entitlements, in **Latvia**, employees taking part in a strike do not receive a salary and employers are not required to make social security payments for such employees, unless the parties to the labour dispute have agreed upon a different arrangement. In **Turkey**, during strikes and lockouts workers benefit from insurance benefits in accordance with the relevant provisions. In **Albania**, while the right to remuneration is suspended during strike action, this suspension does not affect the rights defined by law concerning social security, accidents at work or occupational diseases, and does not affect seniority and its related effects. In the **Netherlands**, workers who participate in a lawful strike lose their right to wages and have no right to social security benefits. [93] In **Colombia**, strike action also represents a suspension of the employment contract. During the strike, the employer is not obliged to make contributions to occupational accident insurance. [94]

3. Sanctions for unlawful strikes

165. *Dismissals* – Many countries afford protection against dismissal to strikers by guaranteeing that recourse to strike action does not suspend or constitute a breach of the contract of employment (see above on the *suspension of contract*). The protection may even cover unlawful strikes. For example, in **Malta**, where the period of the strike does not constitute an interruption of service, protection against dismissal is valid even in cases where the strike has been called when the dispute has been submitted to compulsory arbitration. [95] In other cases, such as **India**, **Kazakhstan** and the **Philippines**, participation in an unlawful strike results in dismissal. In **Egypt**, failure to comply with the legislation respecting strikes is considered to be a serious fault and therefore results in liability to dismissal. The same applies in **Mauritania**, where the worker is not entitled to any compensation for dismissal. In **Indonesia**, it is considered as absence from work and as resignation if the worker does not return to work after being called upon to do so twice within a period of seven days. In the event of failure to comply with the annulment of a strike ordered by the courts, the legislation in **Pakistan** explicitly refers to the dismissal of strikers as a penalty. In **Cambodia**, the law provides that workers who are required to provide a minimum service and who do not appear for such work are considered guilty of serious misconduct and thus liable for termination of employment.

166. *Civil liabilities* – In common law countries, the principal consequence of unlawful strike action is that the legal immunities that would otherwise protect strikers and unions do not apply. Striking is thereby treated as an actionable repudiation or material breach of the employment contract. In these circumstances, it is open to employers to discipline or dismiss the workers concerned. (In **Pakistan**, uniquely, the dismissal of unlawful strikers requires an order of the National Industrial Relations Commission.) Those who organize unlawful strike action, most usually trade unions, may be guilty of one or more economic

[93] B. Waas: op.cit., 2014, p. 57.

[94] ibid., p. 58.

[95] ILO: op. cit., 2006, para. 152.

torts, such as conspiracy or inducement to breach of contract, and may therefore be liable for damages. In the **United Kingdom** and **Ireland**, but also in other jurisdictions, such as **Canada**, **India**, **South Africa** and the **United Republic of Tanzania**, the possibility that strike action may be unlawful can be used as a basis for seeking injunctions against unions to prevent strikes from beginning or continuing until the question of lawfulness has been finally settled by the appropriate court or tribunal. Breaking such injunctions may lead to the award of damages or proceedings for contempt of court.

167. *Penal sanctions (including imprisonment)* – Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions, including penal sanctions. Specific penalties for strike action are included in the criminal codes of at least 30 countries. Specific penalties of *imprisonment* can apply under certain conditions against striking workers or against the organizers of unlawful strike action. [96] In **Cambodia**, the law provides that a strike must be peaceful. Committing violent acts during a strike is considered to be serious misconduct that could be punished, including by work suspension or disciplinary lay-off.

168. In some cases, penalties of imprisonment may also be applied to the employer or any other responsible person who lays off employees on the grounds of taking part in a lawful strike (**Montenegro**). In the **Philippines**, the law provides that penalties of imprisonment may be imposed "upon any person who, for the purpose of organizing, maintaining or preventing coalitions or capital or labor, strike of labourers or lock-out of employees, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work". In **Romania**, the law establishes that a person who, by threats or violence, *impedes or obliges* a worker or a group of workers to participate in a lawful strike or to work during the strike can be sentenced to imprisonment.

169. In some cases, strikers are convicted under the terms of more general provisions of the penal legislation, such as in the **Republic of Korea**, where the offence of impeding the activity of an enterprise is severely sanctioned (up to five years imprisonment). In **China**, workers have been convicted under provisions relating to offences against public order and impeding transport. [97] Finally, certain countries provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute (e.g. **Bangladesh**), or provide for penal sanctions in the case of a work slowdown (e.g. **Pakistan**).

VII. Statistics of strike action over time and countries

170. Appendix II contains statistical data on strike action and lockouts extracted from the ILO Statistical database. In figure 1, the information shows that in the 56 countries for which data was available, fewer days were not worked due to strikes and lockouts in the period 2008–13 as compared to the period 2000–07. Figure 2 provides information for the same periods relating to average number of workers involved in strikes and lockouts with respect to 53 countries (31 developed and 22 developing countries). Based on the data, six out of the 22 developing countries and eight out of 31 developed countries reflected an increase in the number of workers involved in strikes and lockouts. Figure 3, covering the same

[96] For example, **Albania**, **Angola**, **Armenia**, **Bahamas**, **Bangladesh**, **Democratic Republic of the Congo**, **Ecuador**, **Ethiopia** (public servants), **Fiji**, **Guyana**, **India**, **Libya**, **Madagascar**, **Malaysia**, **Montenegro**, **Nigeria**, **Pakistan** (essential services), **Romania**, **Rwanda** (members of the armed forces), **Senegal** (in the area of education), **Singapore**, **Tajikistan**, **Trinidad and Tobago** (essential services) and **Tunisia** (seafarers).

[97] ILO: op.cit., 2006, para. 167.

periods, show data on working days lost in Europe due to strikes and lockouts with nine out of 29 European countries reflecting an increase. Figure 4 shows data for 1998 and 2008 concerning strikes and lockouts from a selected number of countries by region (Africa, Americas, Asia and the Pacific, and Europe and central Asia).

Appendix I

Modalities and practices of strike action at the national level

Constitutional and legal framework for strike action at the national level

Note: The table hereunder provides examples of legislative measures on strike action. It is not meant to be exhaustive and focuses on most recently adopted or amended provisions in this area. It is possible, especially in the case of legislation not subject to review by the regular supervisory machinery, that some references may be out of date or incomplete. In this case, governments are encouraged to provide the latest information to libsynd@ilo.org, which will be incorporated in the final version of the document to be made available a few days before the meeting.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
1.	**Afghanistan**		**Law on Gatherings, Strikes, and Demonstrations, 2003** Article 3 – Definition of strike Articles 6–7 – Prerequisites Article 8 – Other types of restrictions Articles 12–14 – The course of action Article 15 – Political strikes Articles 19 and 24 – Prohibition of violence and freedom of non-striking workers Article 21 – Restriction on strikes during state of emergency Article 26 – Prohibition of participation by military staff of the armed forces
2.	**Albania**	**Constitution** **Article 51** 1. The right of an employee to strike in connection with work relations is guaranteed. 2. Limitations on particular categories of employees may be established by law to assure essential social services.	**1995 Labour Code – Law No. 7961 of 12 July 1995** **The right to strike – Articles 197–197.10** The entity entitled to go to strike The protection of the right to work and of the right to strike Lawfulness of strike Special cases Services of vital importance (essential services) Minimum services Solidarity strike The effects of the lawful strike The effects of the unlawful strike Termination of strike **Criminal Code** Article 264 – Forcing to attend or not a strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
3.	**Algeria**	**Constitution** **Article 57** Le droit de grève est reconnu. Il s'exerce dans le cadre de la loi. Celle-ci peut en interdire ou en limiter l'exercice dans les domaines de défense nationale et de sécurité, ou pour tous services ou activités publics d'intérêt vital pour la communauté.	**Loi n° 90-11 du 21 avril 1990 modifiée portant sur les relations de travail** Article 5 – Les travailleurs jouissent des droits fondamentaux suivants: … recours à la grève. **Loi n° 90-14 du 2 juin 1990 modifiée portant sur les modalités d'exercice du droit syndical** Article 38 – Possibilité des syndicats de participer aux grèves **Ordonnance n° 06-03 du 19 Joumada Ethania 1427 correspondant au 15 juillet 2006 portant statut général de la fonction publique** Article 36 – Reconnaissance du droit de grève aux fonctionnaires **Loi n° 90-02 du 6 février 1990 relative à la prévention et au règlement des conflits collectifs de travail et à l'exercice du droit de grève** Article 43 – Services essentiels **Loi n° 91-27 du 21 décembre 1991 modifiant et complétant la loi n° 90-02 du 6 février 1990 relative à la prévention et au règlement des conflits collectifs de travail et à l'exercice du droit de grève**
4.	**Angola**	**Constitution** **Article 51** *(Right to strike and prohibition of lockouts)* 1. Workers shall have the right to strike. 2. … 3. The law shall regulate the exercise of the right to strike and shall establish limitations on the services and activities considered essential and urgent in terms of meeting vital social needs.	**Collective Bargaining Act No. 20-A/92** **Strikes Act/Ley núm. 23/91 sobre la huelga** Section 10 – Decision of strike Section 20(3) – Satisfaction of basic needs Section 27 – Penalties

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
5.	**Antigua and Barbuda**		**Industrial Court Act, 1976** **Part III – Lockouts and strikes** 20. Strikes and lockouts prohibited during hearings, etc. 21. Stop order in the national interest 22. Offence for persons to contribute financial assistance to promote or support strike or lockout 23. Continuing offences **Labour Code (No. 14 of 1975)** **Part III – Industrial action** K19 Right to industrial action Limitation Application of limitations Penalties and sanctions Special provisions certain services **The Essential Services Act, 2008** **Schedule** Section 2 – Essential services
6.	**Argentina**	**Constitución** **Artículo 14 *bis*** […] Queda garantizado a los gremios: concertar convenios colectivos de trabajo; recurrir a la conciliación y al arbitraje; el derecho de huelga. Los representantes gremiales gozarán de las garantías necesarias para el cumplimiento de su gestión sindical y las relacionadas con la estabilidad de su empleo. […]	**Ley núm. 25877, Régimen Laboral de 2004** Capítulo III – Conflictos colectivos de trabajo Artículo 24 – Servicios esenciales **Ley núm. 14786, Conciliación Obligatoria, 22 de diciembre de 1958** **Decreto núm. 272/2006 – Reglamentación a la que quedan sujetos los conflictos colectivos de trabajo que dieren lugar a la interrupción total o parcial de servicios esenciales o calificados como tales en los términos del artículo 24 de la ley núm. 25877. Facultades de la Comisión de Garantías prevista en el tercer párrafo del mencionado artículo.**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
7.	**Armenia**	**Constitution** **Article 32** Employees shall have the right to strike for the protection of their economic, social and employment interests, the procedure for and limitations thereon shall be prescribed by law.	**2004 Labour Code** Article 73 – Strike Article 74 – Declaration of a strike Article 75 – Restriction of strikes Article 76 – The body leading a strike Article 77 – Course of a strike Article 78 – Dispute about lawfulness of a strike; essential services Article 79 – Legal status and guarantees of strikes Article 80 – Actions prohibited to the employer upon declaration of and during the strike Article 81 – Termination of a strike Article 82 – Liability in case of illegal strike **Act of 5 November 2000 on Trade Unions** Article 20 – Right of trade unions to strike and other mass actions **2009 Law No. H-130-N to amend the Labour Code of the Republic of Armenia** – Amends some provisions of the Labour Code concerning strike **Criminal Code** Article 155 – Forcing to refuse from participation in a strike or forcing to participate in a strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
8.	**Australia**		**Fair Work Act, 2009** Chapter 1 – Introduction **Part 1-2 – Definitions** Division 4 – Other definitions Section 19 – Meaning of industrial action Chapter 2 – Terms and conditions of employment **Part 2-5 – Workplace determinations** Chapter 3 – Rights and responsibilities of employees, employers, organizations, etc. Division 4 – Industrial activities Articles 346–350 **Part 3-3 – Industrial action** Division 2 – Protected industrial action Subdivision A – What is protected industrial action Articles 408–412 Subdivision B – Common requirements for industrial action to be protected industrial action Articles 413–414 Subdivision C – Significance of industrial action being protected industrial action Articles 415–416A Division 3 – No industrial action before nominal expiry date of enterprise agreement, etc. Division 4 – FWC orders stopping, etc., industrial action Articles 418–421 Division 5 – Injunction against industrial action if pattern bargaining is being engaged in Article 422 Division 6 – Suspension or termination of protected industrial action by the FWC; Essential services Articles 423–430 Division 7 – Ministerial declarations Articles 431–434 Division 8 – Protected action ballots Articles 435–469 Division 9 – Payments relating to periods of industrial action Articles 470–476
9.	**Austria**		

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
10.	Azerbaijan	**Constitution** **Article 36. Right for strikes** I. Everyone has the right to be on strike, both individually and together with others. II. Right for strike for those working based on labour agreements might be restricted only in cases envisaged by the law. Soldiers and civilians employed in the army and other military formations of the Azerbaijan Republic have no right to go on strike. III. Individual and collective labour disputes are settled in line with legislation.	**Labour Code of 1 February 1999** Chapter 43 – Right to strike in order to resolve collective labour disputes Article 270 – Legal basis of strikes Article 271 – Making a decision to go on strike Article 272 – Informing the employer of the decision to strike Article 273 – Warning strike Article 274 – Group leading the strike Article 275 – Duties of the parties and relevant authorities during a strike Article 276 – Guarantees to individuals who refuse to participate in a strike Article 277 – Right of strikers to freely assemble Article 278 – Strike funds Article 279 – Ending or suspending a strike Article 280 – Situations in which the right to strike is limited or prohibited Article 281 – Sectors where strikes are forbidden; essential services Article 282 – Illegal strikes Article 283 – Compensation of employees who participate in a strike Article 286 – Liability for violation of the rules hereof for resolving collective labour disputes
11.	Bahamas		**Industrial Relations Act (Act No. 14 of 1970) as amended 2001** **Part VI – Trade Dispute Procedure** 72. Essential services 74. Strikes and lockouts 75. Illegal strikes and lockouts 76. Power of Minister to refer legal strike or lockout to Tribunal 77. Strikes and lockouts prohibited during hearings 80. Breach of contract involving danger to life or property 82. Prevention of intimidation or annoyance by violence or otherwise
12.	Bahrain		**Law No. 36 of 2012 – The promulgation of the labour law in the private sector** Article 8 – Right to strike **Law No. 49 of 2006 amending some provisions of the Workers Trade Union Law promulgated by Legislative Decree No. 33 of 2002** Section 21 – Strikes **Workers' Trade Union Law** Section 21 – Strikes

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
13.	**Bangladesh**		**Labour Act, 2006 (XLII of 2006)** 196. Unfair labour practices on the parts of workers 210. Settlement of industrial disputes 211. Strike and lockout 225. Prohibition on serving notice of strike or lockouts while proceeding pending 226. Power of labour court and tribunal to prohibit strike, etc. 227. Illegal strikes and lockouts 291. Penalty for unfair labour practices 294. Penalty for illegal strike or lockout 295. Penalty for instigating illegal strike or lockout 296. Penalty for taking part in or instigating go-slow 301. Penalty for non-compliance with the provisions of section 210(7) **Export Processing Zones (EPZ) Workers Welfare Association and Industrial Relations Act of 2010 (Act No. 43 of 2010)**
14.	**Barbados**		**2012 Employment Rights Act** Article 2 – Definition of strike Part VIII – Voluntary dispute settlement procedure
15.	**Belarus**	**Constitution** **Article 41** … Citizens shall have the right to protection of their economic and social interests, including the right to form trade unions and conclude collective contracts (agreements), and the right to strike. Article 84. The President of the Republic of Belarus shall: … (23) have the right, in instances specified in the law, to defer a strike or suspend it for a period not exceeding three months.	**Labour Code of 26 July 1999 (text No. 432)** Part IV – General rules for the regulation of collective labour relations Sections 388–399 **Law No. 1605-XII of 22 April 1992 on Trade Unions** Article 22 – Right of trade unions to declare strikes **Law No. 204-Z of 14 June 2003 on Public Service in the Republic of Belarus (text No. 2/953)** **Act No. 416 of 23 November 1993 on the fundamental principles of employment in the public service** – Public service employees may not take part in strikes **Presidential Decree No. 24 concerning the use of foreign gratuitous aid** **Act of 30 December 1997 on gatherings, meetings, street processions, demonstrations and picketing** Article 11 – Picketing

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
16.	**Belgium**		**Code pénal social, 2010** **Section 8 – Les prestations d'intérêt public, article 207** **Loi du 11 juillet 1990 portant approbation de la Charte sociale européenne et de l'annexe, faites à Turin le 18 octobre 1961** **Code pénal** Article 141*ter* – Aucune disposition du présent titre ne peut être interprétée comme visant à réduire ou entraver des droits ou libertés fondamentales tels que le droit de grève (…)
17.	**Belize**		**Labour (Amendment) Act, 2005** Part I – Preliminary Section 2 – Interpretation of strike **Settlement Of Disputes In Essential Services Act, Chapter 298 (revised edition 2003)** – Essential services **Settlement of Disputes in Essential Services (Amendment) Act, 1996 (No. 17 of 1996)** **Settlement of Disputes (Essential Services) Order, 1977** **Settlement Of Disputes In Essential Services Act, 1953** Section 2 – Application of the Act to persons employed by or under the Government Section 3 – Meaning of strike Section 15 – Prohibition of lockouts and strikes
18.	**Benin**	**Constitution** **Article 31** L'Etat reconnaît et garantit le droit de grève. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et ses intérêts soit individuellement, soit collectivement ou par l'action syndicale. Le droit de grève s'exerce dans les conditions définies par la loi. **Article 98** Sont du domaine de la loi les règles concernant: […] – du droit du travail, de la sécurité sociale, du droit syndical et du droit de grève;	**Loi n° 2001-09 du 21 juin 2002 portant exercice du droit de grève** **Titre IV – De la réquisition** Articles 13-20 – Services essentiels

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
19.	**Bolivia, Estado Plurinacional de**	**Constitución** **Artículo 53** Se garantiza el derecho a la huelga como el ejercicio de la facultad legal de las trabajadoras y los trabajadores de suspender labores para la defensa de sus derechos, de acuerdo con la ley.	**Ley General del Trabajo / Decreto supremo de 24 de mayo de 1939, por el que se dicta la Ley General del Trabajo, elevado a ley el 8 de diciembre de 1942** Título X – De los conflictos Capitulo II – De la huelga y el *lock-out* **Código Penal / Decreto supremo núm. 0667 por el que se aprueba el Texto Ordenado del Código Penal** Artículo 234 – *Lock-out,* huelgas y paros ilegales Artículo 306 – Violencias o amenazas, por obreros y empleados **Ley núm. 316, de 11 de diciembre de 2012, que despenaliza el derecho a la huelga y la protección del fuero sindical en materia penal**
20.	**Bosnia and Herzegovina**	**Constitution** Article 4 – Non-discrimination The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Annex I includes, inter alia, ICESCR Article 8(d) of the ICESCR provides: "The right to strike, provided that it is exercised in conformity with the laws of the particular country."	**Act of 14 December 2005 on strike *(Zakon o strajku)*** **Act of 7 April 2000 on strike (text No. 90)** Provides for general strike organization. Workers shall be free to participate or not in a strike. Strikes shall be organized by trade unions for the protection of economic and social rights of their members. **Act on Strike, 1998**
21.	**Botswana**		**Trade Disputes Act, 2003 (Act No. 15 of 2004) (Cap. 48:02)** Part VI – Unlawful industrial action and enforcement of collective labour agreements and decisions of the Industrial Court 39. Right to strike and lockout 40. Regulation of strikes and lockouts 41. Strikes and lockouts in compliance with this Part 42. Prohibition of certain strikes and lockouts Part VII – Protection of essential services, life and property Schedule – Essential services **National industrial relations code of good practice, 2002** Part D – Collective bargaining Section 18 – Strikes and lockouts

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
22.	**Brazil**	**Constitution** **Article 9** The right to strike is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defend thereby. Paragraph 1. The law shall define the essential services or activities and shall provide with respect to the satisfaction of the community's undelayable needs. Paragraph 2. The abuses committed shall subject those responsible to penalties of the law.	**Decreto-ley núm. 5452, de 1.º de mayo de 1943, por el que se aprueba la codificación de las leyes del trabajo** Chapter VII – DAS PENALIDADES Section 1 Do "Lockout" E Da Greve / Article 722 **Ley núm. 7783 sobre el Ejercicio del Derecho de Huelga, definición de las actividades esenciales, regulación de las necesidades perentorias de la comunidad, y por la que se provee a otros fines de 28 de junio de 1989**
23.	**Brunei Darussalam**		**Trade Disputes Act, 1961** Part II – Trade disputes Article 7(7) – Essential services Article 9 – Illegal strikes and lockouts Article 10 – Penalty for illegal strikes and lockouts Article 11 – Penalty for giving financial aid to illegal strikes and lockouts Article 12 – Prosecutions Article 13 – Protection of persons refusing to take part in illegal strikes or lockouts Article 14 – Peaceful picketing and prevention of intimidation
24.	**Bulgaria**	**Constitution** **Article 50** Workers and employees shall have the right to strike in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law.	**Regulations of 2003 on the organization and activities of the National Institute for Conciliation and Arbitration** **Railway Transport Act, 2000** Section 51 – Satisfactory transport services to be ensured to the public in case of strike **Law for the Civil Servant, 1999** Article 47 – Right to strike **Act of 6 March 1990 on the settlement of collective labour disputes** Section 11(2) – Majority needed to call a strike State Gazette No. 87/27.10.2006 amending the Settlement of Collective Labour Disputes Act.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
25.	**Burkina Faso**	**Constitution** **Article 22** Le droit de grève est garanti. Il s'exerce conformément aux lois en vigueur.	**Loi n° 028-2008/AN portant Code du travail au Burkina Faso** Section 3 – Grève et lock-out Articles 382 et suivants Article 384 – Services minimums Article 386 – Occupation des lieux de travail **Arrêté n° 2009-022/MTSS/SG/DGT/DER du 18 décembre 2009 déterminant les emplois réquisitionnés et les conditions et modalités de réquisition en cas de grève** Articles 2 et 3 – Services essentiels
26.	**Burundi**	**Constitution** **Article 37** Le droit de fonder des syndicats et de s'y affilier ainsi que le droit de grève sont reconnus. La loi peut réglementer l'exercice de ces droits et interdire à certaines catégories de personnes de se mettre en grève. Dans tous les cas, ces droits sont interdits aux membres des corps de défense et de sécurité.	**Décret-loi n° 1-037 du 07 juillet 1993 portant Code du travail** Article 41 – Suspension du contrat de travail en cas de grève légale Articles 191-210 – Des différends collectifs Article 217 – Services minimums **Chapitre 3 – Droit de grève** (Articles 211-223) Section 1 – Disposition générale Section 2 – Restrictions à l'exercice du droit de grève Section 3 – Les effets de la grève **Loi n° 1/015 du 29 novembre 2002 portant réglementation de l'exercice du droit syndical et du droit de grève dans la fonction publique**
27.	**Cambodia**	**Constitution** **Article 37** Les droits de grève et de manifestations pacifiques doivent s'exercer dans le cadre de la loi.	**1997 Labour Law – Kram dated 13 March 1997 on the Labour Law** **Chapter XIII – Strikes and lockouts** (Articles 318–337) General provisions Procedures prior to the strike Effects of a strike Illegal strikes **2000 Circular/Pakras on the Right to Strike – No. 005 MoSALVY**
28.	**Cameroon**	**Préambule de la Constitution:** – La liberté d'association, la liberté syndicale et le droit de grève sont garantis dans les conditions fixées par la loi.	**Loi n° 92-007 du 14 août 1992 portant Code du travail** Titre 9 – Des différends du travail Chapitre 2 – Du différend collectif Article 157 – Définitions et conditions de légitimité des grèves Article 165 – Sanctions

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
29.	**Canada**	*In a judgment dated 30 January 2015, the Supreme Court of Canada found that the right to strike is protected under section 2(d) of the Charter of Rights and Freedoms by virtue of its unique role in the collective bargaining process.* **Section 2 of the Charter of Rights and Freedoms** Everyone has the following fundamental freedoms: … (d) freedom of association.	**Trade Unions Act of Canada (in force since 1 June 2001)** **Canada Labour Code, 1985** Article 3 – Definition of strike Article 87.3.1 – Strike ballot within the previous 60 days secret ballot simple majority of those voting Article 87.2.1 – Imposes minimum 72 hours' notice of strike or lockout Article 87.4 – Maintenance of activities Article 87.4.8 – Compulsory arbitration Article 87.6 – Reinstatement Article 87.7.1 – Specific minimum service provisions exist for the grain shipping industry **Division VI – Prohibitions and enforcement** ***Strikes and lockouts*** Article 88 – Definitions Article 89 – Certain requirements for calling a strike Article 90 – Limitations to the right to strike Article 94.2.1 – Prohibition of replacement hires Article 94.3 – Rights of striking workers **Public Service Labour Relations Act, 2003** Section 4 – Essential services Division 8 – Essential services Section 119(1) – Essential services Division 14 – Prohibitions and enforcement Article 194 – Declaration or authorization of strike **Québec / Décret n° 754-2007 du 28 août 2007 concernant le maintien des services essentiels en cas de grève dans certains services publics** **Québec / Décret n° 1227-2005 du 7 décembre 2005 relatif au maintien des services essentiels en cas de grève dans certains services publics**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
30.	**Cabo Verde**	**Constitution** **Article 64 – The right to strike and prohibition of lockout** (1) The right to strike shall be guaranteed; workers have the right to decide on the occasions to strike and the interests which the strike is intended to defend. (2) The law shall regulate the exercise of the right to strike. (3) …	**2007 Labour Code / Decreto-Legislativo nº 5/2007** **Section 2 – Right to strike** 112. Notion of strike 113. Illegal strikes 114. Decision to go on strike 115. Advance notice 116. Representatives of striking workers 117. Strike pickets 118. Conciliation and mediation 119. Freedom to join a strike 120. Prohibition of replacing striking workers 121. Effects of strike 122. Obligations during strike 123. Determination of minimum services 124. Provision of minimum services 125. End of strike 126. Effects of illicit strikes 127. Remission
31.	**Central African Republic**	**Constitution** **Article 10** (…) Le droit de grève est garanti et s'exerce dans le cadre des lois qui le régissent et ne peut, en aucun cas, porter atteinte ni à la liberté de travail ni au libre exercice du droit de propriété.	**Loi nº 09-004 du 29 janvier 2009 portant Code du travail** **Section III – De la grève et du lock-out** Articles 377-386 Article 381 – Services minimums **Loi nº 09-14 du 10 août 2009 portant statut général de la fonction publique** Article 23 – Reconnaissance du droit de grève aux fonctionnaires **Ordonnance nº 81/028 portant réglementation du droit de grève dans les services publics**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
32.	**Chad**	**Constitution** **Article 29** Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le réglementent.	**Loi n° 38/PR/96 du 11 décembre 1996 portant Code du travail** Article 133 – Suspension du contrat de travail en cas de grève légale Articles 455 et suivants – De la grève et du lock-out Articles 456-461 – L'exercice du droit de grève **Loi n° 017-PR-2001 portant statut général de la fonction publique** Article 9 – Reconnaissance du droit de grève aux fonctionnaires **Loi n° 008/PR/2007 du 9 mai 2007 portant réglementation de l'exercice du droit de grève dans les services publics** Articles 18-21 – Services essentiels
33.	**Chile**	**Constitución** **Artículo 19, 16º** […] No podrán declararse en huelga los funcionarios del Estado ni de las municipalidades. Tampoco podrán hacerlo las personas que trabajen en corporaciones o empresas, cualquiera que sea su naturaleza, finalidad o función, que atiendan servicios de utilidad pública o cuya paralización cause grave daño a la salud, a la economía del país, al abastecimiento de la población o a la seguridad nacional. La ley establecerá los procedimientos para determinar las corporaciones o empresas cuyos trabajadores estarán sometidos a la prohibición que establece este inciso;	**Código del Trabajo, 2011 (versión refundida)** Artículos 303-414 **Título VI – De la huelga y del cierre temporal de la empresa** Artículos 369-385 Artículo 384 – Servicios esenciales **Ley núm. 12927, Seguridad Interior del Estado** Artículo 11 – El paro o huelga en ciertos servicios puede sancionarse con presidio o relegación.
34.	**China**		**Trade Union Law of the People's Republic of China (amended 2001)** Article 27 – Consultations to be held with the trade union in case of work stoppage or slowdown strike.
35.	**Colombia**	**Constitución** **Artículo 56** Se garantiza el derecho de huelga, salvo en los servicios públicos esenciales definidos por el legislador. La ley reglamentará este derecho. Una comisión permanente integrada por el Gobierno, por representantes de los empleadores y de los trabajadores, fomentará las buenas relaciones laborales, contribuirá a la solución de los conflictos colectivos de trabajo y concertará las políticas salariales y laborales. La ley reglamentará su composición y funcionamiento.	**Ley núm. 50, de 28 de diciembre de 1990, por la que se introducen reformas al Código Sustantivo del Trabajo y se dictan otras disposiciones** Artículo 51 – Suspensión del contrato de trabajo por huelga Artículo 429 – Definición Artículo 444 – Decisión de los trabajadores Artículo 445 – Desarrollo de la huelga Artículo 448 – Funciones de las autoridades Artículo 449 – Efectos jurídicos de la huelga Artículo 450 – Casos de ilegalidad y sanciones

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
36.	**Comoros**		**Code du travail de 2012** Titre IX – Des différends du travail Chapitre II – Du différend collectif Article 247 – Droit de grève **Loi du 28 juin 2012 abrogeant, modifiant et complétant certaines dispositions de la loi n° 84-108/PR portant Code du travail** Article 68 – Suspension du contrat de travail pendant la grève Articles 247-249 – Droit de grève; services essentiels **Loi n° 04-006 du 10 novembre 2004 portant statut général des fonctionnaires** Article 9 – Reconnaissance du droit de grève aux fonctionnaires **Code Pénal** Article 391
37.	**Congo**	**Constitution** **Article 25** A l'exception des agents de la force publique, les citoyens congolais jouissent des libertés syndicales et du droit de grève dans les conditions fixées par la loi.	**Loi n° 45-75 instituant un Code du travail de la République populaire du Congo** **Titre 2 – Du contrat de travail** Chapitre 2 – Du contrat de travail individuel Article 47 – De la suspension du contrat de travail **Titre 8 – Du règlement des différends de travail** Chapitre 2 – Du différend collectif (articles 242-249.4) Article 248-2 – Définition de la grève Article 248-3 – Grèves licites Article 248-4 – Grèves illicites ou abusives Articles 248.5-249.4 – Autres modalités Article 248-15 – Services minimums
38.	**Costa Rica**	**Constitución** **Artículo 61** Se reconoce el derecho de los patronos al paro y el de los trabajadores a la huelga, salvo en los servicios públicos, de acuerdo con la determinación que de éstos haga la ley y conforme a las regulaciones que la misma establezca, las cuales deberán desautorizar todo acto de coacción o de violencia.	**Código del Trabajo (refundido en 2014)** Artículos 371-378 – De las huelgas legales e ilegales

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
39.	**Côte d'Ivoire**	**Constitution** **Article 18** Le droit syndical et le droit de grève sont reconnus aux travailleurs des secteurs public et privé qui les exercent dans les limites déterminées par la loi.	**Loi n° 95/15 du 12 janvier 1995 portant Code du travail** **Chapitre 2 – Différends collectifs** Articles 82.1-82.5 sur la définition et les modalités de la grève Section 5, article 82.11 – Arbitrage obligatoire Loi n° 92-570 du 11 septembre 1992 portant statut général de la fonction publique **Décret n° 95-690 du 6 septembre 1995 portant modalités particulières d'exécution du service minimum en cas de grève dans les services publics** **Décret n° 94-92 du 2 mars 1994 portant modalités du service minimum en cas de grève dans un établissement public sanitaire et social** **Loi n° 92-571 du 11 septembre 1992 relative aux modalités de la grève dans les services publics**
40.	**Croatia**	**Constitution** **Article 60** The right to strike shall be guaranteed. The right to strike may be restricted in the armed forces, the police, the civil service and public services as specified by law.	**Labour Act of 4 December 2009 (text No. 3635)** **Part XX – Strike and collective labour dispute resolution** Article 269 – Strike and solidarity strike Article 270 – Disputes in which mediation is mandatory Article 274 – Resolution of disputes by arbitration Article 278 – Rules applicable to work assignments which must not be interrupted Article 279 – Effects of organization of a strike or participation in a strike Article 280 – Proportional reduction of salary and salary supplements Article 281 – Judicial prohibition of an illegal strike and compensation for damages Article 283 – Judicial jurisdiction to prohibit a strike or a lockout Article 284 – Strikes in the armed forces, police, state administration and public services **Criminal Code** Article 111 – Violation of the right to strike
41.	**Cuba**		

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
42.	**Cyprus**	**Constitution** **Article 27** 1. The right to strike is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person. 2. The members of the armed forces, of the police and of the gendarmerie shall not have the right to strike. A law may extend such prohibition to the members of the public service.	**Industrial Relations Code, 1977** (the Industrial Relations Code is a gentleman's agreement signed by the Social Partners in 1977) Part II – Procedural provisions B. Procedure for the settlement of grievances 1. Direct negotiations (d) Violations of collective agreements – Resort to strike
43.	**Czech Republic**	**Constitution** **Article 44** … A law may place restrictions upon the exercise of the right to strike by persons who engage in professions essential for the protection of human life and health.	**Act No. 2/1991 on collective bargaining** Section 16 – Grounds for strike Section 17 – Conditions Section 18 – Participation Section 19 – Cooperation Section 20 – Unlawful strike
44.	**Democratic Republic of the Congo**	**Constitution** **Article 39** Le droit de grève est reconnu et garanti. Il s'exerce dans les conditions fixées par la loi qui peut en interdire ou en limiter l'exercice dans les domaines de la défense nationale et de la sécurité ou pour toute activité ou tout service public d'intérêt vital pour la nation.	**Loi n° 015/2002 du 16 octobre 2002 portant Code du travail** **Section 1 – La conciliation préalable des conflits collectifs de travail** Article 57 – Suspension du contrat de travail Article 305 – Demande devant le Tribunal de travail en cas de conflit collectif non résolu Article 315 – Cessation collective du travail Article 326 – Peine en cas de cessation collective du travail **Loi n° 016/2002 portant création, organisation et fonctionnement des tribunaux du travail** Article 28 – Application de l'article 305 du Code du travail **Note circulaire n° 12/CAB.MIN/ETPS/05/09 du 14 août 2009 relative aux instructions procédurales pour l'usage du droit de grève en République démocratique du Congo aux organisations professionnelles des employeurs et des travailleurs, entreprises et établissements de toute nature** Article 10 – Services essentiels Annexe

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
45.	**Denmark**		**Labour Court and Industrial Arbitration Act, 2008** Part 1 – The Labour Court Section 9, subsection 2 – Work stoppage Section 12 – Illegal work stoppage **Consolidation Act on Conciliation in Industrial Disputes, 2002** Part 1 – Conciliators Section 2(4) – Notices of work stoppage Section 4(4) – Work stoppage following failure of negotiations
46.	**Djibouti**	**Constitution** **Article 15** (…) Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail.	**Loi n° 133/AN/05/5ème L du 28 janvier 2006 portant Code du travail** Articles 36, 41, 188, 189, 190 **Décret n° 83-099/PR/FP du 10 septembre 1983 fixant les conditions d'exercice du droit syndical et du droit de grève** Article 23 – Services essentiels **Décret n° 95-0091/PRE du 5 septembre 1995 portant réquisition du personnel de certains services publics** Article premier – Services essentiels
47.	**Dominica**		**Industrial Relations Act (Act No. 18 of 1986)** **Part VIII – Settlement of trade disputes and managerial trade disputes** Article 2 – Definition of essential services Schedule – Essential services Article 59 – Essential services Article 61 – When strike or lockout may occur Article 64 – When employee may participate in a strike Article 71 – No right to pay during strike
48.	**República Dominicana**	**Constitución** **Artículo 62, 6** Para resolver conflictos laborales y pacíficos se reconoce el derecho de trabajadores a la huelga y de empleadores al paro de las empresas privadas, siempre que se ejerzan con arreglo a la ley, la cual dispondrá las medidas para garantizar el mantenimiento de los servicios públicos o los de utilidad pública;	**Ley núm. 16-92 que aprueba el Código del Trabajo** **Libro 6 – De los conflictos económicos, de las huelgas y de los paros** Título I – De los conflictos económicos (Artículos 395-400) Título II – De las huelgas (Artículos 401-412)

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
49.	Ecuador	**Constitución** **Artículo 326** Párrafo 10 – Se adoptará el diálogo social para la solución de conflictos de trabajo y formulación de acuerdos. Párrafo 12 – Los conflictos colectivos de trabajo, en todas sus instancias, serán sometidos a tribunales de conciliación y arbitraje. Párrafo 14 – Se reconocerá el derecho de las personas trabajadoras y sus organizaciones sindicales a la huelga. Los representantes gremiales gozarán de las garantías necesarias en estos casos. Las personas empleadoras tendrán derecho al paro de acuerdo con la ley. Párrafo 15 – Se prohíbe la paralización de los servicios públicos de salud y saneamiento ambiental, educación, justicia, bomberos, seguridad social, energía eléctrica, agua potable y alcantarillado, producción hidrocarburífera, procesamiento, transporte y distribución de combustibles, transportación pública, correos y telecomunicaciones. La ley establecerá límites que aseguren el funcionamiento de dichos servicios.	**Codificación del Código del Trabajo, 1997 (enmendado en 2012)** Artículo 235 – Declaratoria de huelga Artículo 330 – Normas en caso de huelga Artículo 467 – Derecho de huelga Artículo 468 – Pliego de peticiones Artículo 469 – Término del conflicto Artículo 470 – Mediación obligatoria Artículo 471 – Prohibición de declaratoria de huelga Artículo 474 – Integración del Tribunal de Conciliación y Arbitraje Artículo 485 – Apelación de los huelguistas Artículo 497 – Casos en que puede declararse la huelga Artículo 498 – Declaratoria de huelga Artículo 499 – Providencias de seguridad Artículo 501 – Prohibición de emplear trabajadores sustitutos Artículo 502 – Terminación de la huelga Artículo 504 – Remuneración durante los días de huelga Artículos 505-508 – Huelga solidaria Artículo 511 – Suspensión del contrato de trabajo Artículo 514 – Declaración de huelga en las instituciones y empresas que prestan servicios de interés social o público Artículos 515 y 522 – Servicios mínimos Artículo 521 – Servicios esenciales **Ley Orgánica de Empresas Públicas (LOEP)** Artículo 24 **Ley general de Instituciones del Sistema Financiero** Artículo 56 **Código Penal** Artículo 241 – Impedimento o limitación del derecho a huelga Artículo 346 – Paralización de un servicio público

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
50.	Egypt		**Labour Code (No. 12 of 2003)** **Book 4 – Collective labour relationships** **Part IV – Collective labour litigations** Articles 192–201 on strike action **Trade Union Act No. 35 of 1976 (as amended by Act No. 12 of 1995)** Section 14 **Decree No. 1185 of 2003 determining the vital or strategic establishments where strike is forbidden**
51.	El Salvador	**Constitución** **Artículo 48** Se reconoce el derecho de los patronos al paro y el de los trabajadores a la huelga, salvo en los servicios públicos esenciales determinados por la ley. Para el ejercicio de estos derechos no será necesaria la calificación previa, después de haberse procurado la solución del conflicto que los genera mediante las etapas de solución pacífica establecidas por la ley. Los efectos de la huelga o el paro se retrotraerán al momento en que éstos se inicien. La ley regulará estos derechos en cuanto a sus condiciones y ejercicio. **Artículo 221** Se prohíbe la huelga de los trabajadores públicos y municipales, lo mismo que el abandono colectivo de sus cargos.	**Código del Trabajo, decreto núm. 15, de 23 de junio de 1972** **Capítulo III – Del procedimiento en los conflictos colectivos económicos o de intereses** Sección 7 – De la huelga (Artículos 527-538) Sección 9 – De la calificación de la huelga y el paro (Artículos 546-565) Sección 10 – De la terminación de la huelga y el paro (Artículo 566)
52.	Guinea Ecuatorial	**Constitución** **Artículo 10** El derecho a la huelga es reconocido y se ejerce en las condiciones previstas por la ley.	**Ley núm. 12/1992, de fecha 1.º de octubre, de Sindicatos y Relaciones Colectivas de Trabajo** Título segundo – Relaciones colectivas de trabajo Capítulo I – Negociación colectiva Capítulo II – Huelga Capítulo III – Cierre patronal Capítulo IV – Procedimientos para la solución de los conflictos de trabajo Capítulo V – Sanciones
53.	Eritrea		**Labour Proclamation (No. 118/2001)** Title IX – Strike and lockout and unfair labour practices Article 115 – Strike and lockout Article 116 – Legality of a strike Article 117 – Labour dispute resolution in undertakings which supply essential services

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
54.	Estonia	**Constitution** **Article 29** … Everyone may freely belong to unions and federations of employees and employers. Unions and federations of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law. The conditions and procedure for the exercise of the right to strike shall be provided by law.	**Trade Unions Act of 14 June 2000 (as amended 2010)** Section 18 – Rights of trade unions (1) In order to exercise their competence, trade unions have the right to: … (6) in order to achieve their objectives, organise meetings, political meetings, street parades, pickets and strikes pursuant to the procedure prescribed by law; … **Civil Service Act of 13 June 2012** Article 59 – Strike ban on official **2000 Imprisonment Act** Article 135 – A prison officer is prohibited to participate in strikes, pickets and other service-related pressure activities **Act on resolution of collective labour disputes of 5 May 1993 (consolidation)** Article 13 – Creation of right to strike or lockout Chapter III – Strikes and lockouts Article 14 – Decision-making Article 15 – Advance notice of strike or lockout Article 16 – Direction of strike Article 18 – Warning and support strike Article 19 – Postponement or suspension of strike or lockout Article 20 – Freedom to participate in strike Article 21 – Restrictions on right to strike Article 22 – Unlawful strikes and lockouts Article 23 – Declaration of strikes or lockouts as unlawful Article 24 – Rights and liability of participants in strikes or lockouts Article 25 – Remuneration during strike or lockout Article 26 – Liability in case of strike or lockout declared unlawful Article 28 – Making up for time lost by reason of strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
55.	**Ethiopia**	**Constitution** **Article 42** 1. (a) Factory and service workers, farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests. (b) Categories of persons referred to in paragraph (a) of this sub-article have the right to express grievances, including the right to strike. (c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-article shall be determined by law. …	**Labour Proclamation No. 377/2003** Part 9 – Labour dispute Article 136 – Definition of strike **Chapter 5 – Strike and lockout** General Conditions to be fulfilled Procedure for notice Prohibited actions (Articles 157–160) **Criminal Code/Proclamation No. 414/2004** Article 420 – Penalties Article 421 – Unlawful striking
56.	**Fiji**		**Employment Relations Promulgation, 2007** **Part 18 – Strikes and lockouts** 175. Secret ballot a prerequisite to strike 177. Unlawful strikes or lockouts 178. Lawful strikes or lockouts on grounds of safety or health 179. Effect of lawful strikes or lockouts 180. Power of the Minister to declare strike or lockout unlawful 181. Court may order discontinuance of strike or lockout 182. Employers not liable for wages 183. Record of strikes and lockouts 184. Prohibition of expulsion of members **Part 19 – Protection of essential services, life and property** 185. Object of this Part 186. Strikes in essential services **Part 21 – Offences** 250. Offences where strikes or lockouts are unlawful 256. Penalties **Essential National Industries (Employment) Decree, 2011** 27. Job actions, strikes, sick outs, slowdowns, and lockouts **Public Service (Collective Bargaining) Act, 1973 (No. 123)**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
57.	**Finland**	**Constitution** **Section 13(2) – Freedom of assembly and freedom of association** Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The freedom to form trade unions and to organize in order to look after other interests is likewise guaranteed.	**Act on Mediation in Labour Disputes, 1962** Chapter 2 – Arrangement of stoppages of work Section 7 – Notice of stoppage of work Section 8 – Deferment of stoppage of work **Employment Contracts Act (55/2001, amendments up to 398/2013 included)** Chapter 7 – Grounds for termination of the employment contract by means of notice Section 2.2 – Termination grounds related to the employee's person **Collective Agreements Act, 1946**
58.	**France**	**Constitution** **Préambule** Le droit de grève s'exerce dans le cadre des lois qui le réglementent.	**Décret n° 2008-1246 du 1er décembre 2008 relatif aux règles d'organisation et de déroulement de la négociation préalable au dépôt d'un préavis de grève prévue aux articles L. 133-2 et L. 133-11 du Code de l'éducation** **Circulaire du 30 juillet 2003 relative à la mise en œuvre des retenues sur la rémunération des agents publics de l'Etat en cas de grève** **Loi n° 2007-1224 sur le dialogue social et la continuité du service public dans les transports terrestres réguliers de voyageurs** **Loi n° 2012-375 du 19 mars 2012 relative à l'organisation du service et à l'information des passagers dans les entreprises de transport aérien de passagers et à diverses dispositions dans le domaine des transports**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
59.	**Gabon**		**Loi n° 3/94 du 21 novembre 1994 portant Code du travail** **Chapitre II – Des conflits collectifs du travail** Section 1 – De la grève Articles 342-352 **Sous-section 2 – Des dispositions particulières concernant la grève dans les services publics** Articles 353-355 **Loi n° 1/2005 du 4 février 2005 portant statut général de la fonction publique** Article 68 et 69 – Exercice du droit de grève par les agents publics; préavis et service minimum
60.	**Gambia**		**Labour Act, 2007 – Act No. 5 of 2007** Article 137 – Picketing Article 138 – Secondary action Article 139 – Political action and action in breach of procedure Article 140 – Emergency provisions – Essential services
61.	**Georgia**	**Constitution** **Article 33** The right to strike shall be recognized. Procedure of exercising this right shall be determined by law. The law shall also establish the guarantees for the functioning of services of vital importance.	**Law on Trade Unions,1997** Article 13 – Right to participate in settling collective labour disputes **Criminal Code** Article 165 – Encroachment upon right to strike
62.	**Germany**	*The constitutional guarantee of the right to strike has been established by the courts on the basis of article 9(3) of the Basic Law (Grundgesetz).* **Basic Law** **Article 9(3)** The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful. Measures taken pursuant to article 12a, to paragraphs (2) and (3) of article 35, to paragraph (4) of article 87a, or to article 91 may not be directed against industrial disputes engaged in by associations within the meaning of the first sentence of this paragraph in order to safeguard and improve working and economic conditions.	

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
63.	**Ghana**		**Labour Act, 2003 – Act No. 651** **Part XIX – Strikes** 159. Notice of intention to resort to strike or lockout 160. Strike and lockout 161. Cooling-off period 162. Essential services 163. Prohibition of strike or lockout in respect of essential services 164. Compulsory reference to arbitration 168. Illegal strike and lockout 169. Legal effect of lawful strike and lockout 170. Temporary replacement of labour 171. Picketing 175. Definitions of essential services and strike
64.	**Greece**	**Constitution** **Article 23** 1. The State shall adopt due measures safeguarding the freedom to unionize and the unhindered exercise of related rights against any infringement thereon within the limits of the law. 2. Strike constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labour interests of working people. Strikes of any nature whatsoever are prohibited in the case of judicial functionaries and those serving in the security corps. The right to strike shall be subject to the specific limitations of the law regulating this right in the case of public servants and employees of local government agencies and of public law legal persons as well as in the case of the employees of all types of enterprises of a public nature or of public benefit, the operation of which is of vital importance in serving the basic needs of the society as a whole. These limitations may not be carried to the point of abolishing the right to strike or hindering the lawful exercise thereof.	**Act No. 1264, respecting the democratization of the trade union movement and the protection of workers' trade union freedoms, 1982** Article 19 – Right to strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
65.	**Grenada**		**Labour Relations Act (Act No. 15 of 1999)** 45. Reporting of trade disputes 46. Power to refer dispute to Arbitration Tribunal **Part IX – Employees' ancillary rights, etc.** 64. Peaceful picketing and prevention of intimidation 65. Refusal to do strikers' work 66. Right to return to work after strike action 67. Negation of conspiracy re trade disputes 68. Negation of liability re interfering with another's business 69. Intimidation and annoyance **Employment Act (Act No. 14 of 1999)** 44. Continuity of employment pursuant to participation in strike
66.	**Guatemala**	**Constitución** **Artículo 116** Se reconoce el derecho de huelga de los trabajadores del Estado y sus entidades descentralizadas y autónomas. Este derecho únicamente podrá ejercitarse en la forma que preceptúe la ley de la materia y en ningún caso deberá afectar la tensión de los servicios públicos esenciales.	**Código del Trabajo (2001)** **Título 7 – Conflictos colectivos de carácter económico** Capítulo 1 – Huelgas (Artículos 239-244) Capítulo 3 – Disposiciones comunes a la huelga y al paro (Artículos 253-256) **Decreto núm. 18-2001, por el que se enmienda el Código del Trabajo** *(en particular, la lista de trabajadores que no pueden ejercer el derecho de huelga)* **Ley de Sindicalización y Regulación de la Huelga de los Trabajadores del Estado, decreto núm. 71-86, del Congreso de la República** (enmendado por decreto núm. 35-96, de 28 de mayo de 1996) Sección 4 – Arbitraje obligatorio en caso de servicios no esenciales.
67.	**Guinea**	**Constitution** **Article 20** […] Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail. La loi fixe les conditions d'assistance et de protection auxquelles ont droit les travailleurs.	**Code du travail de 2014** Titre III – Conflits collectifs Chapitre 1 – La grève (Articles 431.1-431.10) Chapitre 3 – L'arbitrage Chapitre 4 – Exécution des accords de conciliation et des sentences arbitrales **Arrêté n° 680/MTASE/DNTLS/95 du 24 octobre 1995 portant définition et détermination des services essentiels dans le cadre de l'exercice du droit de grève**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
68.	Guinea-Bissau	**Constitution** **Article 47** 1. It is recognized a workers' right to strike under the law which is responsible for defining the scope of professional interests to defend through the strike, and its limitations in essential services and activities in the interest of the pressing needs of society. 2. …	**Ley núm. 9/91, sobre la Huelga** Se reconoce el derecho de huelga a los trabajadores en defensa de sus intereses socioprofesionales dentro de los límites de los demás derechos reconocidos a los ciudadanos. Se prohíbe la huelga en las fuerzas armadas y en la policía. Se prohíbe la discriminación de los trabajadores con motivo de su adhesión o no a una huelga. Se determinan los casos en que la huelga es ilegal y las prácticas ilícitas. Se garantiza la libertad de trabajo de los no adherentes y se prohíbe la substitución de los trabajadores huelguistas. Se determinan los órganos competentes para declarar la huelga. Otras disposiciones de la ley se refieren a los piquetes de huelga, a la intervención conciliatoria, a los servicios mínimos, a la huelga con motivo de la aplicación de una norma legal o convencional, a la huelga en empresas o servicios de interés público esencial, a la finalización de la huelga, a la prohibición del cierre de talleres, a las sanciones, etc. (NATLEX)
69.	Guyana	**Constitution** **Article 147(2)** Except with his or her consent no person shall be hindered in the enjoyment of his or her freedom to strike. **Judicial Service Commission Rules (included in the Constitution)** Article 20 – Special provisions for officers of the judicial service commission concerning strike action.	**Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01), as amended up to 2012** Section 12 – Prohibition of lockouts and strikes Section 19 – Penalty for participation in illegal strike **Public Utility Undertakings and Public Health Services Arbitration (Amendment) Act, 2009** Article 6 – Schedule defining essential services **Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01)** Article 19 – Compulsory arbitration and the sanction (fine or imprisonment, as amended by the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Act, 2009) imposed on workers who take part in an illegal strike.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
70.	Haiti	**Constitution** **Article 35.5** Le droit de grève est reconnu dans les limites déterminées par la loi.	**Code du travail, 1984** Titre III – Des conflits du travail Chapitre VI – De la grève Article 204 – Conditions Article 205 – Formes de grève Article 206 – Légalité de la grève Article 207 – Suspension du contrat de travail Article 208 – Contenu de la grève Article 209 – Interdiction de la grève dans les services essentiels Article 210 – Grève illégale
71.	Honduras	**Constitución** **Artículo 128, 13)** Se reconoce el derecho de huelga y de paro. La ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que determine;	**Decreto núm. 189, que promulga el Código del Trabajo** Artículo 495 – Atribución exclusiva de la Asamblea Artículo 550 – Definición de huelga Artículo 551 – Objeto de la huelga Artículos 552-553 – Efectos jurídicos de las huelgas Artículos 555-557 – Restricciones al derecho de huelga en los servicios públicos Capítulo II – Declaración y desarrollo de la huelga (Artículos 562-568) Capítulo IV – Terminación de la huelga (Artículos 572-573) Capítulo VI – Disposiciones comunes a la huelga y al paro (Artículos 585-590)
72.	Hungary	**2011 Fundamental Law** **Article XVII** (2) Employees, employers and their representative bodies shall have a statutory right to bargain and conclude collective agreements, and to take any joint action or hold strikes in defence of their interests.	**Act I of 2012 on the Labour Code** Sections 216 and 266 **2010 Amendment of Act VII of 1989 on Strikes**
73.	Iceland		**Act on Trade Unions and Industrial Disputes, No. 80/1938 (as amended 2011)** **Section II – Respecting strikes and lockouts** Articles 14–19

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
74.	**India**	Freedom of association subject to constitutional protection Article 19.1.c "All citizens shall have the right to ... form associations and unions", but no mention of the right to strike. Main case law on constitutional protections is *All India Bank Employees* v. *National Industrial Tribunal* (1961) in which it is stated: "we have reached the conclusion that even a very liberal interpretation of sub-cl. (c) of cl. (1) of Art. 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation". The same judgment goes on to say "the right guaranteed by sub-cl.(c) of cl.(1) of Art. 19 does not carry with it a concomitant right that the unions formed for protecting the interests of labour shall achieve the purpose for which they were brought into existence, such that any interference, to such achievement by the law of the land would be unconstitutional unless the same could be justified as in the interests of public order or morality".	**Industrial Disputes Act, 1947** Article 2.q – Definition of strike Article 2.n – Definition of public services Article 10.3 – Power of referral Chapter V – Strikes and lockouts Sections 22–25 Chapter Vc – Unfair labour practices Section 25.u – Penalties Schedule 5, sections 4, 5, 6, 7, 8, 12, 15, Part II **Trade Unions Act, 1926** Sections 17 and 18 **The Central Civil Services (Conduct) Rules, 1964** Rule 7 – Demonstration and strikes
75.	**Indonesia**		**Act No. 13 of 2003 concerning manpower** **Part 8 – Institutes/agencies for the settlement of industrial relations disputes** Articles 137–145 – Strikes **Act No. 2 of 2004 on Industrial Relations Disputes Settlement** **Kapolri Regulation No. 1/2005 *(Guidelines on the conduct of the Indonesian police to ensure law enforcement and order in industrial disputes)***
76.	**Iran, Islamic Republic of**		**Labour Code of 20 November 1990** Section 142 refers to "stoppage of work" and "deliberate reduction of production by the workers".
77.	**Iraq**		**Act No. 71 of 1987 promulgating the Labour Code** Part VIII – Dispute resolution (Labour Code) Chapter I – Labour disputes Section 136

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
78.	**Ireland**	Case law suggests that it is likely a right to strike can be derived from article 40.3 of the Constitution, which protects the "personal rights" of citizens, but this protection does not necessarily extend to other forms of industrial action, for example *Crowley* v. *Ireland and Others* (1980) and *Talbot (Ireland)* v. *Merrigan and Others* (1981).	**Industrial Relations Act, 1990** Part II – Trade Union Law Section 8 – Definitions Section 10 – Acts in contemplation or furtherance of trade dispute Section 11 – Peaceful picketing Section 12 – Removal of liability for certain acts Section 13 – Restriction of actions of tort against trade unions Section 14 – Secret ballots Section 15 – Power to alter rules of trade unions Section 16 – Enforcement of rule for secret ballot Section 17 – Actions contrary to outcome of secret ballot Section 18 – Non-application of sections 14–17 to employers' unions Section 19 – Restriction of right to injunction **Unfair Dismissals Act, 1977** Article 5 – Strike dismissal
79.	**Israel**		**Settlement of Labour Disputes Law, 5717-1957** Part Two – Conciliation Article 5A – Duty to give notice of strike or lockout Part Four – Collective agreements in public service Article 37A – Definitions Unprotected strike or lockout Part Four – Collective agreements in public service Article 37A – Definitions Unprotected strike – A strike of employees in a public service where a collective agreement applies, except a strike unconnected with wages or social conditions and declared or approved by the central national governing body of the authorized employees' organization.
80.	**Italy**	**Constitution** **Article 40** Le droit de grève doit s'exercer dans le respect de la loi.	**Loi n° 83 du 11 avril 2000 portant modifications et compléments à la loi n° 146 du 12 juin 1990 réglementant le droit de grève dans les services publics essentiels ainsi que les droits de la personne prévus par la Constitution** **Loi n° 146/1990 portant dispositions relatives à l'exercice du droit de grève dans les services publics essentiels et à la sauvegarde des droits de la personne protégés par la Constitution et instituant une commission de garantie de l'application de la loi**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
81.	**Jamaica**		**Labour Relations and Industrial Disputes Act, 1975** Section 2 – Definitions Section 9 – Industrial disputes in undertakings providing essential services Section 10 – Ministry may act in public interest to settle dispute Section 11 – Reference of disputes to the tribunal at the request of the parties Part III – Establishment and functions of the industrial disputes tribunal Section 13 – Unlawful industrial action Section 31 – Prohibition of industrial action while appeals from the tribunal are pending in court Section 32 – Prohibition of industrial action prejudicial to the national interests
82.	**Japan**	*According to the courts, dispute acts, including strikes, are protected by article 28 of the Constitution.* **Constitution** **Article 28** The right of workers to organize and to bargain and act collectively is guaranteed.	**Labour Union Act (Act No. 174 of 1 June 1949)** Article 5(2) – The constitution of a labour union shall include the provisions listed in any of the following items: … (viii) that no strike shall be started without a majority decision made by direct secret vote either of the union members or of delegates elected by direct secret vote of the union members. Article 8 – An employer may not make a claim for damages against a labour union or a union member for damages received through a strike or other acts of dispute which are justifiable acts. **Labour Relations Adjustment Law (Law No. 25 of 27 September 1946 as amended through Law No. 82 of 14 June 1988)** Provides for conciliation, mediation, arbitration, and emergency arbitration.
83.	**Jordan**		**Labour Law and its Amendments No. 8 of the Year 1996** Articles 134–136 – Strike action **Regulation No. (8) of the Year 1998 – The regulation of the conditions and procedures of strike and lockout**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
84.	**Kazakhstan**	**Constitution** **Article 24** Paragraph 3 – The right to individual and collective labour disputes with the use of methods for resolving them, stipulated by law including the right to strike, shall be recognized.	**Labour Code of the Republic of Kazakhstan No. 251 of 15 May 2007** Article 296 – Guarantees in connection with settlement of a collective labour dispute Article 297 – Obligations of the parties and mediation bodies in settling collective labour disputes Article 298 – The right to strike Article 299 – Announcement of a strike Article 300 – Powers of the body heading the strike Article 301 – Obligations of the parties to the collective labour dispute during a strike Article 302 – Guarantees to employees in connection with a strike being called Article 303 – Illegal strikes Article 304 – Consequences of a strike being declared illegal **Criminal Code** Article 335 – Directing of a prohibited strike, and impeding the work of an enterprise or an organization under the conditions of an emergency situation.
85.	**Kenya**	**Constitution** **Article 41** (1) Every person has the right to fair labour practices. (2) Every worker has the right: (c) to form, join or participate in the activities and programmes of a trade union; and (d) to go on strike.	**Employment Act, 2007** Part I – Preliminary Section 2 – Interpretation – definition **Labour Relations Act, 2007** **Part X – Strikes and lockouts** Section 76 – Protected strikes and lockouts Section 77 – Powers of industrial court Section 78 – Prohibited strikes or lockouts Section 79 – Strike or lockout in compliance with this Act Section 80 – Strike or lockout not in compliance with this Act

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
86.	**Kiribati**		**Industrial Relations Code (Amendment) Act, 2008** **Industrial Relations Code, 1998** Article 27 – Strike, lockout or boycott unlawful where procedures are not exhausted Article 28 – Strike, lockout or boycott where award or agreement still in force Article 30 – Offences where strike, lockout or boycott unlawful Part VI – Protection of essential services, life and property Article 37 – Protection of life and property Article 39 – Strike ballots *(see amendments 2008)* **Extradition Act, 2003** *Terrorist offence* – However, an act is not a terrorist act if it is committed as part of … *industrial action* and is not intended to result in any harm …
87.	**Korea, Republic of**	**Constitution** **Article 33** (1) To enhance working conditions, workers shall have the right to independent association, collective bargaining, and collective action. (2) Only those public officials, who are designated by Act, shall have the right to association, collective bargaining, and collective action. (3) The right to collective action of workers employed by important defence industries may be either restricted or denied under the conditions as prescribed by Act.	**Trade Union and Labour Relations Adjustment Act, 1997 (Law No. 5310) (as amended 2010)** Chapter IV – Industrial action Article 37 (Basic principles of industrial action) Article 38 (Guidance and responsibility of trade union) Article 39 (Restriction on detention of workers) Article 40 (Support for labour relations) Article 41 (Restriction on and prohibition of industrial action) Article 42 (Prohibition of acts of violence) Article 43 (Restriction on hiring by employer) Article 44 (Prohibition of demands for wage payment during the period of industrial action) Article 45 (Adjustment precedent to industrial action) **Act on the Establishment, Operation, etc. of Public Officials' Trade Unions, 2005** Article 1 (Prohibition of industrial action) – A trade union and its members shall not take any action, including strikes
88.	**Kuwait**		**Law No. 6/2010 concerning Labour in the Private Sector** Chapter V – Collective Labour Relations/Section 3 – Collective labour disputes

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
89.	**Kyrgyzstan**	**Constitution** **Article 43** Everyone shall have the right to strike.	**Labour Code of 4 August 2004 (text No. 106)** Article 436 – Right to the strike Article 437 – Announcement of the strike Article 438 – The organ heading the strike Article 439 – Obligations of the parties of the collective employment dispute during the strike Article 440 – Illegal strikes Article 441 – Guarantees and the legal status of workers in connection with carrying out the strike Article 443 – Responsibility for evasion from participation in conciliatory procedures and failure to carry out of the agreement reached as a result of conciliatory procedure Article 444 – Responsibility of workers for illegal strikes Article 445 – Maintaining documentation in case of permission of the collective employment dispute
90.	**Lao People's Democratic Republic**		**Labour Law, 2013** Article 154 – Prohibition of work stoppage during disputes

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
91.	**Latvia**	**Constitution** **Article 108** Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions.	**Law on Trade Unions of 1990 (as amended 2005)** **Section 20 – Right of trade unions to declare strikes** Trade unions have the right to declare strikes in accordance with the procedures specified by law. **1998 Act on Strikes (amended in 2002 and 2005)** Part I – General conditions Sections 1–7 Part II – Pre-strike negotiations Sections 8–10 Part III – Declaration of strikes Sections 11–15 Part IV – Limits of the right to strike Sections 16–18 Part V – Supervision of the strike procedure Sections 19–22 Part VI – Illegality of the strike or the strike declaration Sections 23–25 Part VII – The rights and obligations of employees during the strike Sections 26–33 Part VIII – Responsibility for contravention of this Act Section 34
92.	**Lebanon**		**Penal Code – Legislative Decree No. 340 of 1943** Article 342 – Sanction for suspension of inter-urban or international transport, postal, telegraphic or telephone communications or public water or electricity distribution service. Article 343 – Sanctions for anyone who has led or maintained a concerted work stoppage by means of a gathering on public roads or places or by occupying workplaces.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
93.	**Lesotho**		**1992 Labour Code** **Part XIX – Strikes, lockouts and essential services** 3. Definition 229. Notice of strikes and lockouts 230. When strike lockout lawful 231. Offences in connection with strikes and lockout declared unlawful 232. Threat to essential services **Part XX – Picketing, intimidation and other matters related to trade disputes** 233. Peaceful picketing and prevention of intimidation 234. Intimidation 235. Conspiracy in trade disputes **Public Services Act (2005)** Article 19 – Prohibition for public officers
94.	**Liberia**		**Labour Practices Law, 1956** Title 18A – Labour Practices Law Part VI – Labour organizations Chapter 44 – Unlawful picketing, strikes and boycotts Section 4403 – Essential services Section 4503 – Notice and secret ballot for strike Section 4506 – Unlawful strikes against Government
95.	**Libya**		**1970 Labour Code** Part IV – Trade unions Part V – Labour disputes, section 150 – Requirements for prior conciliation and arbitration Part VI – Penalties, section 176 – Liability for contravention of section 150 **Law No. 12 of 1378 (2010) on Labour Relations** Chapter 4 – Labour disputes, conciliation and arbitration, sections 101–109

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
96.	Lithuania	**Constitution** **Article 51** While defending their economic and social interests, employees shall have the right to strike. The limitations of this right and the conditions and procedure for its implementation shall be established by law.	**Labour Code, 2002** Part I Chapter III – Representation of labour law subjects Article 22(3) – Right of employees to organize and manage strikes **Chapter X – Regulation of collective labour disputes** Article 76 – Definition of strike Article 77 – Declaration of a strike Article 78 – Restrictions on strikes Article 79 – Body leading a strike Article 80 – Course of a strike Article 81 – Lawfulness of a strike Article 81(4) – Essential services Article 82 – Legal status and guarantees of the employees on strike **Law on Works Councils, 2004** Chapter V – Rights and duties of the Works Council Article 19 – Rights of the Works Council Article 19(10) – Decision to call a strike **Law On Public Service, 1999** Chapter IV – Duties and rights of civil servants Article 21.1(10) – Right of civil servants to strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
97.	**Luxembourg**	**Constitution** **Article 11** 4) La loi garantit le droit au travail et l'Etat veille à assurer à chaque citoyen l'exercice de ce droit. La loi garantit les libertés syndicales et organise le droit de grève.	**Code du travail** Article L162-11 – Obligation de trêve sociale durant la période de validité de la convention collective Article L.163-2, paragraphe 1) – Avant toute grève ou lock-out, les litiges collectifs visés aux points 1 et 2 de l'article L163-1, paragraphe 2), sont portés obligatoirement devant l'Office national de conciliation. Article L163-2, paragraphe 5) – Jusqu'à la constatation de la non-conciliation par l'Office national de conciliation les parties s'abstiendront […] ainsi que de toute grève ou mesure de lock-out. **Loi du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat** Chapitre 11 – Droit d'association, représentation du personnel Article 36, paragraphe 1) – Les fonctionnaires jouissent de la liberté d'association et de la liberté syndicale. Toutefois, ils ne peuvent recourir à la grève que dans les limites et sous les conditions de la loi qui en réglemente l'exercice. **Arrêt du 24 juillet 1952 de la Cour de cassation luxembourgeoise** «La participation à une grève professionnelle, légitime et licite, constitue pour le travailleur un droit proclamé implicitement par l'article 11, alinéa 5, de la Constitution.» Confirmé par arrêt du 15 décembre 1959.
98.	**Madagascar**	**Constitution** **Article 33** Le droit de grève est reconnu sans qu'il puisse être porté préjudice à la continuité du service public ni aux intérêts fondamentaux de la nation. Les autres conditions d'exercice de ce droit sont fixées par la loi.	**Loi n° 2003-044 portant Code du travail** Titre VII – Du différent de travail Chapitre II – Du règlement des différends collectifs de travail Section 2 – La grève Articles 13 et 229 – Suspension du contrat de travail pendant certaines actions de grève Articles 220-227 – De l'arbitrage Article 228 – Réquisition de travailleurs Article 258 – Pénalités

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
99.	**Malawi**		**Labour Relations Act, 1996** Article 2 – Definition Part V – Dispute settlement 46. Strike or lockout procedures 47. Strike or lockout in essential services 48. Status of collective agreement and employment contract 49. Civil immunity 50. Right to return to employment 51. Temporary replacement labour 52. Refusal to do strikes' work 53. Peaceful picketing 54. Injunction in respect of strike or lockout
100.	**Malaysia**		**Industrial Relations Act, 1967** Article 2 – Definition Part IX – Trade disputes, strikes and lockouts and matters arising therefrom Article 43 – Restrictions on strikes and lockouts in essential services Article 44 – Prohibition of strikes and lockouts Article 45 – Illegal strikes and lockouts Article 46 – Penalty for illegal strikes and lockouts **Trade Unions Act, 1959** Article 2 – Definition 25A. Strikes and lockouts 40. Secret ballot First schedule – Section 38
101.	**Maldives, Republic of**	**Constitution** **Article 31** Every person employed in the Maldives and all other workers have the freedom to stop work and to strike in order to protest.	*New Labour Relations Act under discussion, which will address the right to strike.*

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
102.	**Mali**	**Constitution de 1992** **Article 21** Le droit de grève est garanti. Il s'exerce dans le cadre des lois et règlements en vigueur. [**Constitution de 2012 – article 32** L'Etat reconnaît et garantit le droit de grève. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et ses intérêts soit individuellement, soit collectivement par l'action syndicale. Le droit de grève s'exerce dans les conditions définies par la loi.]	**Loi n° 92-020/AN-RM du 23 septembre 1992 portant Code du travail** Article L.34 (7) – Suspension du contrat de travail pendant la grève Article L.231 – Grève illicite pendant la procédure de conciliation et ses effets Article L.311 – Interruption immédiate des opérations de placement pendant la grève **Code pénal de 2001** Chapitre VII – Coalition de fonctionnaires Article 82 – Les dispositions qui précèdent ne portent en rien préjudice au droit de grève et à la liberté de se regrouper au sein d'organisations de coopération ou d'organisations syndicales de leur choix pour la défense de leurs intérêts professionnels. **Loi n° 87-47/AN-RM du 4 juillet 1987 relative à l'exercice du droit de grève dans les services publics** **Décret n° 90-562/PRM du 22 décembre 1990 fixant la liste des services et emplois et les catégories de personnel indispensable à l'exécution du service minimal en cas de cessation concertée du travail dans les services publics de l'Etat et des collectivités territoriales et des organismes personnalisés chargés de la gestion d'un service public**
103.	**Malta**		**Employment and Industrial Relations Act, Chapter 425 (Act XXII of 2002)** Article 63 – Immunity of trade unions and employers' associations to actions in tort Article 64 – Acts in contemplation or furtherance of trade disputes – Exclusion of persons employed in essential services Article 65 – Peaceful picketing Article 73 et seq. – Industrial tribunal
104.	**Marshall Islands**		

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
105.	**Mauritania**	**Constitution** **Article 14** Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le réglementent.	**Loi n° 2004-017 portant Code du travail** Titre II – Règlement des différends collectifs Chapitre IV – Arbitrage (Articles 350-356) Article 350 – Décision ministérielle de recourir à l'arbitrage Chapitre V – Grève et lock-out (Articles 357-366) Article 357 – Définition Article 358 – Préavis de grève Article 359 – Obligations des grévistes Article 360 – Réquisition Article 361 – Effets de la grève licite Article 362 – Grève illicite Article 363 – Effets de la grève illicite
106.	**Mauritius**		**Employment Relations Act, 2008 (Act No. 32 of 2008), as amended by the Employment Rights (Amendment) Act, 2013 (No. 6 of 2013)** Part VII – Strikes and lockouts 76. Right to strike and recourse to lockout 77. Limitation on right to strike or recourse to lockout 78. Strike ballot 79. Notice of strike or lockout 80. Picketing 81. Minimum service 82. Acute national crisis 83. Legal effect of strike on contract of employment 84. Civil and criminal immunity **Employment Rights Act, 2008 (Act No. 33 of 2008)** 9. Continuous employment

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
107.	**Mexico**	**Constitution** **Title VI – Labour and social security** Article 123. (50) The Congress of the Union, without contravening the following basic principles, shall formulate labour laws which shall apply to: 19. Workers, day labourers, domestic servants, artisans *(obreros, jornaleros, empleados domésticos, artesanos)* and in a general way to all labour contracts: … **q.** The laws shall recognize strikes and lockouts as rights of workmen and employers. **r.** Strikes shall be legal when they have as their purpose the attaining of equilibrium among the various factors of production, by harmonizing the rights of labour with those of capital. In public services it shall be obligatory for workers to give notice ten days in advance to the Board of Conciliation and Arbitration as to the date agreed upon for the suspension of work. Strikes shall be considered illegal only when the majority of strikers engage in acts of violence against persons or property, or in the event of war, when the workers belong to establishments or services of the Government. … **v.** (54) An employer who dismisses a worker without justifiable cause or because he has entered an association or union, or for having taken part in a lawful strike, shall be required, at the election of the worker, either to fulfil the contract or to indemnify him to the amount of three months' wages. The law shall specify those cases in which the employer may be exempted from the obligation of fulfilling the contract by payment of an indemnity. He shall also have the obligation to indemnify a worker to the amount of three months' wages, if the worker leaves his employment due to lack of honesty on the part of the employer or because of ill-treatment from him, either to himself or to his wife, parents, children, or brothers and sisters. An employer may not relieve himself of this responsibility when the ill-treatment is attributable to his subordinates or members of his family acting with his consent or tolerance.	**Federal Labour Law, 1970** Title VIII – Strikes Chapter I – General provisions Article 440 – Definition of strike Article 441 – Illegal strikes Chapter II – Objectives and procedures Article 450 – Objectives Article 451 – Requirements Article 469 – End of strike Article 925 – Public services **Federal Act on State Employees** Section 94, Title 4 – Right to strike in limited circumstances for state employees Section 99(II) – Requirements for support of strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
		The branches of the union, the governments of the federal district and of the federal territories and their workers: … **j.** Workers shall have the right to associate together for the protection of their common interests. They may also make use of the right to strike after first complying with requirements prescribed by law, with respect to one or more offices of the public powers, whenever the rights affirmed by this article are generally and systematically violated.	
108.	**Moldova, Republic of**	**Constitution** **Article 45 – Right to strike** (1) The right to strike shall be acknowledged. Strikes may be unleashed only with the view of protection the employees' professional interests of economic and social nature. (2) The law shall set forth conditions governing the exercise of the right to strike, as well as the responsibility for illegal unleash of the strikes.	**2003 Labour Code** Part XII – Chapter III Settlement of collective labour conflicts Chapter IV The strike Article 362 – Strike announcement Article 363 – Strike organization at the enterprise Article 364 – Strike organization at the territorial level Article 365 – Strike organization at the branch level Article 366 – Strike organization at the national level Article 367 – Place of holding the strike Article 368 – Strike suspension Article 369 – Restriction of participation to strikes Article 370 – Responsibility for illegal organization of strikes **Law No. 1129 of 7 July 2000 on trade unions** Article 22 – The right to organize and conduct meetings **Criminal Code** Article 357 – Organizing or leading an illegal strike and hindering the activity of an enterprise, institution, or organization in conditions of emergency, siege, or a military situation.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
109.	**Mongolia**		**Labour Law of Mongolia of 14 May 1999** Chapter 10 – Settlement of collective labour disputes Article 119 – Exercise of the right to strike Article 120 – Announcing a strike; temporary denial of access to the workplace Article 121 – Parties which may organize a strike; suspension and termination of a strike Article 122 – Prohibition, postponement, or temporary suspension of a strike Article 123 – Deeming a strike or denial of access to the workplace unlawful Article 124 – Guarantees of the rights of employees related to the settlement of a collective labour dispute
110.	**Montenegro**	**Constitution** **Article 66 – Strike** The employed shall have the right to strike. The right to strike may be limited to the employed in the army, police, state bodies and public service with the aim to protect public interest, in accordance with the law.	**2003 Act on Strikes** The concept of strike and decision-making freedom Types of strike Making a decision on strike Elements of the decision to go on strike Announcement of strike Initiating the procedure of conciliation, mediation and arbitration Obligations of a strike committee and strike participants Termination of strike Strike in specific activities Minimum work process Strike announcement Initiating the procedure of conciliation, mediation and arbitration Cooperation with the employer and execution of its instructions Protection of employees' rights Obligations of the employer Termination of employment Picket duty Authorizations of the state body Inspection supervision Penalties for offences **Criminal Code** Articles 227 and 228

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
111.	**Morocco**	**Constitution** **Article 29** Sont garanties les libertés de réunion, de rassemblement, de manifestation pacifique, d'association et d'appartenance syndicale et politique. La loi fixe les conditions d'exercice de ces libertés. Le droit de grève est garanti. Une loi organique fixe les conditions et les modalités de son exercice.	**Code Pénal** Chapitre IV – Des crimes et délits commis par des particuliers contre l'ordre public Section VI – Des infractions relatives à l'industrie, au commerce et aux enchères publiques Article 288 – Pénalités

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
112.	**Mozambique**	**Constitution** **Article 87** 1. Workers shall have the right to strike, and the law shall regulate the exercise of this right. 2. The law shall restrict the exercise of the right to strike in essential services and activities, in the interest of the pressing needs of society and of national security. 3. …	**Labour Law, 2007** Chapter V – Collective rights and collective employment relations Section VI – Rules on collective bargaining Subsection V – Arbitration of labour pursuits Article 189 – Compulsory arbitration Article 191 – Arbitration process Section VII – Right to strike Subsection I – General provisions on strikes Article 194 – Right to strike Article 195 – Concept of strike Article 196 – Limits on the right to strike Subsection II – General principles Article 197 – Resort to strike Article 198 – Democratic rules Article 199 – Freedom to work Article 200 (Prohibition against discrimination) Article 201 (Representation of employees on strike) Article 202 (Duties of the parties during a strike) Subsection III – Special strike regimes Article 205 – Strike in essential services and activities Subsection IV – Procedures, effects and effective implementation of the strike Article 207 – Prior notice Article 208 – Conciliatory action Article 209 – Putting the strike into effect Article 210 – Effects of the strike Article 211 – Effects of an unlawful strike Article 212 – Termination of the strike Article 213 – Exceptional measures by Government Article 214 – Content of civil requisition Article 215 – Objective of civil requisition

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
113.	**Myanmar**		**Labour Organization Law (No. 7 of 2011)** Chapter XI – Lockout and strike Article 38 – Strike in a public utility service Article 39 – Strike in a non-public utility service Article 41 – Illegal strikes Chapter XII – Prohibitions Articles 43–47 – Prohibitions in respect of strikes **The Settlement of Labour Dispute Law, 2012** Chapter VI – Settlement of dispute Article 28(b) – Exercising the right to strike Chapter VIII – Prohibitions Article 42 – Prerequisites for strike
114.	**Namibia**		**Labour Act, 2007 (Act No. 11 of 2007)** Chapter 7 – Strikes and lockouts Sections 74–79 Chapter 8 – Prevention and resolution of disputes Sections 80–91

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
115.	**Nepal**		**Labour Act, 1992 of 15 May 1992** Article 76 – Notice of strike Article 78 – Prohibition of strikes Article 80 – Power to issue order to stop strikes Article 83 – Special arrangements for the settlement of disputes Article 51(f) and (g) – Misconduct: participation in a strike that has been declared irregular or illegal or without fulfilling the legal requirements **Essential Services Operation Act, 2014 (1957) – Act No. 15 of 2014** Article 2 – Definitions of essential service and strike Article 3 – Right of the Government of Nepal to restrict strike Article 4 – Punishment to a person committing a restricted strike or participating or continuing to participate in the same Article 5 – Punishment to an encourager Article 6 – Punishment to a person contributing in cash to a restricted strike **Trade Union Act, 1992** Article 30 – Special powers of the Government in the event that the activities of a trade union are considered to be likely to create an extraordinary situation and thus disturb the law and order situation within the country or to adversely affect the economic interests of the country.
116.	**Netherlands**		

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
117.	**New Zealand**		**Employment Relations Act, 2000** Part 8 – Strikes and lockouts 81. Meaning of strike 82. Meaning of lockout ***Lawfulness of strikes and lockout*** 82A. Requirement for union to hold secret ballot before strike 82B. Terms of question for secret ballot 82C. When requirement for secret ballot does not apply 83. Lawful strikes and lockouts related to collective bargaining 84. Lawful strikes and lockouts on grounds of safety or health 85. Effect of lawful strike or lockout 86. Unlawful strikes or lockouts ***Suspension of employees during strikes*** 87. Suspension of striking employees 88. Suspension of non-striking employees where work not available during strike 89. Basis of suspension 90. Strikes in essential services 92. Chief executive to ensure mediation services provided ***Procedure to provide public with notice before strike or lockout in certain passenger transport services*** 93. Procedure to provide public with notice before strike in certain passenger transport services 95. Penalty for breach of section 93 or section 94 ***Performance of duties of striking or locked out employees*** 97. Performance of duties of striking or locked out employees ***Record of strikes and lockouts*** 98. Record of strikes and lockouts ***Jurisdiction of Employment Court*** 99. Jurisdiction of court in relation to torts 100. Jurisdiction of court in relation to injunctions **Crimes Act, 1961 (No. 43 of 1961)** **79. Sabotage:** (2) No person shall be convicted of an offence against this section by reason only of the fact that he or she takes part in any strike or lockout.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
			307A. Threats of harm to people or property: (4) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that a person has committed an offence against subsection (1).
118.	**Nicaragua**	**Constitución** **Artículo 83** Se reconoce el derecho a la huelga	**Ley núm. 185, Código del Trabajo** **Capítulo III – De los conflictos colectivos** Sección I – De la huelga (Artículos 244-249) Sección II – Del paro (Artículos 250-251) Sección III – Disposición común a la huelga y al paro (Artículo 252) Artículos 389-390 – Arbitraje obligatorio **Ley núm. 641 que dicta el Código Penal** **Artículo 435 – Abandono de funciones públicas** (…) Se exceptúa de esta disposición el ejercicio del derecho a huelga de conformidad con la ley.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
119.	**Niger**	**Constitution** **Article 34** L'Etat reconnaît et garantit le droit syndical et le droit de grève qui s'exercent dans les conditions prévues par les lois et règlements en vigueur.	**Loi n° 2012-45 du 25 septembre 2012 portant Code du travail** **Articles 320-326** **Ordonnance n° 96-039 du 29 juin 1996 portant Code du travail** Chapitre II – Différends collectifs Section I – Conditions de recours à la grève (articles 311-315) Section II – Procédure d'arbitrage **Code Pénal (2003) tel qu'amendé par la loi n° 2008-18** Section III – Coalition de fonctionnaires Article 120 – Droit de grève des fonctionnaires **Arrêté n° 0825 du 2 juin 2003 portant création d'un comité national tripartite chargé de la mise en œuvre des recommandations des journées de réflexion sur le droit de grève et la représentativité des organisations professionnelles** **Décret n° 96-092/PCSN/MFPT/T du 16 avril 1996 portant modalités d'application de l'ordonnance n° 96-09 du 21 mars 1996, fixant les conditions d'exercice du droit de grève des agents de l'Etat et des collectivités territoriales** **Ordonnance n° 96-009 du 21 mars 1996 fixant les conditions d'exercice du droit de grève des agents de l'Etat et des collectivités territoriales** **Ordonnance n° 96-010 du 21 mars 1996 déterminant la liste des services essentiels et/ou stratégiques de l'Etat** **Loi n° 2007-26 du 23 juillet 2007 portant statut général de la fonction publique de l'Etat** *(Reconnaît le droit de grève pour la défense des intérêts professionnels collectifs des fonctionnaires et précise que ce droit s'exerce dans le cadre défini par la loi.)*

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
120.	Nigeria		**Trade Unions (Amendment) Act, 2005** Amends section 30 (strikes and lockouts; essential services) and section 42 (restrictions). **1973 Trade Unions Act (Chapter 437)** Section 54 – Matters to be provided for in rules of trade unions 14. A provision that no member of the union shall take part in a strike unless a majority of the members have in a secret ballot voted in favour of the strike. **Trade Disputes Act (Chapter 432) (No. 7 of 1976) (as amended through 1989)** Article 17 – Prerequisites; National Industrial Court; dispute settlement Article 47 – Definition of strike **Trade Disputes (Essential Services) Act (No. 23 of 1976)** Article 9.1 – Essential services; strike prohibition **Nigerian Export Processing Zones Act, 1992** Article 18(5) – Prohibition of strikes for ten years after commencement of a zone; mandatory dispute settlement.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
121.	**Norway**		**General Civil Penal Code** Section 86(7) – Punishment for any person who in time of war or for the purpose of war encourages, incites, is a party to deciding or takes part in any lockout, strike or boycott which is illegal and weakens Norway's ability to resist. **Labour Disputes Act of 5 May 1927 (as amended on 5 June 1981)** Article 1(5) – Definition of strike Article 1(7) – Definition of "notice to cease work" Article 4 – Responsibility in respect of breach of collective agreement and illegal stoppage of work Article 5 – Stipulation of compensation for breach of collective agreement and illegal stoppage of work Article 6 – Obligation to observe peace Chapter III – Conciliation Article 28 – Notice to the mediators (in the event of a notice to cease work being given) Article 29 – Rules respecting stoppages of work Article 31 – Preliminaries to mediation Article 35 – Mediation proceedings and mediation proposals Article 36 – Termination of mediation proceedings … **Public Service Labour Disputes Act of 18 July 1958 (as amended)** Chapter V – Breach of agreement. Stoppage of work. Article 20 – Rules of industrial peace Article 21 – Definition of stoppage of work (strike) Article 22 – Possible dismissal in the event of notification of work stoppage being given Article 23 – Liability for unlawful stoppage of work
122.	**Oman**		**Labour Law, 2003** Part VIII – Labour disputes Article 107(bis) – Peaceful strikes **Ministerial Decision No. 294 of 2006 on regulation of collective bargaining, peaceful strikes and lockouts**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
123.	**Pakistan**	**Constitution** Article 17: "every citizen shall have the right to form associations or unions" According to the Supreme Court in Siddique et al. 2006 p. 992, Civil Aviation Authority, *Islamabad* v. *Union of Civil Aviation Employees* (1997), this constitutional provision means that the right to strike cannot be derived from the constitutional protection of freedom of association – unlike bargaining itself.	**Industrial Relations Act, 2012 (Act No. X of 2012)** Article 2 – Definition of strike Article 20 – Functions of the collective bargaining agent Article 31 – Unfair labour practices on the part of employers Article 32 – Unfair labour practices on the part of a workmen Article 37 – Conciliation after notice of strike or lockout Article 39 – Commencement and conclusion of proceedings **Chapter VII – Strikes and lockout** Article 41 – Notice of strike or lockout Article 42 – Strike and lockout Article 43 – Illegal strikes and lockout Article 44 – Procedure in cases of illegal strikes or lockout Article 45 – Strike or lockout in public utility services Article 47 – Removal of fixed assets Article 48 – Protection of certain persons Article 61 – Powers of the Commission to prohibit strike, etc. Article 67 – Unfair labour practices **Essential Services (Maintenance) Act, 1952** Article 5 – Definition of essential services; prohibition of strike action
124.	**Palau**		**Division of Labour Rules and Regulations, 2002**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
125.	**Panamá**	**Constitución** **Artículo 69** Se reconoce el derecho de huelga. La Ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que ella determine.	**Código del Trabajo, 1972 / Decreto del Gabinete núm. 252, por el cual se aprueba el Código del Trabajo** (enmendado en 1995) Artículos 448-451 – Declaración previa de legalidad de la huelga Artículo 452 – Arbitraje Título IV – De la huelga Artículos 475-519 Huelga por solidaridad Huelga en los servicios públicos Declaratoria y actuación de la huelga Efectos de la huelga Huelga ilegal Huelga imputable al empleador Normas especiales y sanciones **Ley núm. 68, de 26 de octubre de 2010, que modifica los artículos del Código del Trabajo** Modifica algunas disposiciones del Código del Trabajo sobre el derecho de huelga Artículo 3, 2) – modifica el artículo 493 del Código del Trabajo de 1972 **Decreto ejecutivo núm. 26, de 5 de junio de 2009, por el cual se establecen los parámetros a tomar en consideración en relación con el porcentaje de trabajadores que laborarán en los turnos de los servicios públicos durante la huelga en éstos, de acuerdo con lo establecido en el artículo 487 del Código del Trabajo.**
126.	**Papua New Guinea**		**Industrial Relations Act, 1962** Part III – Settlement of industrial disputes Section 25 – Report of industrial disputes
127.	**Paraguay**	**Constitución** **Artículo 98 – Del derecho de huelga y de paro** Todos los trabajadores de los sectores públicos y privados tienen el derecho a recurrir a la huelga en caso de conflicto de intereses. Los empleadores gozan del derecho de paro en las mismas condiciones. Los derechos de huelga y de paro no alcanzan a los miembros de las Fuerzas Armadas de la Nación, ni a los de las policiales. La ley regulará el ejercicio de estos derechos, de tal manera que no afecten servicios públicos imprescindibles para la comunidad.	**Ley núm. 213 que establece el Código del Trabajo, 1993** Título IV – De las huelgas y los paros Artículos 352-378 – De las huelgas

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
128.	**Perú**	**Constitución** **Artículo 28** El Estado reconoce los derechos de sindicación, negociación colectiva y huelga. Cautela su ejercicio democrático: 1. Garantiza la libertad sindical. 2. Fomenta la negociación colectiva y promueve formas de solución pacífica de los conflictos laborales. La convención colectiva tiene fuerza vinculante en el ámbito de lo concertado.	**Decreto supremo núm. 010-2003-TR por el que se aprueba el Texto Único Ordenado de la Ley de Relaciones Colectivas de Trabajo** Título III – De la negociación colectiva (Artículo 68) Título IV – De la huelga (Artículos 72-86) **Decreto supremo núm. 024-2007-TR por el que se sustituye el artículo 62 del Reglamento de la Ley de Relaciones Colectivas de Trabajo** (se refiere a la decisión de declaración de huelga)
129.	**Philippines**	**Constitution** **Section 3** … It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.	**Labor Code (Presidential Decree No. 442 of 1974)** ***(as amended 2002)*** **Title VIII – Strikes and lockouts and foreign involvement in trade union activities** Article 212 (o, r, s) – Definition of strike, strike-breaker and strike areas Chapter I – Strikes and lockouts Article 263 – Strikes, picketing and lockouts Article 264 – Prohibited activities Article 265 – Improved offer balloting Article 266 – Requirement for arrest and detention **Penal Code (Act No. 3815)** Article 289
130.	**Poland**	**Constitution** **Article 59** … (3) Trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.	**Act of 21 November 2008 on the Civil Service (text No. 1505)** Article 78 *(no right to strike for civil service corps members if interference with regular functioning of an office)* **Act of 23 May 1991 on solving collective labour disputes**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
131.	**Portugal**	**Constitution** **Article 57 Right to strike and prohibition of lockouts** 1. The right to strike shall be guaranteed. 2. Workers shall be responsible for defining the scope of the interests that are to be defended by a strike and the law shall not limit that scope. 3. The law shall define the conditions under which such services as are needed to ensure the safety and maintenance of equipment and facilities and such minimum services as are indispensable to the fulfilment of essential social needs are provided during strikes. 4. …	**2009 Labour Code (revised) /** **Lei n.º 7/2009 de 12 de Fevereiro** **Aprova a revisão do Código do Trabalho** Strikes – Articles 530–545 **Decreto-ley núm. 259/2009 que reglamenta el arbitraje obligatorio, el arbitraje necesario y el arbitraje sobre servicios mínimos durante la huelga.**
132.	**Qatar**		**Qatar Labour Law, 2004** Part XII – Workers' organizations Article 120 – Strike requirements
133.	**Romania**	**Constitution** **Article 43** (1) The employees have the right to strike in the defence of their professional, economic and social interests. (2) The law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the essential services for the society.	**Act No. 62 of 10 May 2011 concerning social dialogue** **(*Legea dialogului social*)** Sections 181–207 – Strike Sections 217–218 – Sanctions **Law No. 54 of 24 January 2003 on trade unions** **Article 27** With a view to achieving the purpose for which they have been set up, the trade union organizations shall have, inter alia, the right strike, according to their own statutes and according to the conditions provided by the law. **Law No. 188/1999 regarding the regulations of civil servants** Article 28 – Civil servants may have the right to strike by the stipulations of the law.

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
134.	**Russian Federation**	**Constitution** **Article 37** Paragraph 4 – The right of individual and collective labour disputes with the use of the methods for their resolution, which are provided for by federal law, including the right to strike, shall be recognized.	**2001 Labour Code** Article 409 – Strike right Article 410 – Calling a strike Article 411 – Head striking unit Article 412 – Parties liabilities in the course of a strike Article 413 – Unlawful strikes Article 414 – Guarantees and legal conditions of employees in connection with the conduct of a strike Article 416 – Responsibility for conciliatory procedures evasion and non-performance of agreement reached as outcome of a conciliatory procedure Article 417 – Responsibility of employees for unlawful strikes Article 418 – Keeping documentation during settlement of a collective industrial dispute **Federal Law No. 10-FZ on Trade Unions and their Rights and Guarantees for their Activities** (1996, amended 2005) Article 14 – The right of the trade unions to take part in regulating collective labour disputes – recognizes the right to strike **2004 Law on State Civil Service** **1994 Federal Postal Service Act** Section 9 **1998 Federal Municipal Services Act** Section 11(1)(10) **2003 Federal Rail Transport Act** Section 26 **Decree No. 524 on means of organization and realization of meetings, demonstrations, processions and strike pickets** Meetings, demonstrations, processions and strike pickets must not violate rights and liberties of others, neither commend hatred or violence. **Act No. 54-FZ of 19 June 2004 on gatherings, meetings, demonstrations, processions and strike-pickets (text No. 2485)**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
			Law No. 334 of 22 November 2011 to Amend the Labour Code Regarding Improvements on the Procedure for the Consideration and Resolution of Collective Labour Disputes – article 410 is amended concerning announcement of strikes – article 411 is amended concerning the head of strikes **Federal Law No. 175-FZ of 23 November 1995 on the Procedure for Resolving Collective Labour Disputes**
135.	**Rwanda**	**Constitution** **Article 39** Le droit de grève des travailleurs est reconnu et s'exerce dans les conditions définies par la loi, mais l'exercice de ce droit ne peut porter atteinte à la liberté du travail reconnue à chacun.	**Loi n° 13/2009 du 27 mai 2009 portant réglementation du travail / Law regulating labour in Rwanda** Section 3 – Right to strike and lock out Article 151 – Exercise of rights to strike and lock out Article 152 – Decision on illegal strike or lock out Article 153 – Consequences of illegal strike Article 154 – Consequences of illegal lock out Article 155 – Exercising the right to strike in indispensable services **Arrêté ministériel n° 04 du 13 juillet 2010 déterminant les services indispensables et les modalités d'exercice du droit de grève dans ces services** **Criminal Code** Article 727 (penalties for soldiers on strike)
136.	**Saint Kitts and Nevis**		*Draft bill in progress*
137.	**Saint Lucia**		**Labour Code, 2006** Part VIII – Principles and procedures in industrial relations and industrial disputes Division 1 – Settlement of trade disputes 383. Freedom to engage in industrial action (including strike) 385. Effect of strike on contract of employment 392. Prohibition of lockouts, strikes and industrial action

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
138.	**Saint Vincent and the Grenadines**		**Trade Unions Act** Article 5 – Excludes minors under the age of 16 years from participating in unions Article 7 – Secret ballot for strike action Article 31 – Peaceful picketing and prevention of intimidation (which includes peacefully persuading any person to work or abstain from working) **Public Order Act** Articles 6 and 8 – Prohibitions and restrictions on public meetings **Police Act, Cap. 280** Article 72 – Excludes policemen from organizing
139.	**Samoa**		**Crimes Act, 2013 (2013, No. 10)** Article 190(4) – Strike action is not, by itself, a threat of harm to people or property **Prisons and Corrections Act, 2013 (2013, No. 11)** Article 55(i) – Prohibition of a sworn member or a non-sworn member of the prisons and correction service from participating in a strike that affects the proper management of a prison
140.	**San Marino**	**Constitution** (Declaration of citizens' rights and of the fundamental principles of the San Marinese legal order, 1974) **Article 9** Each citizen shall have the right and the duty to work. The law shall guarantee workers fair remuneration, leave, weekly rest and the right to strike.	**Act for the Protection of Work and Workers (Act of 17 February 1961, No. 7)** Section 27 – Right to strike **Decree of 2 August 2012, No. 110, on renewal of employment contract in public employment for 2011–12** Section 8 – Right to strike, period of notice, notification, minimum services
141.	**Sao Tome and Principe**	**Constitution** **Article 42** All the workers have rights: (f) To strike, under terms to be regulated by law, taking into account the interests of the workers and of the national economy.	**Ley núm. 4/2002 de requerimiento civil** **Ley núm. 4/92, sobre la huelga/Law on Strikes**
142.	**Saudi Arabia**		**Labour Law (Royal Decree No. M/51), 2006** Articles 201–228 – Procedure for and effects of decisions on labour disputes

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
143.	**Senegal**	**Constitution** **Article 25** […] Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas ni porter atteinte à la liberté de travail ni mettre l'entreprise en péril.	**Loi nº 97-17 du 1er décembre 1997 portant Code du travail** Article L70 – Suspension du contrat de travail pendant la grève Articles L.225, L.273, L.274, L.275 et L.276 sur la grève **Code pénal de 1965** Article 392 – Pénalités
144.	**Serbia**	**Constitution** **Article 61** The employed shall have the right to strike in accordance with the law and collective agreement. The right to strike may be restricted only by the law in accordance with nature or type of business activity.	**Criminal Code** Section 166 – Violation of the right to strike Section 167 – Abuse of the right to strike **Act of 15 November 2004 on peaceful settlement of labour disputes**
145.	**Seychelles**	**Constitution** **Article 35 – Right to work** The State recognizes the right of every citizen to work and to just and favourable conditions of work and with a view to ensuring the effective exercise of these rights the State undertakes – … (g) Subject to such restrictions as are necessary in a democratic society, and necessary for safeguarding public order, for the protection of health or morals and the rights and freedoms of others, to ensure the right of workers to organize trade unions and to guarantee the right to strike.	**Industrial Relations Act, 1993 (Act No. 7 of 1993)** Section 37 – Protection against victimization by trade union Section 50 – Compulsory award Section 52 – Strike or lockout Section 53 – Picketing Section 56 – Offences relating to strike or lockout Section 57 – No pay while on strike
146.	**Sierra Leone**		**Regulation of Wages and Industrial Relations Act, 1971, No. 18** Article 1 – Exclusions of members of the armed forces of police force officers Article 2 – Definition of strike Article 17(1) – Requirement for conciliation Article 17(2) – Exclusion for essential workers, advance notice for strikes and prohibition of sympathy strikes Article 17(3) – Definition of essential trade groups Article 17(4) – Binding nature of award

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
147.	**Singapore**		**Trade Unions Act, 1941** Part IV – Rights and liabilities of trade unions Section 27 – Strike or industrial action **Trade Disputes Act, 1941** Sections 3 and 4 – Illegal industrial action and lockout Sections 5–8 – Penalties in relation to illegal industrial action and lockout **Industrial Relations Act (Cap. 136)** Part 5 – Arbitration Articles 31–36 **Criminal Law (Temporary Provisions) Act** Section 5 – Definition Section 6 – Restrictions on strikes and lockouts (essential services) Section 7 – Illegal strikes and lockouts Section 8 – Lockout or strike consequent on illegal strike or lockout Section 9 – Penalty for illegal strikes and lockouts Section 10 – Penalty for instigation Section 11 – Penalty for giving financial aid to illegal strikes or lockouts Section 12 – Protection of persons refusing to take part in illegal strikes or lockouts
148.	**Slovakia**	**Constitution** **Article 37** … (4) The right to strike is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.	**Labour Code, 2001** Fundamental Principles Article 10 – Employees' right to strike **Act No. 2/1991 on Collective Bargaining** Article 16(2) – Definition Article 16(1) – Right to strike Article 17 – Requirements to declare a strike Article 17(9) – Essential services Articles 18 and 22 – Participation Article 19 – Collaboration during strike Articles 20 and 21 – Illegal strike Article 23 – Liabilities Article 26 – Termination of a strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
149.	**Slovenia**	**Constitution** **Article 77 (right to strike)** Employees have the right to strike. Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of activity involved.	**The Employment Relationships Act (Ur. l. RS, No. 42/2002, Ur. l. RS, No. 103/2007)** Article 89 – Unfounded reasons for termination – i.e. participation in a lawful strike **The Strike Act (OJ SFRY, No. 23/1991)** Article 1 – Definition Article 2 – Decision to initiate a strike Article 3 – Announcement by the strike committee … Article 4 – End of strike Articles 7–9 – Right to strike of those working in activities of special social importance Article 11 – Right to strike for workers in communal bodies Article 12 – Right to strike for workers in national defence or interior bodies Article 13 – Protection against disciplinary actions … Articles 17–19 – Sanctions **Civil Servants Act, 2002** Chapter III – Other common issues of the civil servants system Article 19 – Civil servants shall have the right to strike
150.	**Solomon Islands**		**Trade Unions Act, 1966** Part I – Preliminary Section 2 – Interpretation **Trade Disputes Act, 1981** Schedule Section 1 – Glossary Definition of strike Article 10 – Restriction on strike **Essential Services Act (Cap. 12)** **Essential Services (Amendment) Act, 2001 (No. 1 of 2001)**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
151.	**Somalia**	**Constitution** **Article 27 – Right to strike** The right to strike is recognized and may be exercised within the limits prescribed by law. Any act tending to discriminate against, or to restrict, the free exercise of trade union rights shall be prohibited.	
152.	**South Africa**	**Constitution** **Article 23** Labour relations 1. Everyone has the right to fair labour practices 2. Every worker has the right … c. to strike	**Act No. 6, 2014: Labour Relations Amendment Act, 2014** Amends the Labour Relations Act, 1995, so as to facilitate the granting of organizational rights to trade unions that are sufficiently representative; to strengthen the status of picketing rules and agreements; to amend the operation, functions and composition of the essential services committee and to provide for minimum service determinations. **Labour Relations Act (No. 66 of 1995)** **Chapter 4 – Strikes and lockouts** 64. Right to strike and recourse to lockout 65. Limitations on right to strike or recourse to lockout 66. Secondary strikes 67. Strike or lockout in compliance with this Act 68. Strike or lockout not in compliance with this Act 69. Picketing 70. Essential services committee 71. Designating a service as an essential service 72. Minimum services 73. Disputes about whether a service is an essential service 74. Disputes in essential services 75. Maintenance services 76. Replacement labour 77. Protest action to promote or defend socio-economic interests of workers 95. Right to refrain from striking **Chapter 7 – Dispute resolution** 116. Governing body of Commission

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
			Public Service Labour Relations Act, 1993 (No. 102 of 1993) Provides for conciliation boards to resolve disputes with the employer regarding the rights of individual employees, and grants the right to strike to all employees other than those engaged in essential services. **Regulations for the South African Police Service, 1995 (No. R. 1489)** Section 12 forbids strikes by employees and lockouts by employers. **Regulations Regarding the Role of Managers Prior to Strike Action, 2000 (No. 327 of 2000)**
153.	**South Sudan**		**2012 Labour Bill, which addresses the right to strike, in the process of adoption.**
154.	**España**	**Constitución** **Artículo 28** 2. Se reconoce el derecho a la huelga de los trabajadores para la defensa de sus intereses. La ley que regule el ejercicio de este derecho establecerá las garantías precisas para asegurar el mantenimiento de los servicios esenciales de la comunidad. **Tribunal Constitucional, sentencia núm. 36/1993, de 8 de febrero de 1993:** Las huelgas políticas están prohibidas por ley, aunque la Corte Constitucional ha limitado la prohibición a las huelgas que trascienden completamente los intereses profesionales de los trabajadores	**Ley orgánica núm. 11/1985, de 2 de agosto, de Libertad Sindical** **Artículo 2** 2. Las organizaciones sindicales en el ejercicio de la libertad sindical, tienen derecho a: […] *d)* el ejercicio de la actividad sindical en la empresa o fuera de ella, que comprenderá, en todo caso, el derecho a la negociación colectiva, al ejercicio del derecho de huelga, al planteamiento de conflictos individuales y colectivos y a la presentación de candidaturas para la elección de comités de empresa y delegados de personal, y de los correspondientes órganos de las administraciones públicas, en los términos previstos en las normas correspondientes. [...] **Real decreto núm. 524/2002, de 14 de junio, por el que se garantiza la prestación de servicios esenciales en el ámbito de la seguridad privada en situaciones de huelga** **Real decreto-ley núm. 17/1977, de 4 de marzo, sobre relaciones de trabajo** Título primero – El derecho de huelga Capítulo primero – La huelga (Artículos 1-10)

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
155.	**Sri Lanka**		**Industrial Disputes Act (No. 43 of 1950) (Cap. 131) (as amended 2008)** Article 32 – Essential industries Article 33 – General **Industrial Disputes (Amendment) Act, No. 39 of 2011**
156.	**Sudan**		**1997 Labour Code** Article 106 – Voluntary conciliation Articles 102–120 – Mandatory arbitration and binding decisions Article 124 – Prohibition against work stoppage for workers or officials **Trade Union Act of 2010** Article 6(1) – Legitimacy of strike action
157.	**Suriname**	**Constitution** **Article 33** The right to strike is recognized subject to the limitations which stem from the law	**Legal status of Military Personnel Act** Articles 51–55 – Prohibitions and limitations on the exercise of the rights to strike and protest **Code Civil** Article 1 1614, b) – "No work no pay" principle **Resolution of 22 March 2003 (SD 2003 No. 31)** **High Council (NJ 1977, 55) – Distinction between types of strikes**
158.	**Swaziland**		**Industrial Relations (Amendment) Act, 2014 (Act No. 11 of 2014)** **Industrial Relations (Amendment) Act No. 6 of 2010** **Industrial Relations (Amendment) Act, 2005 (Act No. 3 of 2005)** **Industrial Relations (Amendment) Act, 2000 (No. 8 of 2000)** **Industrial Relations Act (No. 1 of 2000)** **Police and Public Order: Act 17/1963**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
159.	**Sweden**	**Constitution/Instrument of Government** Article 14 – A trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement.	**Employment (Co-Determination in the Workplace) Act, 1976** Labour-stability obligations Section 41 – Prohibition to participate in strike Notice Section 45 – Notice for industrial action (including strike) **Public Employment Act, 1994** Labour disputes Restrictions on the right to industrial action Section 23 – Form of industrial action (strike, lockout, etc.) Participation in industrial action Sections 25 and 26 – Employees' participation
160.	**Switzerland**	**Constitution** **Article 28 – Liberté syndicale** 1) Les travailleurs, les employeurs et leurs organisations ont le droit de se syndiquer pour la défense de leurs intérêts, de créer des associations et d'y adhérer ou non. 2) Les conflits sont, autant que possible, réglés par la négociation ou la médiation. 3) La grève et le lock-out sont licites quand ils se rapportent aux relations de travail et sont conformes aux obligations de préserver la paix du travail ou de recourir à une conciliation. 4) La loi peut interdire le recours à la grève à certaines catégories de personnes.	
161.	**Syrian Arab Republic**	**2012 Constitution** **Article 44** Citizens shall have the right to assemble, peacefully demonstrate and to strike from work within the framework of the constitution principles, and the law shall regulate the exercise of these rights.	**Legislative Decree No. 148 of 22 June 1949 – Penal Code** Sections 330–334 – Sanctions for exercising the right to strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
162.	**Tajikistan**		**Labour Code of 15 May 1997** Article 4 – Basic labour rights and obligations of workers The state guarantees the right of each worker to: … (11) engage in strike action; … Article 211 – Strike action Article 211(2) – Decision to strike by vote Article 211(3) – Notification of length of strike Article 212 – Safeguards and compensation for workers exercising their right to strike Article 213 – Liability of the employer for non-compliance with legislation on collective labour disputes Article 214 – Liability of workers for unlawful strikes **Criminal Code** Article 152 – Compulsion to be on a strike or non-participation in a strike Article 160 – Penalty

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
163.	**Tanzania, United Republic of**		**Employment and Labour Relations Act, 2004** 4. Definition of strike 47. Ballot 64. Procedure for exercising organizational right **Part VII – Strikes and lockouts** 75. Right to strike and lockout 76. Restrictions on the right to strike and lockout 77. Essential Services 78. Disputes of interest in essential services 79. Minimum services during a strike or lockout 80. Procedure for engaging in a lawful strike 81. Procedure for engaging in a lawful secondary strike 83. Nature of protection for a lawful strike or lockout 84. Strikes and lockouts not in compliance with this part 85. Protest action **Employment and Labour Relations (Code of Good Practice) Rules, 2007 (GN No. 42 of 2007)** Part IV – Strikes and lockouts **Public Service (Negotiating Machinery) Act, 2003 (No. 19 of 2003)** **Part IV – Strikes and lockouts** 26. Rights and conditions to strike and to lockout 27. Strikes and lockout not allowed 28. Incitements 29. Prohibition of acts of discrimination
164.	**Thailand**		**Labour Relations Act, 1975** Section 5 – Interpretation of strike Chapter II – Settlement of labour disputes Section 22 – Employees recourse to strike Chapter III – Lockout and strike Sections 34–36 – Strike conditions

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
165.	**The former Yugoslav Republic of Macedonia**	**Constitution** **Article 38** The right to strike is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.	**2007 Labour Relations Law – No. 80/93-2007** Article 79 – According to law, employees are permitted to go on strike for the purpose of attaining their economic and social rights resulting from employment. **Act of 20 July 2000 on Civil Servants (consolidation)** Article 34 **Law on Public Undertakings (Nos 38/96; 9/97)** Sections 32–36 – Strike in a public enterprise **Criminal Code** Article 156 – Violation of the right to strike
166.	**Timor-Leste**	**Constitution** **Section 51 (right to strike and prohibition of lockout)** 1. Every worker has the right to resort to strike, the exercise of which shall be regulated by law. 2. The law shall determine the conditions under which services are provided, during a strike, that are necessary for the safety and maintenance of equipment and facilities, as well as minimum services that are necessary to meet essential social needs. 3. …	**Law No. 4/2012 – Labour Code** Chapter III – Right to strike and lockouts Article 95 1. The right to strike is protected by the State, in the terms provided for in the Constitution 3. There is specific legislation relating to exercising the right to strike and lockouts **Law No. 5/2012 of 29 February 2012 – Strike Law** Article 2 – Definition of strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
167.	**Togo**	**Constitution** **Article 39** Le droit de grève est reconnu aux travailleurs. Il s'exerce dans le cadre des lois qui le réglementent.	**Loi n° 2006-010 du 13 décembre 2006 portant Code du travail** Chapitre II – Des conflits collectifs et de l'exercice du droit de grève Section III – De la grève et du lock-out Article 268 – Définition Article 269 – Droit de recourir à la grève pour la défense des intérêts professionnels Article 270 – Préavis Article 271 – Négociations pendant la durée du préavis Article 272 – Expiration du préavis Article 273 – Services essentiels Article 274 – Liste des entreprises qui fournissent un service essentiel Article 275 – Déroulement de la grève Article 276 – Suspension du contrat de travail Article 277 – Interdiction des actes de coercition et de violence Article 278 – Services minimums Article 279 – Contestations relatives à l'exercice du droit de grève Article 280 – Sanctions pour actes de violence ou d'intimidation Article 281 – Grève illicite **Loi du 20 janvier 2013 portant statut général de la fonction publique** Article 244 – Le droit de grève est reconnu aux fonctionnaires dans certaines limites. **Décret n° 91-167 du 31 mai 1991 organisant le droit de grève dans les services publics**
168.	**Trinidad and Tobago**		**Industrial Relations Act (Act No. 23 of 1972)** Part V – Disputes procedure 60. Strike or lockout action procedures 61. Referral to court 62. Strike and lockout action in conformity with this Part 63. Industrial action not in conformity with this Part 64. Application to the Court to avoid rescission of contract 65. Stop order in the national interest 66. Industrial action prohibited during hearing, etc. 67. Industrial action in essential services, prohibited 68. Offence for persons to contribute financial assistance to promote or support industrial action 69. Persons prohibited from taking industrial action 70. Liability of officers of companies

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
169.	**Tunisia**	**Constitution de 2014** **Article 36** Le droit syndical est garanti, y compris le droit de grève. Ce droit ne s'applique pas à l'armée nationale. Le droit de grève ne comprend pas les forces de sécurité intérieure et la douane.	**Code du travail (version consolidée de 2011)** Chapitre XIII – Règlement des conflits collectifs de travail Articles 376-390 **Code disciplinaire et pénal maritime, 2010** Dispositions relatives à la répression des grèves (Articles 53-56)
170.	**Turkey**	**Constitution** **Article 54** Workers have the right to strike during the collective bargaining process if a disagreement arises. The procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of, and the exceptions to them shall be regulated by law. The right to strike and lockout shall not be exercised in a manner contrary to the rules of goodwill, to the detriment of society, and in a manner damaging national wealth. The circumstances and workplaces in which strikes and lockouts may be prohibited or postponed shall be regulated by law. In cases where a strike or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute. The decisions of the Supreme Arbitration Board shall be final and have the force of a collective labour agreement. The organization and functions of the Supreme Arbitration Board shall be regulated by law. Those who refuse to go on strike shall in no way be barred from working at their workplace by strikers.	**Law on Trade Unions and Collective Labour Agreements, 2012 – Law No. 6356** **Part 11 – Strike and lockout** Article 58 – Definition of a strike Article 60 – Decision to call a lawful strike or order lawful lockout and their implementation Article 61 – Strike vote Article 62 – Prohibition of strikes and lockouts Article 63 – Postponement of strikes and lockouts Article 64 – Execution of strike and lockout Article 65 – Workers excluded from taking part in a lawful strike or lockout Article 66 – Guarantee of right to strike or lockout Article 67 – Effect of a lawful strike or lockout on contracts of employment Article 68 – Prohibition of recruitment or other employment Article 69 – Effect of a lawful strike or lockout on entitlement to housing Article 70 – Consequences of an unlawful strike or lockout Article 71 – Declaratory action Article 72 – Abuse of the right to strike and lockout Article 73 – Strike and lockout pickets Article 74 – Powers of the civil authority in the event of a strike or lockout Article 75 – Decision to end a strike or lockout **Act No. 6356 on Trade Unions and Collective Labour Agreements** Article 58 – Restrictions during collective bargaining negotiations Article 61 – Voting Article 62 – Essential services Article 66 – Contracts Article 67 – Effect of lawful strike on collective bargaining agreement
171.	**Turkmenistan**		**Labour Code, 2009** Article 395 – Mandatory arbitration

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
172.	**Tuvalu**		**Industrial Relations Code, 1975** Section 2 – Interpretation of strike Part IV – Adherence to agreements and awards Section 22 – Unlawful strikes Section 23 – Minister's prerogatives Sections 25 and 26 – Liabilities Part V – Essential services Sections 28–33 – Protection of essential services, life and property Part VI – Strike ballots Section 34 – Strike ballots Schedule (section 2) – List of essential services
173.	**Uganda**		**The Labour Disputes (Arbitration and Settlement) Act, 2006 (Act No. 8)** 28. Unlawful industrial action 29. Unlawful organization of industrial action 30. Employee's right to participate in industrial action 31. Picketing 32. Acts of intimidation or annoyance 33. Essential services 34. Lawful industrial action in essential services 35. Information about essential services 36. Designation of essential services 37. Prosecutions Schedule 2 – Essential services **The Labour Unions Act, 2006** Section 2 – Interpretation – Definition of strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
174.	**Ukraine**	**Constitution** **Article 44** Those who are employed shall have the right to strike in order to protect their economic and social interests. A procedure for exercising the right to strike shall be established by law taking into account the necessity to ensure national security, public health protection, and rights and freedoms of others. No one shall be forced to participate or not to participate in a strike. The prohibition of a strike shall be possible only on the basis of the law.	**Law No. 4050-VI of 17 November 2011 on Civil Service** Article 13, paragraph 2 – No right to strike for civil servants **Criminal Code** Article 174 – Compulsion to participate in a strike or preclusion from participation in a strike **Act No. 137/98-VR of 3 March 1998 on the procedure for settlement of collective labour disputes** Section 17 – Strikes Section 18 – Right to strike Section 19 – Decision to declare a strike Section 20 – Leading a strike Section 21 – Conclusion of agreement on settlement of a collective labour dispute or supervision of its fulfilment Section 22 – Deeming strikes illegal Section 23 – Ruling to deem a strike illegal Section 24 – Cases in which it is forbidden to strike Section 25 – Settlement of a collective labour dispute in circumstances where strikes are prohibited Section 26 – Ensuring the viability of an enterprise during a strike Section 27 – Guarantees for workers during a strike Section 28 – Consequences of participation by workers in a strike Section 29 – Liability for violations of legislation on collective labour disputes Section 30 – Liability of workers for participation in a strike ruled illegal by a court Section 31 – Liability for violations of labour legislation or of terms of collective labour agreements which have led to the start of a collective labour dispute Section 32 – Liability for organizing a strike ruled illegal by a court or for non-fulfilment of a ruling deeming a strike illegal Section 33 – Liability for compelling participation in a strike or for obstructing participation in a strike Section 34 – Compensation for damage caused by a strike
175.	**United Arab Emirates**		

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
176.	**United Kingdom**		**Trade Union and Labour Relations (Consolidation) Act, 1992 (Chapter 52)** 62. Right to a ballot before industrial action 65. Meaning of "unjustifiably disciplined" 180. Effect of provisions restricting right to take industrial action Part V – Industrial action *Protection of acts in contemplation or furtherance of trade dispute* 219. Protection from certain tort liabilities 220. Peaceful picketing 221. Restrictions on grant of injunctions and interdicts *Action excluded from protection* 222. Action to enforce trade union membership 223. Action taken because of dismissal for taking unofficial action 224. Secondary action 225. Pressure to impose union recognition requirement *Requirement of ballot before action by trade union* 226. Requirement of ballot before action by trade union 226A. Notice of ballot and sample voting paper for employers 226B. Appointment of scrutineer 226C. Exclusion for small ballots 227. Entitlement to vote in ballot 228. Separate workplace ballots 228A. Separate workplaces: single and aggregate ballots 229. Voting paper 230. Conduct of ballot 231. Information as to result of ballot 231A. Employers to be informed of ballot result 231B. Scrutineer's report 232. Balloting of overseas members 232A. Inducement of member denied entitlement to vote 232B. Small accidental failures to be disregarded 233. Calling of industrial action with support of ballot 234. Period after which ballot ceases to be effective *Requirement on trade union to give notice of industrial action* 234A. Notice to employers of industrial action 235. Construction of references to contract of employment

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
		Industrial action affecting supply of goods or services to an individual 235A. Industrial action affecting supply of goods or services to an individual 235B. Application for assistance for proceedings under section 235A 235C. Provisions supplementary to section 235B *No compulsion to work* 236. No compulsion to work *Loss of unfair dismissal protection* 237. Dismissal of those taking part in unofficial industrial action 238. Dismissals in connection with other industrial action 238(2). No selective dismissal 238A. Participation in official industrial action 238B. Conciliation and mediation: supplementary provisions 239. Supplementary provisions relating to unfair dismissal *Criminal offences* 240. Breach of contract involving injury to persons or property 241. Intimidation or annoyance by violence or otherwise … 246. Definition of strike **Employee Relations Act, 1999** Article 29 – Ballot Article 235 – Definition of strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
177.	**United States**		**National Labor Relations Act** (Title 29, Chapter 7, subchapter II, United States Code) Section 1 – Findings and policies Section 7 – Rights of employees Section 8 – Unfair labor practices Section 9 – Representatives and elections (paragraph 3) Section 10 – Prevention of unfair labor practices (k) (Hearings on jurisdictional strikes) (l) (Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process) Section 13 – Limitations (Section 163. Right to strike preserved) Section 501(2) – Definition of strike **Title II** (Title 29, Chapter 7, subchapter III, United States Code) **Conciliation of labor disputes in industries affecting commerce; national emergencies** Section 203 – (Section 173. Functions of service) (c) (Settlement of disputes by other means upon failure of conciliation) **National emergencies** Section 206 – (Section 176. Appointment of board of inquiry by President; report; contents; filing with service) Section 208 – (Section 178. Injunctions during national emergency] **Conciliation of labor disputes in the health-care industry** Section 213 – (Section 183) (a) (Establishment of boards of inquiry; membership) Federal service labor management relations statute Article 7116(b)(7) – Prohibition of strike action

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
178.	Uruguay	**Constitución** **Artículo 57** La ley promoverá la organización de sindicatos gremiales, acordándoles franquicias y dictando normas para reconocerles personería jurídica. Promoverá, asimismo, la creación de tribunales de conciliación y arbitraje. Declárase que la huelga es un derecho gremial. Sobre esta base se reglamentará su ejercicio y efectividad.	**Ley núm. 13720, Comisión de Productividad, Precios e Ingresos. Se crea para la actividad privada y se determina su integración y cometidos** Artículo 3, *f)* […] Ninguna medida de huelga o «lock out» será considerada lícita si el problema que la origina y la decisión de recurrir a tales medidas no han sido planteadas con no menos de siete días de anticipación a la Comisión. Artículo 4 – Servicios públicos – Interrupción de servicios esenciales **Ley núm. 12590, Licencias Anuales. Se modifica y amplia el régimen de vacaciones remuneradas para los empleados y obreros de actividades privadas** Artículo 8 – No se descontaran las ausencias de trabajo que tengan origen en la huelga. **Ley núm. 19051, Falta de Pago por Parte de los Empleadores de Incentivos, Premios, Asiduidad y/o Beneficios o Rubros Laborales de Cualquier Tipo. Se reputa nulo y violatorio del derecho y la actividad sindical** Artículo 1 – Todo descuento de la prima por presentismo o de otras partidas de naturaleza salarial vinculadas a la asistencia del trabajador a su lugar de trabajo, deberá efectuarse de manera proporcional al tiempo de ausencia que se registrare cuando tal ausencia tuviere por causa el ejercicio del derecho de huelga en cualquiera de sus modalidades. **Decreto núm. 165/2006, Relaciones laborales. Procedimientos autónomos; Mediación y conciliación voluntaria; Consulta y negociación previa; Ocupación en ejercicio del Derecho de Huelga. 30 de mayo de 2006** Artículo 3 – Consulta y negociación previa Artículo 4 – Ocupación en ejercicio del derecho de huelga **Decreto del Poder Ejecutivo núm. 145/005, de fecha 2 de mayo de 2005** Artículo 1 – Derogación de los decretos núms. 512/966 de 19 de octubre de 1966, y 286/000 de 4 de octubre de 2000 **NB – El decreto núm. 512/66, habilitaba a los empleadores a solicitar al Ministerio del Interior la desocupación de los locales de trabajo ocupados por los trabajadores**

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
179.	**Uzbekistan**	**Constitution** **Article 34** Right to form, inter alia, trade unions and to participate in mass movements.	**Criminal Code** Article 218 – Direction of illegal strike or impediment to operation of enterprise, institution, or organization in emergency state.
180.	**Vanuatu**		**Trade Disputes Act, 1983** Section 1 – Interpretation of strike public service Part IV – Trade disputes affecting essential services Section 25 – Definition of "essential service" Section 26 – Conciliation or arbitration Section 27 to 32 – Proclamation of emergency Section 33 – Prohibition of strike and lockouts during emergency Part V – Provisions with respect to strikes, lockouts, etc. Section 33A – Notice of strike or other industrial action Section 34 – Powers of Minister Section 40 – Application of the Act to Government
181.	**Venezuela, Bolivarian Republic of**	**Constitución** **Artículo 97** Todos los trabajadores y trabajadoras del sector público y del privado tienen derecho a la huelga, dentro de las condiciones que establezca la ley.	**2012, decreto núm. 8938, mediante el cual se dicta el decreto con rango, valor y fuerza de Ley Orgánica del Trabajo, los Trabajadores y las Trabajadoras** **Capítulo III – Del conflicto colectivo de trabajo** Sección Primera – De los pliegos conflictivos (Artículos 472-482) Sección Segunda: De los servicios mínimos indispensables y servicios públicos esenciales (Artículos 483-485) Sección Tercera: De la huelga (Artículos 486-491) Sección Cuarta: Del arbitraje (Artículos 493-496)

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
182.	**Viet Nam**		**2012 Labour Code** Chapter XIV – Resolution of labour disputes **Section 4 – Strikes and strike resolution** Article 209 – Strikes Article 210 – Organizing and leading strikes Article 211 – Procedures for going on strike Article 212 – Procedures for soliciting opinion of the worker's collective Article 213 – Notice of the starting time of a strike Article 214 – Rights of parties prior to and during a strike Article 215 – Cases where strikes are illegal Article 216 – Notice of the decision on temporary closure of the workplace Article 217 – Cases in which the temporary closure of the workplace is prohibited Article 218 – Wages and other lawful rights of employees during strikes Article 219 – Prohibited acts before, during and after a strike Article 220 – Cases where strikes are prohibited Article 221 – Decisions on postponing or cancelling strikes Article 222 – Resolution of strikes which do not follow the statutory procedures **Section 5 – Consideration of the lawfulness of strikes by the court** **Decree No. 43/2013/ND-CP of 10 May 2013, detailing Article 10 of the Trade Union Law on trade unions' rights and responsibilities to represent and protect the rights and legitimate interests of employees** Article 12 – Trade unions' rights and responsibilities to organize and lead strikes **Decree No. 41/2013/ND-CP of 8 May 2013, detailing the implementation of the Labour Code's Article 220 on the list of employing units in which strikes are prohibited and settlement of demands of employees' collectives in these units** **Decree No. 58-CP of 31 May 1997 on the wage payment and settlement of other interests for on-strike labourers** **Circular No. 12-LDTBXH/TT of 8 April 1997 guiding the petition to adjust the list of enterprises not allowed to stage a strike**

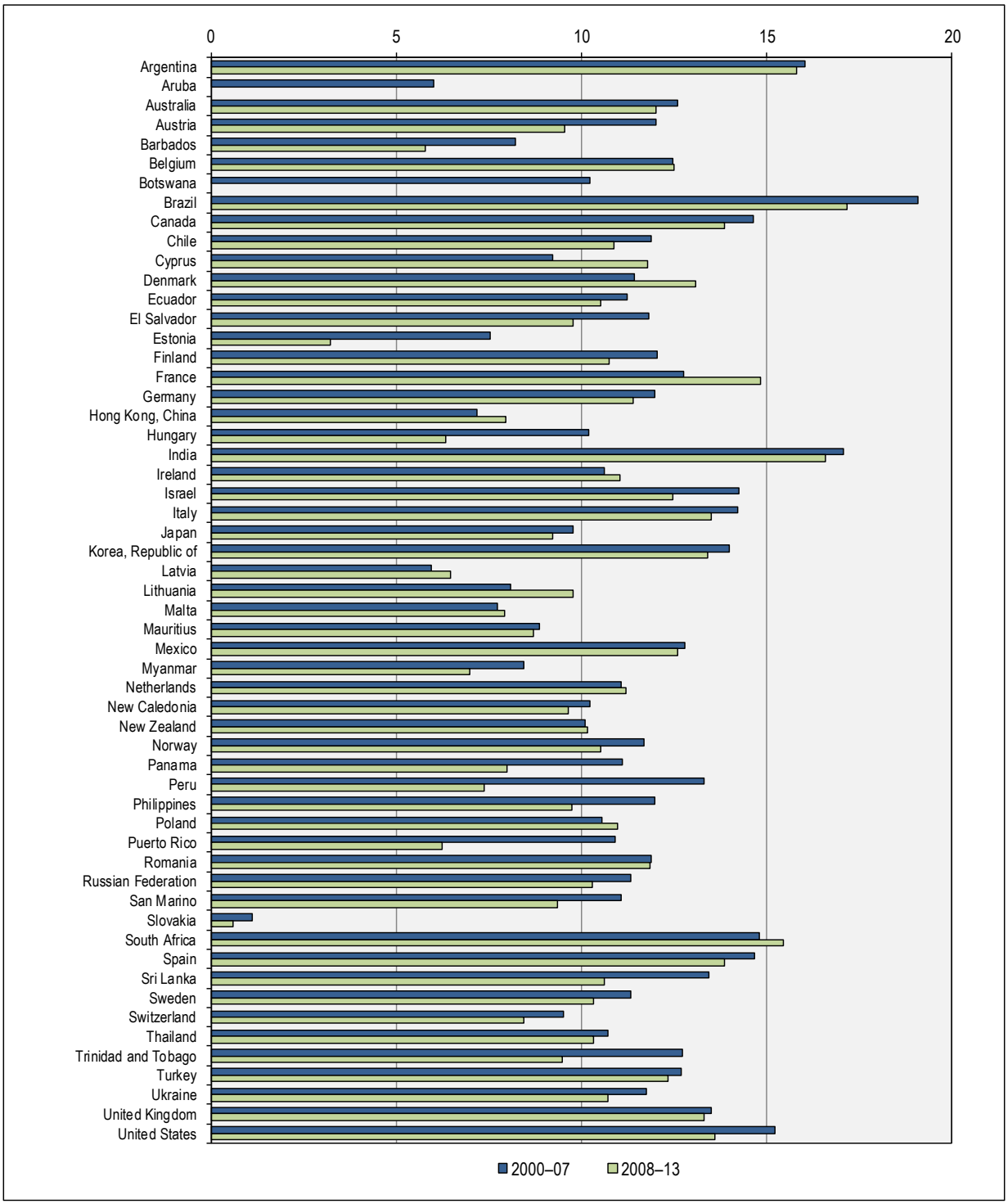
	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
183.	**Yemen**		**Labour Code, Act No. 5 of 1995** **Chapter XII – Labour disputes and legitimate strikes** Part I – Settlement of labour disputes Part II – Legitimate strikes (Articles 144–150 and Article 156 on penalties) **Law No. 35 of 2002 on the organization of workers' trade unions** Article 29 – Fonctions du Conseil central Articles 40-44 – Droit de grève
184.	**Zambia**		**Industrial and Labour Relations (Amendment) Act, 2008 (No. 8 of 2008)** *Amending section 3 of the Act – Definition of strike* *Amending section 78 of the Act* *Amending section 85 of the Act* **Industrial and Labour Relations (Amendment) Act, 1997 (No. 30 of 1997)** **Industrial and Labour Relations Act, 1993 (No. 27 of 1993)** Section 3 – Interpretation Section 78 – Failure to reach settlement by conciliation Section 85 – Jurisdiction of court Section 101 – Prohibition from participation in lockouts or strikes Section 103 – Attendance at or near place of residence Section 107 – Essential service certificates

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
185.	**Zimbabwe**	**Constitution** **Article 65(3)** Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.	**Labour Act (Chapter 28:01) (Acts 16/1985) (as amended 2006)** Section 2 – Interpretation ("collective job action" includes strike action) Section 9 – Unfair labour practices by trade union or workers committee (paragraph f) Section 24 – Functions of workers' committees (paragraphs 1. c and d) Section 29 – Registration of trade unions and employers' organizations and privileges thereof (paragraph 4. g) Section 30 – Unregistered trade unions and employers' organizations (paragraph 3. a) Section 35 – Requirements of constitution of registered trade unions or employers Organizations (paragraph a) Section 54 – Collection of union dues (paragraph 5) Section 98 – Effect of reference to compulsory arbitration under Parts XI and XII (paragraph 11) **Pare XIII – Collective job action** 102. Interpretation in Part XIII 103. Appeal against declaration of essential service 104. Right to resort to collective job action 104A. Picketing 106. Show cause orders 107. Disposal orders 108. Protection of persons engaged in lawful collective action 109. Liability of persons engaged in unlawful collective action 110. Appeals 111. Cessation of collective job action 112. Offences under Part XIII

Appendix II

Statistical data on strike action and lockouts extracted from the ILO statistical database

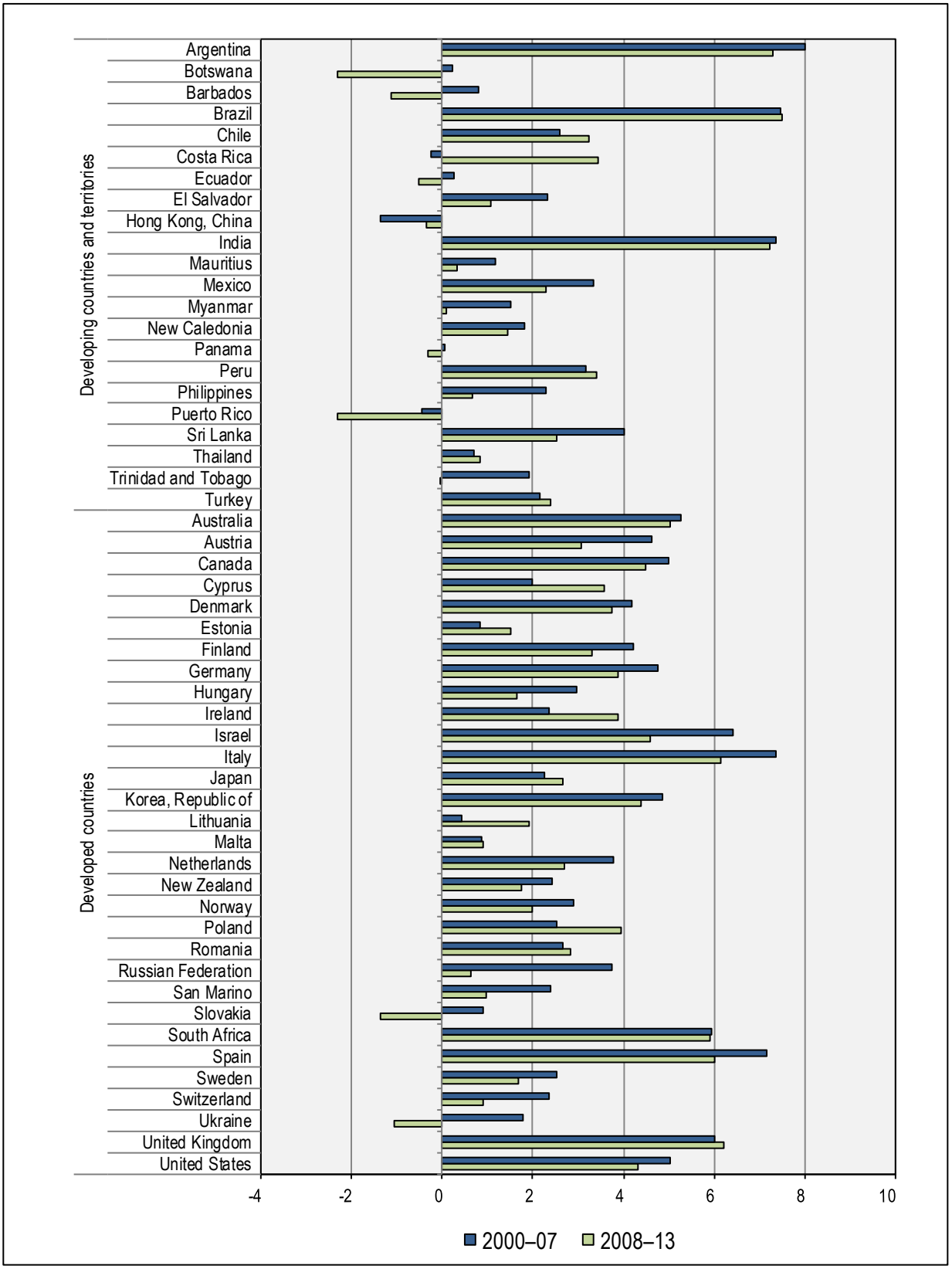
Figure 1. Average number of days not worked due to strikes and lockouts
(expressed in natural logarithm)



Note: This figure gives the annual average figure for days not worked due to strikes and lockouts over the periods 2000–07 and 2008–13, expressed in natural logarithms. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind.

Source: ILO: Department of Statistics database, available at: http://www.ilo.org/ilostat.

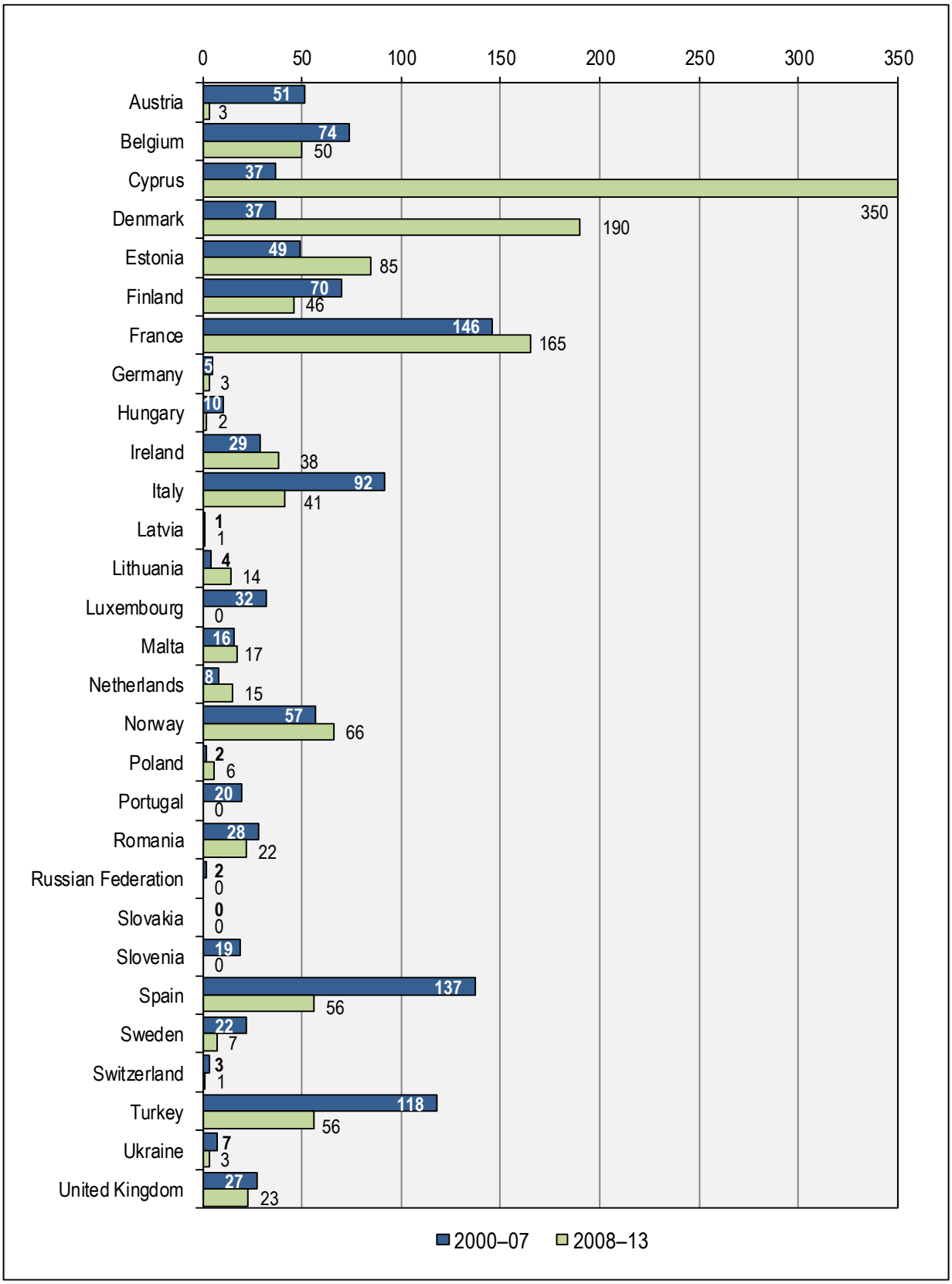
Figure 2. Average number of workers involved in strikes and lockouts
(expressed in natural logarithm)



Note: This figure gives the annual average figure for workers involved in strikes and lockouts over the periods 2000–07 and 2008–13, expressed in natural logarithms. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind.

Source: ILO: Department of Statistics' database, available at: http://www.ilo.org/ilostat.

Figure 3. Average number of days not worked in Europe due to strikes and lockouts per 1,000 employees (annual averages for the period 2000–07 and 2008–13)



Source: ILO: Department of Statistics database, available at: http://www.ilo.org/ilostat.

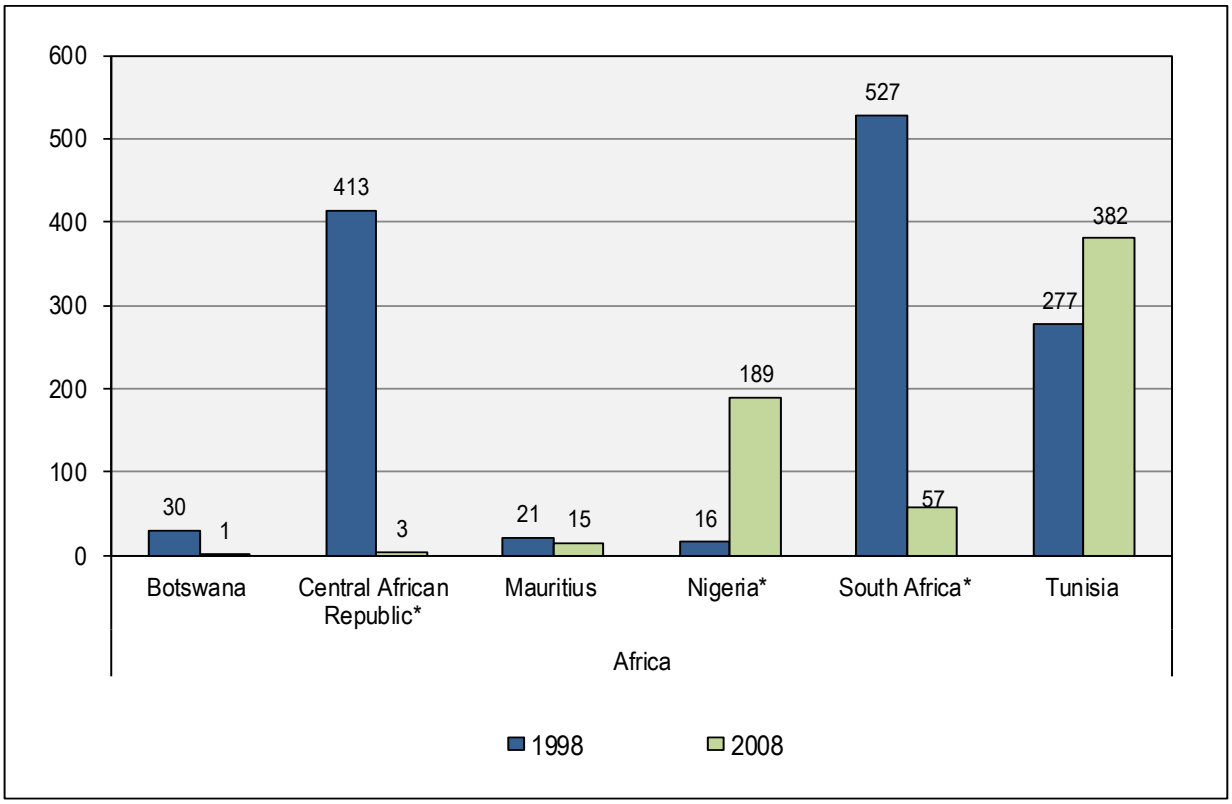
Explanation of data used in figure 3

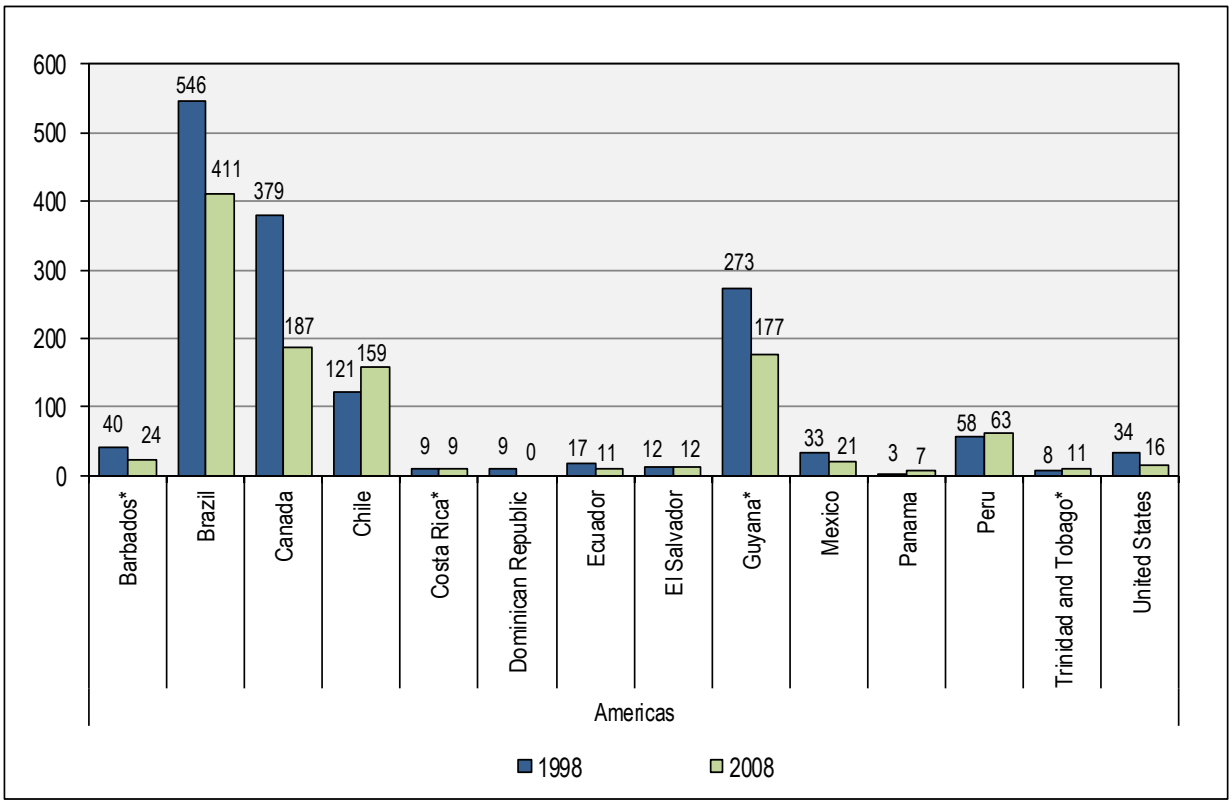
This graph gives the annual average figure for working days lost due to strikes and lockout per 1,000 employees over periods 2000–07 and 2008–13. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind. The figure is based on data extracted from the ILO Statistical database: www.ilo.org/ilostat, and supplemented these with data from the European trade union institute dataset: http://www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-version-2.0-December-2014#visual for a couple of countries with incomplete data in www.ilo.org/ilostat.

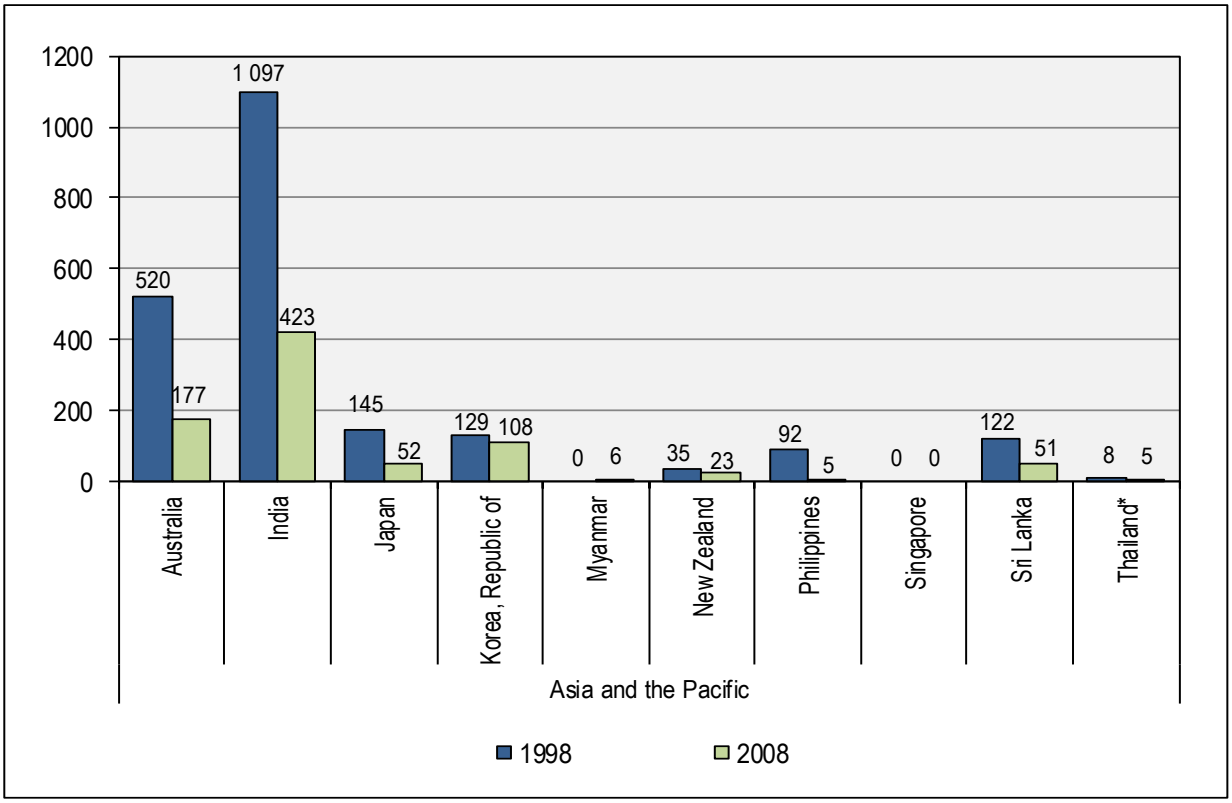
During the period 2008-2013 the countries that displayed the highest propensity to engage in industrial action (more than 100 days per 1000 employees) were Cyprus, Denmark and France, while Austria, Germany, Hungary, Latvia, Russia, Slovakia, Switzerland and Ukraine had less than 5 days lost per 1000 employees.

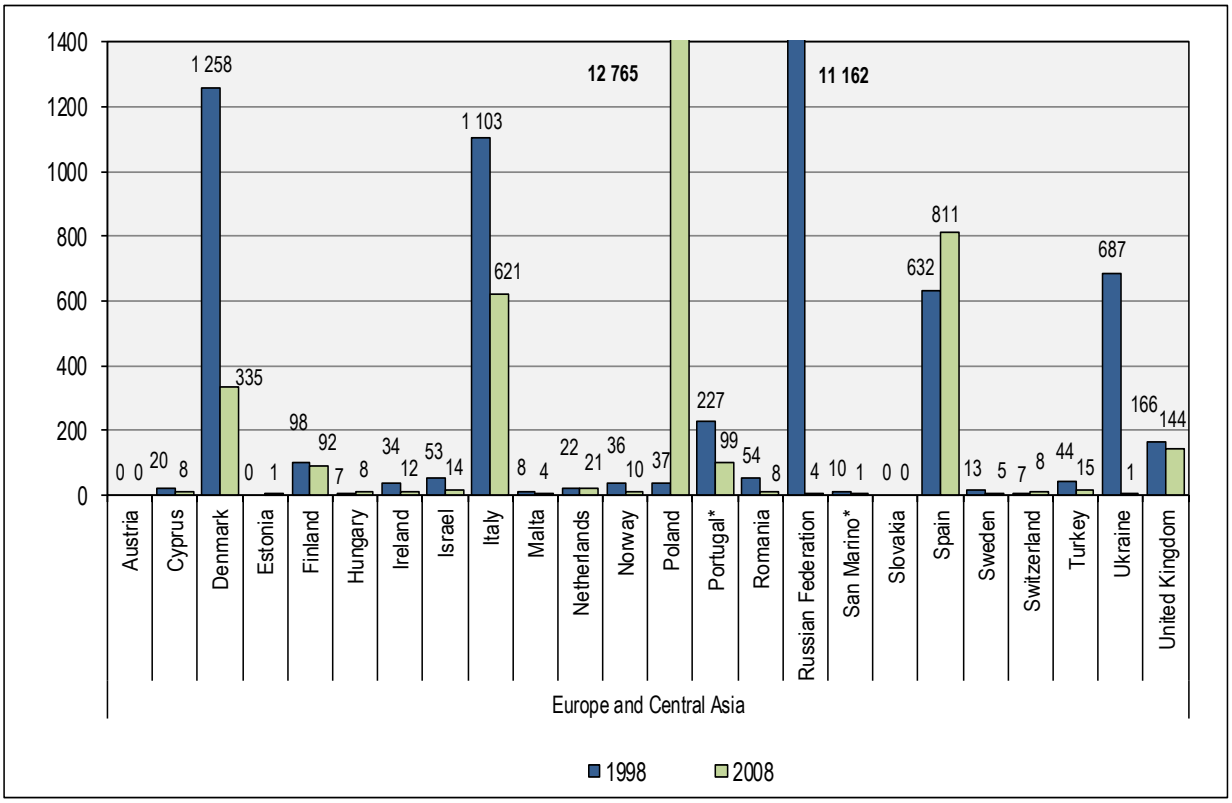
During the period 2000–07, the countries that displayed the highest propensity to engage in industrial action (more than 100 days per 1,000 employees) were France and Spain, while Germany, Latvia, Lithuania, Poland, Russia Federation, Slovakia and Switzerland had less than five days lost per 1,000 employees.

Figure 4. Number of strikes and lockouts for countries by region, 1998 and 2008









* Where data for 2008 is not available, the year closest to 2008 was used where possible.

Note: Countries were selected on the basis of available data.

Source: ILO: Department of Statistics database, available at: http://www.ilo.org/ilostat.

Document No. 109

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 33

International Labour Organization

Report III (Part A)

Application of International Labour Standards 2023

Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
111th Session, 2023

31. The Committee also referred to its relationship with the UN Human Rights Treaty Bodies, based on the fact labour standards served as precursors of human rights instruments since the ILO's creation more than 100 years ago, setting the rules for economic development so that it could go hand in hand with social justice and global peace. When human rights were proclaimed in the Universal Declaration of Human Rights and entrenched the UN Charter in 1945, international labour standards became an integral part of this framework and a new era opened up. The Committee of Experts functioned in ways which found their echo in the work of the Human Rights Treaty Bodies with the same ultimate purpose to promote respect for international obligations. There was much complementarity in this work and a consequent need for consistency within each entity's respective mandates. There were also hopes that enhanced synergies would open up space for higher levels of consistency. The Committee of Experts had invited the Chairpersons of the Human Rights Treaty Bodies to an exchange which was very productive and opened the way for closer collaborations, ultimately enhancing the impact of the ILO supervisory mechanism.

32. The Committee also referred to improvements introduced in this year's General Survey entitled *Achieving Gender Equality at Work* [2] which addressed different aspects of the same policy question, i.e., how to promote equality of opportunity and treatment between women and men at work and the realization of the fundamental principle of gender equality. The Committee referred in particular to the use of hyperlinks, improved visibility of conclusions and the possibility to address all Member States through the General Survey. The Committee expressed the hope that this year's General Survey would draw attention to the fundamental importance of gender equality and would meet the constituents' expectations.

C. Mandate

33. **The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO Member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by Member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.**

[2] Report III (Part B), International Labour Conference, 111th Session, Geneva, 2023.

Document No. 110

ILO, Director-General's Instruction No. 45, 1952, Procedure concerning requests for interpretations of Conventions and Recommendations

INTERNATIONAL LABOUR OFFICE

Distribution:
Chiefs of Division
and Autonomous Services

Director-General's Instruction No. 45
Geneva, 23 December 1952.

PROCEDURE CONCERNING REQUESTS FOR INTERPRETATIONS OF CONVENTIONS AND RECOMMENDATIONS

1. Every request for the interpretation of an International Labour Convention or Recommendation received by the Office shall be immediately communicated to the Legal Division.

2. The request shall then be transmitted to the Application of Conference Decisions Division, together with any preliminary observations thereon which may have been made by the Legal Division.

3. If it appears impossible to give a reply within fifteen days from the receipt of the request, the Application of Conference Decisions Division shall prepare an interim acknowledgment.

4. The Application of Conference Decisions Division shall examine the request and transmit it, as soon as possible, to the Division or Divisions qualified to deal with the technical aspects of the problems raised, together with its own comments and the observations, if any, of the Legal Division.

5. Each Division so consulted shall prepare as rapidly as possible a detailed memorandum on the technical aspects of the problems raised which lie within its competence.

That memorandum shall contain the data necessary for the preparation of the final reply. It shall be drawn up on the basis of:

(a) the preparatory work which preceded the adoption of the Convention or Recommendation in question;

(b) information concerning measures taken with a view to putting that instrument, once adopted, into effect;

(c) any observations of the Committee of Experts on the Application of Conventions and Recommendations;

(d) all available technical information.

The Divisions concerned shall refer, in particular, to the various reports submitted to the International Labour Conference, and to the minutes of discussions, as well as to earlier interpretations on identical or similar points, where these exist. Attention is drawn to the fact that the International Labour Code and its comments and references constitute an invaluable work of reference in this connection with regard to material covering the period up to the end of 1951. For interpretations given after that date the Application of Conference Decisions Division, which possesses files of these interpretations, should be consulted.

If the study so undertaken requires the examination of any national legislation, the Divisions should be in possession of the text of the provisions of that legislation in one of the working languages of the Organisation. Where necessary, the Government concerned will be requested to provide these texts, and a letter to that effect will be addressed to it by the Application of Conference Decisions Division at the request of the Technical Division concerned.

6. When a request for an interpretation raises a question of terminology, the English and French terms of the instruments under discussion shall be studied and compared. It should be noted, in this connection, that the text of Conventions consists of versions in the English and French languages which are of equal authority and must be read in conjunction in order to determine the meaning of the Convention.

English dictionaries which will be found useful are the following:

(a) General dictionaries: "Oxford English Dictionary"; Webster's "New National Dictionary"; "Encyclopaedia Britannica".

(b) Law dictionaries and similar works: "Words and Phrases Judicially Defined", by Burrows, London, 1943; Bouvier's "Law Dictionary".

French dictionaries which will be found useful are the following:

(a) General dictionaries: Littré's "Dictionnaire de la langue française"; "Larousse du XXme siècle"; "Dictionnaire encyclopédique Quillet".

(b) Law dictionaries and similar works: "Vocabulaire juridique", by Capitant, Paris, 1936; "Répertoire de droit international", by de Lapradelle and Niboyet, Paris, 1929; "Nouveau répertoire de droit" (collection Dalloz).

Comparative dictionaries which will be found useful are the following:

(a) General dictionary: Harrap's Standard French-English and English-French Dictionary.

(b) Law dictionaries and similar works: "Law Dictionary English-Espanol-Français-Deutsch", by Egbert, New-York, 1949; "Dictionnaire juridique anglais-français", by Aglion, Paris, 1947.

7. As soon as the Divisions concerned have completed the memorandum on the technical aspects of the questions raised, that memorandum shall be transmitted to the Application of Conference Decisions Division, which shall forthwith prepare the draft of the final reply.

That draft shall, as a rule, include:

(a) an introductory letter containing the following general reservation:

"I have the honour to enclose herewith a memorandum containing the opinion of the International Labour Office on the question, subject to the usual reservation that the Constitution of the International Labour Organisation confers no special competence upon the International Labour Office to give an authentic interpretation of the provisions of Conventions adopted by the International Labour Conference."

(b) appended to that letter a memorandum the title of which shall be as follows:

"CONVENTION CONCERNING .....

(Article .....)

Memorandum by the International Labour Office"

That memorandum shall be drawn up by the Application of Conference Decisions Division, on the basis of the memorandum or memoranda concerning the technical aspects of the problems raised.

As a rule, that memorandum shall be drafted on the following lines:

(a) Citation of the provisions the interpretation of which is requested.

(b) Exact reproduction of the essence of the request for an interpretation.

(c) In appropriate cases, a study of the terms involved, in accordance with §6 above.

(d) An account of the preparatory work and the various technical data.

(e) Conclusions.

8. A letter without a separate memorandum, containing both the above-cited general reservation and the reply to the questions posed, may sometimes be appropriate when the question raised is particularly simple and susceptible to summary treatment, but this practice should be limited to exceptionally simple cases.

9. The Application of Conference Decisions Division will consult the Legal Division on all points of law. As soon as the draft is ready, it shall be sent to the Legal Division for its opinion on the whole draft before being submitted to the Legal Adviser.

10. All replies to requests for an interpretation shall be prepared for the signature of the Director-General.

11. Requests for interpretations which raise questions of general interest or are of some importance, and the replies to such requests, are brought to the notice of the Governing Body and later published in the Official Bulletin.

12. The Office will not, for the time being, give any opinion on requests for the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in view of the special procedure instituted by the Governing Body for dealing with complaints in the matter of freedom of association. Any such requests shall be brought immediately to the attention of the Legal Adviser for instructions.

13. No draft reply to a request for an interpretation shall be submitted to the Director-General without the visa of the Legal Adviser.

David A. Morse
Director-General.

Document No. 111

ILO, Director-General's Instruction No. 337, 1968, Procedure concerning requests for interpretations of Conventions and Recommendations

INTERNATIONAL LABOUR OFFICE

Distribution: A.6
1 per organisational unit

Director-General's Instruction No. 337
(In English only)
Geneva, 11 January 1968

PROCEDURE CONCERNING REQUESTS FOR INTERPRETATIONS OF CONVENTIONS AND RECOMMENDATIONS

1. Every request for the interpretation of an international labour Convention or Recommendation received by the Office shall be immediately communicated to the Office of the Legal Adviser.

2. The request shall then be transmitted to the Application of Standards Branch, together with any preliminary observations thereon which may have been made by the Office of the Legal Adviser.

3. Unless it appears possible to give a reply within 15 days from the receipt of the request, the Application of Standards Branch shall prepare an interim acknowledgment.

4. The Application of Standards Branch shall add to the file containing the request references to any earlier interpretations relating to the problems raised, references to any relevant observations of the Committee of Experts on the Application of Conventions and Recommendations and other competent supervisory bodies, and any comments which it may consider appropriate at this stage.

5. The file shall then be transmitted to the branch or branches qualified to deal with the technical aspects of the problems raised.

6. Each technical branch so consulted shall prepare as rapidly as possible and transmit to the Application of Standards Branch a note on the technical aspects of the problems raised which lie within its competence. In this connection it should take account of:

   (a) the preparatory work which preceded the adoption of the Convention or Recommendation in question, in particular the various reports submitted to the International Labour Conference and the minutes of the discussion;

   (b) the extent to which law and practice in countries other than the one making the request may assist in clarifying the problems at issue;

(c) any earlier interpretations and any observations of a supervisory body;

(d) any other relevant technical information and technical considerations.

7. The draft of the final reply shall be prepared by the Application of Standards Branch on the basis of the various elements on file. If there is any disagreement as to the conclusions to be reached, there shall be discussions between the services concerned. In all cases, the draft shall be sent to the Legal Adviser for his opinion and approval.

8. All the services concerned in dealing with a request for interpretation should recall that the English and French versions of Conventions and Recommendations are equally authoritative and must be read in conjunction in order to determine the meaning of the Convention.

Where a request for interpretation requires the examination of any national legislation, the services concerned should be in possession of the relevant texts in one of the working languages of the Organisation. The Application of Standards Branch should take any steps necessary to obtain these texts.

9. The final reply shall, as a rule, comprise:

(a) an introductory letter containing the following general reservation:

"I have the honour to enclose herewith a memorandum containing the opinion of the International Labour Office on the question, subject to the usual reservation that the Constitution of the International Labour Organisation confers no special competence upon the International Labour Office to give an authentic interpretation of the provisions of Conventions adopted by the International Labour Conference."

(b) a memorandum, the title of which shall be:

"CONVENTION CONCERNING.....

(Article.....)

Memorandum by the International Labour Office"

and which shall, as a rule, be drafted on the following lines:

(i) citation of the provisions the interpretation of which is requested;

(ii) reproduction of the essence of the request for an interpretation;

(iii) in appropriate cases, a study of the terms involved;

(iv) an account of the preparatory work and the various technical data;

(v) conclusions.

10. A letter without a separate memorandum, containing both the reservation set out under 9 (a) above and the reply to the questions raised, may be appropriate in regard to questions susceptible of summary treatment, but should be limited to exceptionally simple cases.

11. All replies to requests for an interpretation shall be prepared for the signature of the Principal Deputy Director-General. They shall have the visa of the Legal Adviser before being submitted for signature.

12. Requests for interpretations which raise questions of general interest or are of some importance, and the replies to such requests, are brought to the notice of the Governing Body and later published in the Official Bulletin.

13. The Office will not, for the time being, give any opinion on requests for the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in view of the special procedures for dealing with complaints in the matter of freedom of association.

14. This Instruction replaces Instruction No. 45 of 23 December 1952.

David A. Morse,
Director-General

Document No. 112

ILO, Circular No. 40, 1987, Procedure concerning requests for interpretations of Conventions and Recommendations

ILO CIRCULAR

Series: 9 - COMMUNICATIONS AND RECORDS No.: 40

Distribution: D[1] Date: 15.09.87

PROCEDURE CONCERNING REQUESTS FOR INTERPRETATIONS OF CONVENTIONS AND RECOMMENDATIONS

1. This Circular replaces Instruction No. 337 of 11 January 1968.

2. Every request for the interpretation of an international labour Convention or Recommendation received by the Office shall be immediately communicated to the Application of Standards Branch of the International Labour Standards Department, with a copy to the Office of the Legal Adviser.

3. Unless it appears possible to give a reply within 15 days from the receipt of the request, the Application of Standards Branch shall prepare an interim acknowledgement.

4. The Application of Standards Branch shall add to the file containing the request references to any earlier interpretations relating to the problems raised, references to any relevant comments of the Committee of Experts on the Application of Conventions and Recommendations and other competent supervisory bodies, and any observations which it may consider appropriate at this stage.

5. The request shall then be transmitted to the Office of the Legal Adviser which shall place on the file its observations on the problems raised, together with references to any passages in the preparatory work which preceded the adoption of the Convention or Recommendation in question which may assist in providing an answer.

6. The file shall then be transmitted to the branch or branches qualified to deal with the technical aspects of the problems raised.

7. Each technical branch so consulted shall prepare as rapidly as possible and transmit to the Application of Standards Branch a note on the technical aspects of the problems raised which lie within its competence. In this connection it should take account of:

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[1] To each unit, including offices in the field. Chiefs of unit should make sure that this circular is brought to the attention of their staff.

(a) the preparatory work which preceded the adoption of the Convention or Recommendation in question, in particular the various reports submitted to the International Labour Conference, the reports of the Conference Committees and, for instruments adopted up to 1977, the minutes of the discussion;

(b) the extent to which law and practice in countries other than the one making the request may assist in clarifying the problems at issue;

(c) any earlier interpretations and any comments of a supervisory body;

(d) any other relevant technical information and technical considerations.

8. The draft of the final reply shall be prepared by the Application of Standards Branch on the basis of the various elements on file. If there is any disagreement as to the conclusions to be reached, there shall be discussions between the services concerned. In all cases, the draft shall be sent to the Legal Adviser for his opinion and approval.

9. All the services concerned in dealing with a request for interpretation should recall that the English and French versions of Conventions and Recommendations are equally authoritative and must be read in conjunction in order to determine the meaning of the instrument.

Where a request for interpretation requires the examination of any national legislation, the services concerned should be in possession of the relevant texts in one of the working languages of the Organisation. The Application of Standards Branch should take any steps necessary to obtain these texts.

10. The final reply shall, as a rule, comprise:

(a) an introductory letter containing the following general reservation:

> I have the honour to enclose herewith a memorandum containing the opinion of the International Labour Office on the question, subject to the usual reservation that the Constitution of the International Labour Organisation confers no special competence upon the International Labour Office to give an authentic interpretation of the provisions of Conventions[1] adopted by the International Labour Conference.

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[1] In the event of a request for interpretation of a Recommendation, the word "Recommendations" should be substituted. In such cases, the reply should be in the form referred to in paragraph 10.

(b) a memorandum, the title of which shall be:

CONVENTION CONCERNING .....

(Article ...)

Memorandum by the International Labour Office

and which shall, as a rule, be drafted on the following lines:

(i) citation of the provisions, the interpretation of which is requested;

(ii) reproduction of the essence of the request for an interpretation;

(iii) in appropriate cases, a study of the terms involved;

(iv) an account of the preparatory work and the various technical data;

(v) conclusions.

11. A letter without a separate memorandum, containing both the reservation set out under 9(a) above and the reply to the questions raised, will normally be appropriate in cases in which the government does not specifically request a formal or official opinion. However, where the issue raised is likely to be of general interest a formal memorandum should be prepared unless the government expressly requests unofficial guidance. In cases of doubt, the decision as to the form of the reply should be taken in consultation between the Office of the Legal Adviser and the Application of Standards Branch.

12. All replies to requests for an interpretation shall be prepared for the signature of the Director of the International Labour Standards Department. They shall have the visa of the Legal Adviser before being submitted for signature.

13. Interpretations in the form of a memorandum are brought to the notice of the Governing Body and later published in the Official Bulletin.

Francis Blanchard,
Director-General.

Document No. 113

ILO, Office informal opinions on international labour standards, IGDS Number 565 (Version 1), 2020

office procedure

IGDS Number 565 (Version 1)

International Labour Office

28 May 2020

Office informal opinions on international labour standards

Introduction

1. This Procedure revises and updates ILO Circular No. 40, Series 9, *Procedure concerning requests for interpretation of Conventions and Recommendations*.

2. This Procedure is issued further to article 8 of the ILO Constitution which confers overall responsibility upon the Director-General for the efficient conduct of the Office.

3. This Procedure is effective as of the date of issue.

Scope and purpose

4. The Office is regularly called upon to provide clarifications or express its views on the scope and meaning of provisions of international labour Conventions and international labour Recommendations. Such requests are received from governments, either when they are considering ratification of an international labour Convention or, after ratification, when implementing its provisions. Such requests are also received from employers' and workers' organizations, whether national or international, and other international organizations within and outside the UN system.

5. The purpose of this Procedure is to ensure that the Office has in place standard and uniform procedures for providing sound, consistent and expeditious informal opinions as regards the scope and meaning of international labour standards.

6. The Office, in fulfilling its general functions as set out in article 10 of the Constitution, has developed a long-established practice of providing informal opinions concerning the scope and meaning of provisions of international labour standards. These opinions are primarily based on a careful analysis of the preparatory work that led to their adoption. They play a useful role inasmuch as the Office has the technical means, linguistic capacity and accumulated experience dealing with such requests that allows it to provide well-researched and consistent replies.

7. Whereas in the past Office informal opinions were communicated to the Governing Body, and some were also published in the *Official Bulletin* in the form of Office Memoranda, both those practices have been discontinued. The only exception in recent years has been the publication of numerous Office opinions concerning provisions of the Maritime Labour Convention, 2006, as amended (MLC, 2006), and the Work in Fishing Convention, 2007 (No. 188), in all three official languages, in the form of anonymized Frequently Asked Questions.

8. The Office advice and guidance is mostly solicited with regard to specific technical aspects of international labour standards. To avoid any confusion with the constitutional means for obtaining an authoritative and binding interpretation of international labour Conventions set out in article 37 of the Constitution, Office informal opinions are provided – as a matter of long-standing practice – with the caveat that the Constitution does not confer any special competence upon the Office to give authoritative interpretation of Conventions and Recommendations and that any views expressed are without prejudice to the position the ILO's supervisory bodies may take.

9. Informal opinions are provided by the Office on the clear understanding that they are of an administrative nature and have no authoritative legal value.

Responsibilities

10. As a key service for the furtherance of the role of international labour standards in the realization of the Organization's objectives, Office informal opinions call for well-coordinated responses, strict vetting procedures and an appropriate degree of formality.

11. The Office of the Legal Adviser (JUR) and the International Labour Standards Departments (NORMES) take lead responsibility for preparing Office informal opinions in a timely manner and ensuring that these opinions meet the highest standards of legal rigour and technical excellence. Other relevant units shall be requested, as appropriate, to provide information such as technical/statistical data or empirical evidence concerning the specific question thereby ensuring practical relevance.

12. Requests for Office informal opinions should not be confounded with requests for practical explanations that do not require an in-depth legal analysis of the text of international labour instruments and of their negotiating history, nor do they call for internal consultations or validation. Any case of doubt as to whether a specific communication involves, in whole or in part, a request for clarification of the scope and meaning of a provision or provisions of an international labour Convention or Recommendation, should be submitted to NORMES which shall advise on appropriate follow-up in consultation with JUR.

Procedure

13. Office informal opinions shall be provided only to requests made in writing or transmitted by electronic means. No reply may be communicated, officially or unofficially, on behalf of the Office unless it is previously cleared and approved in accordance with the procedure set out here below.

14. All requests concerning the scope and meaning of provisions of international labour Conventions or international labour Recommendations shall be transmitted to NORMES for appropriate follow-up as set out in paragraphs 15–22 below.

15. In acknowledging receipt of such requests, NORMES shall give an indication of the expected time of delivery of the Office response and shall also indicate that the informal opinion may be made publicly available unless the author of the request does not wish their identity or any details concerning the underlying context to be revealed.

16. NORMES shall transmit the request to the technical unit(s), if any, having the specialized knowledge and expertise in the area covered by the question(s) raised.

17. NORMES shall undertake an initial technical analysis of the request also taking into account any input received from the technical unit(s) and shall forward it to JUR together

with all supporting documents and background material within ten (10) working days from date of receipt.

18. JUR shall prepare a draft informal opinion in accordance with the guidance given in paragraphs 23−29 below and circulate it for comments within ten (10) working days from date of receipt.

19. In case of politically sensitive or controversial questions, the draft informal opinion shall be transmitted to the Office of the Director-General and the Deputy Director-General for Policy for review and clearance.

20. The Office informal opinion shall be finalized and dispatched in the form of an official letter signed on behalf of the ILO Director-General by the Director of NORMES.

21. Except for particularly lengthy or complex requests, the Office informal opinions shall be provided within one month as of the date of receipt.

22. In very exceptional cases, the Office may decide that it would not be appropriate to express any views on a specific question and may thus decline to provide an informal opinion.

Methodology

23. In preparing Office informal opinions, and in particular in analysing the ordinary meaning of terms and expressions used in international labour standards in the light of their object and purpose, special consideration shall be given to the following:

    (a) the preparatory work which preceded the adoption of the Convention or Recommendation in question, in particular the various reports submitted to the International Labour Conference and the reports of the Conference Committees;

    (b) any relevant work which may have followed the adoption of the Convention or Recommendation in question, such as code of practice, guidelines, Conference general/recurrent discussion, Office manual, etc.;

    (c) the use of identical or similar terms in other Conventions or Recommendations and the preparatory work that led to their adoption;

    (d) any relevant indications contained in the comments/conclusions/ recommendations of ILO supervisory bodies, as the case may be;

    (e) any informal opinion already provided by the Office on the same or similar question;

    (f) the relevant provisions of the national legislation, the critical review of which is requested;

    (g) the extent to which the law and practice in countries other than the one making the request may assist in clarifying the issue(s) in question;

    (h) the extent to which sources such as judicial decisions and doctrinal writings may assist in clarifying the issue(s) in question;

    (i) relevant technical information, such as statistics and other empirical data, contained in official ILO publications;

(j) any other sources of information which may be of relevance in the specific circumstances.

24. Due account shall also be taken of any terminological, stylistic or syntax differences which may be of relevance between the equally authentic English and French versions of the international labour standards under consideration.

Form and structure

25. Office informal opinions shall follow as much as possible a standard structure which should contain the following:

(a) a summary of the request for an informal opinion without departing from the terminology used therein;

(b) a general caveat to read: "The following indications are subject to the customary reservation that the Constitution of the International Labour Organisation (ILO) confers no special competence upon the International Labour Office to provide an authoritative interpretation of the provisions of Conventions and Recommendations adopted by the International Labour Conference and the opinion of the Office is without prejudice to any position that the ILO's supervisory bodies might take with respect to this subject";

(c) the text of all relevant provisions of the Convention(s) and/or Recommendation(s) concerned;

(d) a detailed account of the preparatory work which may shed light to the intention of the tripartite drafters of the provision(s) concerned and the various interests, concerns and compromises involved in the process;

(e) an analysis of other relevant sources of information that may corroborate or contradict any findings or assumptions based on the preparatory work;

(f) the Office conclusions as to the scope and meaning of the provision(s) concerned in light of the intention of the drafters as reflected in the preparatory work, and also taking into account all other relevant sources.

26. In case of requests containing multiple questions, each question shall be analysed and replied to separately.

27. Office informal opinions shall be mainly based on publicly available ILO sources such as records of proceedings of the annual Conference or tripartite meetings, Office guidelines, codes of practice or manuals, and outcome documents of supervisory procedures.

28. Apart from "informal opinions", the Office views may also be referred to as "indications", "observations" or "clarifications". The term "interpretation" may not be used to describe Office informal opinions.

29. To increase their user-friendliness and practicality, Office informal opinions shall contain only limited footnotes and bibliographical references while all referenced documents shall be either attached or made accessible through web links.

Publicity and dissemination

30. All Office informal opinions shall be posted on the ILO's public web site in a dedicated section of the NORMLEX database.

31. Office informal opinions may be reproduced or otherwise used for the purpose of developing promotional tools and materials related to international labour standards, as appropriate. NORMES shall advise on queries related to the reproduction or reference to Office informal opinions, in consultation with JUR.

32. Selected Office informal opinions may be communicated to the UN Office of Legal Affairs for publication in the *United Nations Juridical Yearbook*.

Further information

33. Any questions concerning this Procedure should be addressed to the Office of the Legal Adviser (jur@ilo.org) and/or the International Labour Standards Department (normes@ilo.org).

Greg Vines
Deputy Director-General
for Management and Reform

Document No. 114

ILO, Office informal opinion on the Maritime Labour Convention, 2006, as amended (MLC, 2006), dated 29 July 2016

BV/af (NORMES) – 26.07.16

cc: Permanent Secretary
Ministry of Foreign Affairs
DWT-Bangkok
CO-Suva
JUR
SECTOR
Chrono NORMES

ACD 8-0-7-186-268
Courrier

ACD 5-186

Captain Thomas F. Heinan
Deputy Commissioner of Maritime Affairs
Republic of the Marshall Islands
c/o International Registries, Inc.
11495, Commerce Park Road
RESTON, VA 20191-1507
Etats-Unis d'Amérique

Mr Allan Schwartz
General Manger – Ship Safety Division
Australian Maritime Safety Authority (AMSA)
Level 3, 82 Northbourne Ave.
Braddon ACT 2612
GPO Box 2181 - CANBERRA, ACT 2601
Australie

Dear Sirs,

I refer to your letter dated 23 October 2015 in which the Australian Maritime Safety Authority (AMSA) and the Republic of Marshall Islands (RMI) jointly requested the views of the International Labour Organization regarding the maximum continuous length of time that a seafarer can serve on board without taking leave in the light of the provisions of Standards A2.4 and A2.5 of the Maritime Labour Convention, 2006 (MLC, 2006) on annual leave with pay and repatriation.

I am pleased to provide you with the following explanations subject to the usual understanding that the ILO Constitution confers no special competence upon the Office to give an authoritative interpretation of an international labour Convention and that the opinions expressed are without prejudice to any position that the ILO's supervisory bodies might take with respect to its subject matter. It is also understood that the following information cannot give an appreciation on the conformity of the Australian or RMI legislation with the provisions of the MLC, 2006, that mandate being reserved for the ILO supervisory bodies.

As noted above, the relevant provisions of the MLC, 2006 are Regulation 2.4 and Standards A2.4 and A2.5, paragraph 2(b). Both Standards are directed to flag States as the relevant responsible regulatory/implementing entity. Those provisions read as follows:

Regulation 2.4

1. Each Member shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions, in accordance with the provisions in the Code.
2. Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

Standard A2.4

1. Each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave.
2. Subject to any collective agreement or laws or regulations providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. The manner in which the

length of service is calculated shall be determined by the competent authority or through the appropriate machinery in each country. Justified absences from work shall not be considered as annual leave.

3. Any agreement to forgo the minimum annual leave with pay prescribed in this Standard, except in cases provided for by the competent authority, shall be prohibited.

Standard A2.5, paragraph 2(b)

Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing: [...]

(b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; [...]

The Convention lays down the following two separate yet interrelated normative principles: first, seafarers are entitled be sent home at no cost to themselves at regular intervals not exceeding one year of continuous service, and second, seafarers must be given at least 30 days of paid leave for one year of service. Whereas the former principle is specific to maritime employment, the latter is a well-established workers' right applicable to all economic sectors and to all workers. The interrelation of these principles is evidenced by the fact that, under the MLC, 2006, paid annual leave is to be taken, in principle, in the place where the seafarer has a substantial connection and/or is entitled to be repatriated. It flows from these principles, conjointly taken, that the maximum period of shipboard service without leave is 11 months.

That being said, the issues of repatriation and annual leave should be considered separately.

As provided in Regulation 2.5, paragraph 1, seafarers have a *right* to repatriation. However, when the entitlement to repatriation arises, seafarers may decide for various reasons not to exercise this entitlement. The flag State may accordingly provide for the lapse of this entitlement if not claimed within a reasonable period of time to be defined by national laws or regulations or collective agreement (see Guideline B2.5.1, paragraph 8).

The situation concerning annual leave is different. Even though annual leave with pay is also an entitlement, Standard A2.4 explicitly states that any agreement to forgo the minimum annual leave with pay, except in cases provided for by the competent authority, *shall be prohibited*. As a general rule, therefore, any agreement by which for instance the seafarers would be paid an amount of money in lieu of annual leave would not be in conformity with the Convention. This prohibition clearly aims at guaranteeing the effective realization of the purpose of Regulation 2.4 which is to ensure that seafarers enjoy a period of leave every year for the benefit of their health and well-being which is also intrinsically linked with ship safety and security. The objective of Regulation 2.4 is evidently to prevent fatigue and all risks related thereto and therefore to encourage seafarers to take annual leave rather than undertake back-to-back voyages.

It should be noted, in this connection that, contrary to most of the provisions of the earlier Conventions Nos. 91 and 146 on annual leave with pay which have been included in Guideline B2.5, the prohibition of relinquishing the right to annual leave ("opting out") appears among the binding principles of Standard A2.4.

However, Standard A2.4(3) of the MLC, 2006 does not lay down an absolute prohibition as exceptions may be authorized by the competent authority. While the Convention is silent about the nature and scope of permissible exceptions, there are good reasons to believe that this provision needs to be interpreted in a restrictive manner, just like the corresponding articles of Conventions Nos. 91 and 146 – that Standard A2.4(3) replaces – and which allowed for the substitution for an annual holiday of a cash payment only in "very exceptional circumstances when the service so requires" (article 3(7) of C. 91) or in "exceptional cases" (article 9 of C. 146). In contrast, to read in Standard

A2.4(3) of the MLC, 2006 a broad authorization to forgo annual leave for cash compensation or otherwise, would defeat the very object and purpose of the annual leave and repatriation entitlements and would practically void of any substance the relevant sections of the Convention. Ultimately, it would be for the ILO supervisory bodies to assess the conformity of any exceptions to the prohibition to forgo annual leave adopted by flag States with the letter and the spirit of the MLC, 2006.

Based on the above general considerations, the Office would have the following comments in response to the concrete questions asked in your letter:

1. *Is 11 months the "default" maximum continuous period a seafarer can serve on board a vessel, or can the seafarer choose to serve continuously on board longer?*

   Based on the combined reading of the MLC, 2006 provisions on annual leave and repatriation, it is clear that the maximum continuous period of shipboard service without leave is 11 months. Subject to the limited exceptions that may be authorized by national laws or regulations, any agreement to forgo the annual leave is prohibited, and therefore, seafarers cannot decide at their own discretion to serve continuously on board for longer periods.

2. *Choosing to serve on board for longer, can the seafarer do this by entering into an initial SEA for a longer continuous period on board or can this only be done by an extended or new SEA?*

   "Opting out" from annual leave with pay is, in principle, prohibited under Standard A2.4(3) of the MLC, 2006, and therefore seafarers cannot choose to serve on board for longer periods without taking leave. Moreover, an initial SEA making express provision for longer continuous period on board would openly contravene the requirements of Standard A2.4(2) and Standard A2.5(2)(b) and would therefore be unacceptable. SEAs have to be in compliance with the relevant standards of the Convention, namely provide for at least 2.5 calendar days of paid leave per month of employment and also specify a maximum service period of less than 12 months following which a seafarer would be entitled to be repatriated at no cost to himself/herself.

   Be that as it may, the duration of the seafarer's contract of employment should not be confounded with the protection of the rights to repatriation and annual leave inasmuch as Standard A2.5, paragraph 2(b) of the MLC, 2006 does not regulate the maximum contract period after which an employment contract would have to expire. Reference may be made, in this respect, to Standard A2.1, paragraph 4(g)(i), which expressly provides for a seafarer's employment agreement for an indefinite period. Hence, as long as the rights to repatriation and annual leave are guaranteed in accordance with the relevant provisions of the MLC, 2006, seafarers may enter into SEAs covering periods longer than 11 months.

3. *If a seafarer can choose to serve continuously on board for a longer period, is there or should there be a limit on the total amount of time that the seafarer can spend on board consecutively, taking into consideration factors of fatigue and safety?*

   See under questions 1and 2 above.

4. *What's to prevent a seafarer (voluntarily or not) from repeatedly signing consecutive SEAs and hence staying on board for an indefinite period of time?*

Standards A2.4 and A2.5 conjointly taken, establish an 11-month maximum continuous period that a seafarer can serve on board without leave. Signing consecutive SEAs with the same shipowner without interruption for annual leave would run counter to the *ratio legis* of Regulation 2.4 which is to ensure that seafarers have adequate leave. It would also amount to a barely disguised agreement to forgo annual leave which is, in principle, prohibited under Standard A2.4(3). Signing a SEA with another shipowner while on annual leave (upon repatriation or not, for a different or the same vessel) is more difficult to control although the competent authority may, in particular in regulating the operation of recruitment and placement services, adopt specific provisions to prevent such practice. Parenthetically, it is noted that under article 13 of the Holidays with Pay Convention (Revised), 1970 (No. 132) which is ILO's most up-to-date instrument n this matter, "special rules may be laid down by the competent authority or through the appropriate machinery in each country in respect of cases in which the employed person engages, during the holiday, in a gainful activity conflicting with the purpose of the holiday".

In any event, the fact that there may be need for greater clarity around the practical application of Standard A2.4(3) does not mean that the Convention recognizes an unlimited right to uninterrupted contract extension or renewal based on the seafarer's consent. This would void Regulations 2.4 and 2.5 of their meaning and contradict the overall thrust of the Convention which places emphasis on measures and policies aimed at ensuring decent working and living conditions, preventing fatigue and enhancing occupational health and safety.

Finally, with respect to the situation alluded to in question 4 of a seafarer signing consecutive SEAs on a non-voluntary basis (for fear for instance of not being rehired), it is to be noted that this could qualify as a situation of forced labour within the meaning of the Forced Labour Convention, 1930 (No. 29) and would therefore violate seafarers' fundamental rights as set out in Article III of the MLC, 2006.

5. *Does a seafarer who has signed consecutive SEAs lose the right to repatriation, other than through expiration or termination of this new agreement, of this new agreement, because he/she has waived their rights under Standard A2.5.2(b)? In other words, if the seafarer choses to extend his/her duration on board, for say 4 months, can the seafarer then chose, after say 2 months, to withdraw that choice without penalty or must this be through the termination provisions of A2.5.1(b)?*

As explained above, although seafarers may decide not to exercise their entitlement to repatriation, they cannot sign consecutive SEAs exceeding the "default" 11-month maximum service period as this would imply waiving their right to annual leave with pay, which is in principle prohibited under Standard A2.4(3). Seafarers cannot freely "chose to extend their duration on board" without taking leave except as may be authorized by the national laws and regulations determining the minimum standards for annual leave. Whether seafarers, who under the limited conditions prescribed by national laws and regulations may continue to serve on board the vessel without taking leave, can exercise their right to repatriation only at the end of the new agreement or only upon terminating

that agreement for justified reasons, is a matter to be determined by the flag State. In doing so, the flag State has to give due consideration to Guideline B2.5(8) which provides that the entitlement to repatriation may only lapse if not exercised within a reasonable period of time to be defined by national laws or regulations or collective agreements.

6. *If the seafarer choses to extend his/her term on board beyond 12 months, at which point and upon what guidance, does the flag State apply its obligations under Regulation 2.4 to require that seafarers be given their paid leave?*

See under questions 1 and 2 above.

7. *FAQ C.2.5g clearly states the choice to not exercise the right to repatriation rests with the seafarer and the seafarer alone. MLC, 2006 Guideline B2.4.2.1 clearly states that the time at which annual leave is to be taken should be determined by the shipowner (unless fixed by regulations, collective agreement, arbitration award or other means consistent with national practice). One is a FAQ and one is a Guideline, but both seem to contradict. Should there be another FAQ, that is, "can the shipowner decide not to offer repatriation when the entitlement arises?"*

Any decision of the shipowner refusing the right to repatriation when this entitlement arises would be contrary to Regulation 2.5 of the MLC, 2006. In addition, it would result in the seafarer exceeding the default 11-month maximum continuous period without taking leave, and would therefore be contrary to Regulation 2.4 of the MLC, 2006.

Kindly note that the current edition of the *FAQ* will be reviewed in due course to ensure that it remains updated.

I hope that these explanations will help AMSA and RMI to reach a common understanding of the relevant provisions of the Convention and thus facilitate the harmonious and effective implementation of the Convention.

Yours sincerely,

Corinne Vargha
Director of the International Labour
Standards Department

Document No. 115

ILO, Office informal opinion concerning the Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185), dated 22 December 2020

International Labour Organization

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22 December 2020

Dear Ms Jørgensen,

I have the honour to refer to your letters of 10 and 14 December 2020, by which you requested the views of the International Labour Office principally as to whether a State party to the Seafarers' Identity Documents Convention, 2003, as amended (No. 185) has an obligation to recognize seafarers' identity documents issued pursuant to the Seafarers' Identity Documents Convention, 1958 (No. 108).

The following indications are subject to the customary reservation that the Constitution of the International Labour Organization (ILO) confers no special competence upon the International Labour Office to provide an authoritative interpretation of the provisions of Conventions and Recommendations adopted by the International Labour Conference and the opinion of the Office is without prejudice to any position that the ILO's supervisory bodies might take with respect to this subject matter.

Concretely, you seek clarifications as to whether a Member State that is party to Convention No. 185 is obliged to recognize the seafarers' identity documents issued pursuant to Convention No. 108, and also whether it makes a difference if that Member State was formerly bound by Convention No.108.

The relevant provisions of the two instruments are article 13 of Convention No. 108 and article 10 of Convention No. 185, which read as follows:

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention , notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 10

This Convention revises the Seafarers' Identity Documents Convention, 1958.

It stems from the above provisions that the ratification by a Member of Convention No. 185 --"the new revising Convention" within the meaning of the article 13, paragraph 1, of Convention No. 108 -- involves the immediate denunciation of Convention No. 108. It follows that, upon ratification of Convention No. 185, a Member who had previously ratified Convention No. 108 is released with immediate effect from any obligation to continue to implement that Convention, including the obligation to permit entry into its territory of seafarers holding seafarer's identity documents issued pursuant to that Convention. This is consistent with the principle of *pacta sunt servanda* codified in article 26 of the 1969 Vienna Convention on the Law of Treaties according to which every treaty in force is binding only upon the parties thereto, and also article 70 of the same Convention according to which the termination of a treaty under its provisions releases the parties from any obligations further to perform the treaty. It is recalled, in this connection, that the revision of an international labour Convention through the adoption of a new revising Convention has been the most frequently used method of revision of ILO Conventions. The possibility of the ratification of a new revising Convention and the concomitant ipso jure denunciation of the revised Convention (also known as 'automatic' denunciation) is specifically foreseen in the final clauses of most ILO Conventions.

Furthermore, it emerges from the preparatory work which preceded the adoption of Convention No. 185 that, while the Governing Body had initially envisaged amending Convention No. 108 through the adoption of a Protocol, the majority view expressed during the consultation process pointed to the need for a new revising Convention as the most appropriate means to achieve the objective of improved seafarers' identification (ILO: *Improved security of seafarers' identification*, Report VII(2B), ILC, Geneva, 91st session, 2003). In the event, Convention No. 185 was adopted in 2003 to replace Convention No. 108, which was outdated with respect to its security measures. While the new Convention in its preamble recognized "the principles embodied in the Seafarers' Identity Documents Convention, 1958, concerning the facilitation of entry by seafarers into the territory of Members, for the purposes of shore leave, transit, transfer or repatriation", it departed considerably from the old Convention as regards the content and form of SIDs as the documents in use under that Convention no longer corresponded to modern realities and security needs. A fast-track procedure was adopted by the ILO to allow for the rapid adoption and implementation of the Convention in order to ensure an effective response to enhanced security concerns after the events of 11 September 2001. In sum, Convention No.185 provides for a mutual obligation of recognition of seafarers identity documents issued by the competent authorities of States parties pursuant to the technical standards set out therein. It does not contain, however, any obligation to recognize the documents issued in application of Convention No. 108 nor any transitional measures to that effect. The only transitional measure set out in article 9 of the Convention, aims rather at speeding up the transition from the old system under Convention No.108 to the technologically advanced SIDs under the new Convention.

Thus, the terms of Convention No.185 and the legislative history confirm a clear intention to release countries as soon as possible from their obligation to recognize SIDs issued under Convention No. 108 whose security features were regarded as seriously inadequate. The Office expressed the same view in an informal opinion prepared in 2007 in response to a request of the Government of Estonia (see copy attached). Therefore, apart from being legally unfounded, it would also be inconsistent with the object and purpose of Convention No. 185, which introduced a uniform international seafarer's identity document with modern security and biometric features, to suggest that States parties to Convention No. 185 should continue to recognize the much less sophisticated and secure seafarers' identity documents issued under Convention No. 108.

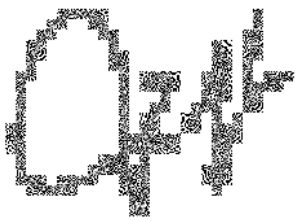
For all useful purposes, reference could be made, at this juncture, to the Resolution concerning maritime labour issues and the COVID-19 pandemic, which was adopted by the ILO Governing Body on 8 December 2020 (GB.340/Resolution (Rev.2)) and which urges all Members, in accordance with applicable national laws and regulations, to "consider the acceptance of internationally recognized documentation carried by seafarers, including seafarers' identity documents delivered in conformity with ILO Conventions Nos 108 and 185." It is recalled, nonetheless, that this resolution seeks to facilitate the transit of seafarers during the pandemic and does not create new legal obligations for States parties to the respective Conventions.

In your communication, you also wish to know what information a State party to Convention No. 108, which ratifies Convention No.185 provides to the Office (e.g. expected effective date of Convention No. 185 or a statement as to whether the Member will continue to recognize seafarers' identity documents issued pursuant to Convention No. 108). In this regard, the Office records show that no ratification instruments have ever contained or been accompanied by a declaration whereby a ratifying State committed or indicated its intention to continue recognizing documents issued under Convention No. 108. Such decision would, in any event, be a matter of domestic policy and not a legal requirement for ratifying States of Convention No. 185.

Finally, you seek clarification as to the type of information, if any, that a State party to Convention No.185 is obliged to pass along, especially to States parties to Convention No. 108, for instance whether the State concerned will continue to recognize seafarers' identity documents issued pursuant to Convention No.108. In this regard, the Office confirms that Convention No. 185 does not set out any obligation for States parties to communicate information of any sort to those States, which remain bound by the old Convention No. 108.

I hope the above clarifications prove useful to the Danish Maritime Authority.

Yours sincerely,



Corinne Vargha
Director

Document No. 116

ILO, Office informal opinion concerning the Occupational Safety and Health Convention, 1981 (No. 155), dated 31 January 2022

International Labour Organization

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Mr Sebastian Müller
Division VIb2 "International Labour Organisation (ILO), United Nations"
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Geneva, 31 January 2022

Dear Mr Müller,

Reference is made to your email message of 27 December 2021 addressed to the Office of the Legal Adviser requesting an informal opinion concerning the scope of the Occupational Safety and Health Convention, 1981 (No. 155).

I am pleased to provide the following indications, subject to the customary reservation that the Constitution of the International Labour Organization confers no special competence upon the International Labour Office to provide an authoritative interpretation of the provisions of Conventions and Recommendations adopted by the International Labour Conference and the opinion of the Office is without prejudice to any position that the ILO's supervisory bodies might take with respect to this subject.

Concretely, your Government requests the views of the Office as to whether Convention No. 155 covers measures in reaction to work-related accidents and/or whether it aims to create corresponding entitlements vis-à-vis the insurance fund under national law, or whether the Convention is exclusively concerned with preventative measures. Your Government also requests, as far as possible, an informal assessment by the Office as to whether German labour and social insurance law complies with the Convention and whether further implementation measures would be required in case of ratification of the Convention.

At the outset, the Office understands that the question does not relate only to "work-related accidents" *stricto sensu*, but to events which could generally fall within the remit of workers' compensation schemes, such as "industrial accidents and occupational diseases" (see Preamble and articles 7-8 of the Employment Injury Benefits Convention, 1964, No. 121),[1] "accident or a prescribed disease resulting from employment" (see article 32 of the Social Security (Minimum Standards Convention, 1952, No. 102)[2] or "accidents and injury to health arising out of, linked with or occurring in the course of work" (see article 4(2) of Convention No. 155).

[1] Ratified by Germany on 1 March 1972.

[2] Ratified by Germany on 21 February 1958.

The relevant provisions of Convention No. 155 are found in its article 4, which reads as follows:

> *Article 4*
>
> *1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.*
>
> *2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.*

The main obligation for ratifying Members arising from the Convention is thus to adopt and effectively implement a coherent national policy on occupational safety and health aiming at preventing workplace accidents and injuries and minimizing occupational hazards. Accordingly, the "main spheres of action" that the national policy should take into account, listed in Article 5 of the Convention, refer to areas for preventative action and do not contain any reference to workers' compensation for occupational accident, injury or disease.

This is in line with how occupational safety and health (OSH) is conceived in the ILO. According to a definition by the International Occupational Hygiene Association (IOHA) quoted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) "OSH is generally defined as the science of anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, taking into account the possible impact on the surrounding communities and the general environment".[3] Consequently, Convention No. 155 uses, in several of its articles, terms such as "danger" or "dangerous" (Arts. 12(a),(b), 13 and 19(f)), "risk" (Arts. 11(f) and 16(1)-(3)) and "hazards" (Arts. 4(2), 11(a), 11(b) and 12(b)). In the ILO's system of standards, questions concerning compensation for occupational accidents or diseases and employment injury are covered in instruments concerning social security, in particular Conventions Nos. 102, Part VI, and 121, and Recommendation No. 121.[4]

As it is clearly stated in the CEACR's General Survey of 2009 on ILO standards on occupational safety and health, Convention No. 155 marks the shift of emphasis from the mere prescription of protection measures to preventative measures. In the Committee's words, "the central organizing theme of Convention No. 155 and Recommendation No. 164 is thus the implementation of a policy focused on prevention rather than a reaction to the consequences of occupational accidents and diseases".[5]

The fact that Convention No. 155 places primary emphasis on prevention is further corroborated by a combined reading of Articles 1(a), 2(1) and 3(3) of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which elaborates on the notion of national policy on occupational safety and health based on the principles specifically set out in Article 4 of Convention No. 155. Indeed, as the CEACR has confirmed, Convention No. 187 and Recommendation No. 197 "integrated and reaffirmed the policy, principles and processes defined in Convention No. 155 and Recommendation No. 164."[6]

[3] ILC, 98th Session, 2009, Report III (Part 1B), para. 4.

[4] See the List of instruments by subject and status published on the ILO website.

[5] ILC, 98th Session, 2009, Report III (Part 1B), para. 15.

[6] ILC, 98th Session, 2009, Report III (Part 1B), para. 294.

Notwithstanding the above, Convention No. 155 contains a few provisions that expressly refer to occupational accidents, diseases or injuries, in particular Articles 11(c),(d),(e) and 18.
As regards Article 11(c),(d),(e), it refers to functions (such as the notification of accidents, the holding of inquiries, and the publication of information) that should be carried out to "*give effect to the policy referred to in Article 4 of this Convention*", which is – as specified in that article – the prevention of occupational accidents and injury. More concretely, with respect to the obligation to notify accidents and to publish relevant information, the preparatory work of the Protocol of 2002 to Convention No. 155, which builds on Article 11(c) and (e) of the Convention, confirms that recording and notification of occupational accidents and diseases would be for purposes of prevention. For example, it was stated in the Office's law and practice report that the "recognition that a disease is occupational in origin – whether wholly or in part – would strengthen health surveillance provisions and raise awareness of appropriate preventive activity".[7] During the first Conference discussion, one Government emphasized, in support of an amendment that was eventually adopted, that "*the aim [of these provisions] was to ensure that the competent authority was notified of every case of disease which could be related to employment, so as to clarify questions of occupational physio-pathology and to make both employers and workers aware of the importance of efficient occupational safety and health measures*".[8] During the same discussion, it was stated with regard to the obligation under article 11(d) that "*the holding of inquiries in this context was to be construed in the sense of the carrying out of research into health and safety problems coming to the notice of the competent authority or authorities*".[9]

It follows from the above that the obligations under Article 11 of the Convention aim at facilitating the prevention of accidents and injury to health by building the knowledge capacity of all stakeholders. Even if the procedures for the notification of occupational accidents and diseases required under Article 11(c) might create administrative obligations for insurance institutions "when appropriate", they are not intended to create any entitlements to benefits.

As for Article 18, it deals with the immediate response to emergency and accidents and not with workers' compensation. In fact, it follows from a discussion that took place during the first Conference discussion that the understanding was that this provision covered only first-aid services. A Workers' amendment proposed "to include in the scope of the relevant Point not only adequate first-aid arrangements but also occupational health services" but some Government members pointed out that "the text, if amended, would cover in the same Point two services of an entirely different nature, first-aid services and in-plant medical services, the latter having a much wider scope of activity". The proposed amendment was withdrawn.[10]

In addition to the express references to occupational accidents, diseases or injuries highlighted above, Article 15 of Convention No. 155 may have an effect on insurance institutions as it requires that "*Members […] shall make arrangements appropriate to national conditions and practice to ensure the necessary co-ordination between various authorities and bodies called upon to give effect to Parts II and III of the Convention*". As explained above, insurance institutions are referred to in Part III, Article 11(c) of the Convention and may thus be concerned by the coordination obligation set out in Article 15. Yet, these potential administrative requirements are not intended to create any entitlements to benefits.

[7] ILC, 90th Session, 2002, Report V(1), p. 23.

[8] ILC, 67th Session, 1981, Report VI (1), p. 24, para. 101.

[9] Ibid.

[10] ILC, 67th Session, 1981, Report VI (1), para. 120.

In light of the preceding considerations, the Office is of the view that the focus of Convention No. 155 is clearly on the development of a national policy for the prevention of occupational accidents and injury to health, and that the few provisions laying down obligations with regard to work-related accidents and injuries, or insurance institutions, do not relate, directly or indirectly, to workers' entitlements for compensation under domestic legislation.

In the absence of references to specific elements of the German labour and social insurance law to review, the Office is not in a position to express an opinion on its compliance with the obligations contained in the Convention. The Office stands ready, if required, to provide its opinion regarding compliance of any specific elements of the German labour and social insurance law with the obligations contained in the Convention.

I hope these explanations may help your Government and its social partners in the deliberations concerning the possible ratification of Convention No. 155.

Yours faithfully,
For the Director-General:

Corinne Vargha
Director of the International Labour
Standards Department

Document No. 117

ILO, Office informal opinion concerning the Minimum Wage Fixing Convention, 1970 (No. 131), dated 26 July 2023

International Labour Organization

International Labour Standards Department

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Geneva, 26 July 2023

Dear Sir,

Reference is made to your communication of 8 June 2023 by which the Government of Kazakhstan sought legal and technical clarifications from the Office in the context of preparatory work on the ratification of the Minimum Wage Fixing Convention, 1970 (No. 131), concerning the meaning of the term "wages" used throughout the text of that Convention.

I am pleased to provide the following explanations, subject to the customary reservation that the Constitution of the International Labour Organization (ILO) confers no special competence upon the International Labour Office to provide an authoritative interpretation of the provisions of Conventions and Recommendations adopted by the International Labour Conference and the opinion of the Office is without prejudice to any position that the ILO's supervisory bodies might take with respect to this subject.

Concretely, your Government seeks clarifications on what kind of wage is implied in Convention No. 131 given that article 104 of the Labour Code of the Republic of Kazakhstan of November 23, 2015, provides for both a minimum monthly wage and a minimum hourly wage.

The relevant provisions of the Convention read as follows:

Article 1

1. *Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.*

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.

At the outset, it should be noted that Convention No. 131 intentionally uses the term “wages” in the expression “system of minimum wages” in plural and without any qualification with respect to time as it was drafted on a principled level to be of general application and to cover diverse national systems (ILC, 53rd Session, 1969, Report VII(1), p. 1, Meeting of experts on minimum wage fixing, MEMW/1967/D.8, para. 128).

The preparatory work that led to the adoption of Convention No. 131 confirms the intention to provide for a minimum wage of general coverage for all wage earners while at the same time offering some flexibility and allowing differentiated rates of minimum wages by region or category of workers, as may be determined by the competent authority after consultations with employers’ and workers’ organizations concerned (ILC, 53rd Session, 1969, Report VII(1), pp. 19-28, and ILC, 53rd Session, 1969, Report VII(2), pp. 113-114). As the Reporter of the Conference committee stated during the second Conference discussion, the first item among those that “received the greatest attention [...] was that the proposed Convention should have as wide a coverage as possible” (ILC, 54th Session, 1970, *Record of Proceedings*, p. 440). Indeed, throughout the Conference proceedings, no reference was made to the distinction between monthly or hourly minimum wages with respect to the scope of the draft instrument (ILC, 53rd Session, 1969, *Record of Proceedings*, pp. 678-685, and ILC, 54th Session, 1970, *Record of Proceedings*, pp. 378-381).

It is worth noting that the same approach was adopted when drafting the earlier minimum wage-fixing instruments, namely the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) and the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99). For instance, in the elaboration of Convention No. 26, Italy considered that the expression "homework" should “include trades which are normally organised in such a way that the worker performs, for his employer only, work paid for by the hour or at piece or job rates” (ILC, 11th Session, 1928, Report on minimum wage fixing machinery, p. 19) while Canada/Province of British Colombia expressed the view that minimum wage should preferably be paid at an hourly rate (ibid., p. 45) but neither proposal was retained, and as a result, Convention No. 26 does not define minimum wage by reference to any specific time period. Similarly, when Convention No. 99 was under consideration, information was provided concerning diverse national practices as regards the time period covered by the minimum wages (ILC, 33rd Session,1950, Report VII(1), pp. 9, 19, 20) but no proposal was made to include specific provisions in the draft Convention.

In light of the preceding observations, it may be safely concluded that there is nothing to indicate that the intention of the drafters of Convention No. 131 was to limit the scope of the instrument to minimum wages calculated on the basis of a specific time period (for instance, month. day or hour).

This conclusion is further corroborated by the remarks of the ILO Committee of Experts on the Application of Conventions and Recommendations. For instance, in 2014, the Committee of Experts defined the concept of minimum wage “as the minimum amount of remuneration that an employer is required to pay wage earners for the work performed *during a given period*, which cannot be reduced by collective agreement or an individual contract” (ILC, 103rd Session,

2014, ILC.103/III/1B, General Survey on minimum wage systems, para. 68, emphasis added).[1] The Committee's views are in line with the approach that diverse national approaches are meant to be covered by the Convention.

Moreover, in its comments addressed to Member States on the application of Convention No. 131, the Committee of Experts has invariably considered minimum wages fixed on a monthly and/or hourly or weekly basis as falling within the scope of the Convention. For example, it has taken note of minimum wages fixed on both monthly and hourly basis in France (direct request, 2007) and in the Republic of Moldova (direct request, 2007), and on a weekly basis in Malta (direct request, 2013).

In the Office's view, therefore, a national system of minimum wages which would prescribe both a minimum monthly wage and a minimum hourly wage would be compatible with the requirements of Convention No. 131.

I hope these explanations may help the Government of Kazakhstan to make progress towards the ratification of Convention No. 131.

Yours faithfully,
For the Director-General:

Corinne Vargha
Director of the International Labour
Standards Department

[1] A definition in practically identical terms is found in the General Survey of 1992 (ILC, 79th Session, 1992, Report III (Part 4B), General Survey on minimum wages, para. 42).

Document No. 118

Constitution of the ILO, Preamble and Annex, Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia)

Constitution of the International Labour Organization

International Labour Office, Geneva, 2021

Constitution of the International Labour Organization

Preamble

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Editor's notes:

(1) The original text of the Constitution, established in 1919, has been modified by the amendment of 1922 which entered into force on 4 June 1934; the Instrument of Amendment of 1945 which entered into force on 26 September 1946; the Instrument of Amendment of 1946 which entered into force on 20 April 1948; the Instrument of Amendment of 1953 which entered into force on 20 May 1954; the Instrument of Amendment of 1962 which entered into force on 22 May 1963; the Instrument of Amendment of 1972 which entered into force on 1 November 1974; and the Instrument of Amendment of 1997 which entered into force on 8 October 2015.

(2) Equality for women and men in the world of work is a core value of the International Labour Organization. The resolution concerning gender equality and the use of language in legal texts of the ILO, adopted by the General Conference at its 100th Session, 2011, affirms that gender equality should be reflected through the use of appropriate language in official legal texts of the Organization and that, in the ILO Constitution and other legal texts of the Organization, the use of one gender includes in its meaning a reference to the other gender unless the context requires otherwise.

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization:

Chapter I. Organization

Article 1

Establishment and membership

1. A permanent organization is hereby established for the promotion of the objects set forth in the Preamble to this Constitution and in the Declaration concerning the aims and purposes of the International Labour Organization adopted at Philadelphia on 10 May 1944, the text of which is annexed to this Constitution.

2. The Members of the International Labour Organization shall be the States which were Members of the Organization on 1 November 1945 and such other States as may become Members in pursuance of the provisions of paragraphs 3 and 4 of this article.

3. Any original member of the United Nations and any State admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a Member of the International Labour Organization by communicating to the Director-General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organization.

4. The General Conference of the International Labour Organization may also admit Members to the Organization by a vote concurred in by two thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director-General of the International Labour Office by the government of the new Member of its formal acceptance of the obligations of the Constitution of the Organization.

5. No Member of the International Labour Organization may withdraw from the Organization without giving notice of its intention so to do to the

Annex

Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia)

The General Conference of the International Labour Organization, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members.

I

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

(a) labour is not a commodity;

(b) freedom of expression and of association are essential to sustained progress;

(c) poverty anywhere constitutes a danger to prosperity everywhere;

(d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

II

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice, the Conference affirms that:

(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in

conditions of freedom and dignity, of economic security and equal opportunity;

(b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;

(c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;

(d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;

(e) in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

III

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

(a) full employment and the raising of standards of living;

(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement

of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(g) adequate protection for the life and health of workers in all occupations;

(h) provision for child welfare and maternity protection;

(i) the provision of adequate nutrition, housing and facilities for recreation and culture;

(j) the assurance of equality of educational and vocational opportunity.

IV

Confident that the fuller and broader utilization of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full cooperation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

V

The Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world.

Document No. 119

Right of Association (Agriculture) Convention, 1921 (No. 11)

International Labour Conference
Conférence internationale du Travail

CONVENTION 11

CONVENTION CONCERNING THE RIGHTS OF ASSOCIATION AND COMBINATION OF AGRICULTURAL WORKERS, ADOPTED BY THE CONFERENCE AT ITS THIRD SESSION, GENEVA, 12 NOVEMBER 1921
(as modified by the Final Articles Revision Convention, 1946)

CONVENTION 11

CONVENTION CONCERNANT LES DROITS D'ASSOCIATION ET DE COALITION DES TRAVAILLEURS AGRICOLES, ADOPTÉE PAR LA CONFÉRENCE A SA TROISIÈME SESSION, GENÈVE, 12 NOVEMBRE 1921
(telle qu'elle a été modifiée par la Convention portant revision des articles finals, 1946)

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Convention 11

CONVENTION CONCERNING THE RIGHTS OF ASSOCIATION AND COMBINATION OF AGRICULTURAL WORKERS.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Third Session on 25 October 1921, and

Having decided upon the adoption of certain proposals with regard to the rights of association and combination of agricultural workers, which is included in the fourth item of the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts the following Convention, which may be cited as the Rights of Association (Agriculture) Convention, 1921, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation :

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Article 2

The formal ratifications of this Convention, under the conditions set forth in the Constitution of the International Labour Organisation, shall be communicated to the Director-General of the International Labour Office for registration.

Article 3

1. This Convention shall come into force at the date on which the ratifications of two Members of the International Labour Organisation have been registered by the Director-General.

2. It shall then be binding only upon those Members whose ratifications have been registered with the International Labour Office.

3. Thereafter, the Convention shall come into force for any Member at the date on which its ratification has been registered with the International Labour Office.

CONVENTION CONCERNANT LES DROITS D'ASSOCIATION ET DE COALITION DES TRAVAILLEURS AGRICOLES.

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 25 octobre 1921, en sa troisième session,

Après avoir décidé d'adopter diverses propositions relatives aux droits d'association et de coalition des travailleurs agricoles, question comprise dans le quatrième point de l'ordre du jour de la session, et

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte la convention ci-après, qui sera dénommée Convention sur le droit d'association (agriculture), 1921, à ratifier par les Membres de l'Organisation internationale du Travail conformément aux dispositions de la Constitution de l'Organisation internationale du Travail :

Article 1

Tout Membre de l'Organisation internationale du Travail ratifiant la présente convention s'engage à assurer à toutes les personnes occupées dans l'agriculture les mêmes droits d'association et de coalition qu'aux travailleurs de l'industrie, et à abroger toute disposition législative ou autre ayant pour effet de restreindre ces droits à l'égard des travailleurs agricoles.

Article 2

Les ratifications officielles de la présente convention, dans les conditions établies par la Constitution de l'Organisation internationale du Travail, seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 3

1. La présente convention entrera en vigueur dès que les ratifications de deux Membres de l'Organisation internationale du Travail auront été enregistrées par le Directeur général.

2. Elle ne liera que les Membres dont la ratification aura été enregistrée au Bureau international du Travail.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre à la date où sa ratification aura été enregistrée au Bureau international du Travail.

Article 4

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 5

Subject to the provisions of Article 3, each Member which ratifies this Convention agrees to bring the provisions of Article 1 into operation not later than 1 January 1924, and to take such action as may be necessary to make these provisions effective.

Article 6

Each Member of the International Labour Organisation which ratifies this Convention engages to apply it to its colonies, possessions and protectorates in accordance with the provisions of Article 35 of the Constitution of the International Labour Organisation.

Article 7

A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

Article 8

At least once in ten years, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

Article 9

The French and English texts of this Convention shall both be authentic.

The foregoing is the authentic text of the Right of Association (Agriculture) Convention, 1921, as modified by the Final Articles Revision Convention, 1946.

The original text of the Convention was authenticated on 20 November 1921 by the signatures of Lord Burnham, President of the Conference, and Albert Thomas, Director of the International Labour Office.

Article 4

Aussitôt que les ratifications de deux Membres de l'Organisation internationale du Travail auront été enregistrées au Bureau international du Travail, le Directeur général du Bureau international du Travail notifiera ce fait à tous les Membres de l'Organisation internationale du Travail. Il leur notifiera également l'enregistrement des ratifications qui lui seront ultérieurement communiquées par tous autres Membres de l'Organisation.

Article 5

Sous réserve des dispositions de l'article 3, tout Membre qui ratifie la présente convention s'engage à appliquer les dispositions de l'article 1 au plus tard le 1er janvier 1924, et à prendre telles mesures qui seront nécessaires pour rendre effectives ces dispositions.

Article 6

Tout Membre de l'Organisation internationale du Travail qui ratifie la présente convention s'engage à l'appliquer à ses colonies, possessions et protectorats conformément aux dispositions de l'article 35 de la Constitution de l'Organisation internationale du Travail.

Article 7

Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée au Bureau international du Travail.

Article 8

Le Conseil d'administration du Bureau international du Travail devra, au moins une fois tous les dix ans, présenter à la Conférence générale un rapport sur l'application de la présente convention et décidera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de la revision ou de la modification de ladite convention.

Article 9

Les textes français et anglais de la présente convention feront foi l'un et l'autre.

Le texte qui précède est le texte authentique de la Convention sur le droit d'association (agriculture), 1921, telle qu'elle a été modifiée par la Convention portant revision des articles finals, 1946.

Le texte original de la convention fut authentiqué le 20 novembre 1921 par les signatures de Lord Burnham, Président de la Conférence, et de M. Albert Thomas, Directeur du Bureau international du Travail.

The Convention first came into force on 11 May 1923.

IN FAITH WHEREOF I have, in pursuance of the provisions of Article 6 of the Final Articles Revision Convention, 1946, authenticated with my signature this thirtieth day of April 1948 two original copies of the text of the Convention as modified.

L'entrée en vigueur initiale de la convention eut lieu le 11 mai 1923.

EN FOI DE QUOI j'ai authentiqué par ma signature, en application des dispositions de l'article 6 de la Convention portant revision des articles finals, 1946, ce trentième jour d'avril 1948, deux exemplaires originaux du texte de la convention telle qu'elle a été modifiée.

EDWARD PHELAN,

Director-General
of the International Labour Office.

Directeur général
du Bureau international du Travail.

Document No. 120

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

International Labour Conference

Conférence internationale du Travail

CONVENTION (No. 87) CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE.

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948 ;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session ;

Considering that the Preamble to the Constitution of the International Labour Organisation declares " recognition of the principle of freedom of association " to be a means of improving conditions of labour and of establishing peace ;

Considering that the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress " ;

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation ;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions ;

adopt this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948 :

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Con-

CONVENTION (N° 87) CONCERNANT LA LIBERTÉ SYNDICALE ET LA PROTECTION DU DROIT SYNDICAL.

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à San-Francisco par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 17 juin 1948, en sa trente et unième session,

Après avoir décidé d'adopter sous forme d'une convention diverses propositions relatives à la liberté syndicale et la protection du droit syndical, question qui constitue le septième point à l'ordre du jour de la session,

Considérant que le Préambule de la Constitution de l'Organisation internationale du Travail énonce, parmi les moyens susceptibles d'améliorer la condition des travailleurs et d'assurer la paix, « l'affirmation du principe de la liberté syndicale » ;

Considérant que la Déclaration de Philadelphie a proclamé de nouveau que « la liberté d'expression et d'association est une condition indispensable d'un progrès soutenu » ;

Considérant que la Conférence internationale du Travail, à sa trentième session, a adopté à l'unanimité les principes qui doivent être à la base de la réglementation internationale ;

Considérant que l'Assemblée générale des Nations Unies, à sa deuxième session, a fait siens ces principes et a invité l'Organisation internationale du Travail à poursuivre tous ses efforts afin qu'il soit possible d'adopter une ou plusieurs conventions internationales ;

adopte, ce neuvième jour de juillet mil neuf cent quarante-huit, la convention ci-après, qui sera dénommée Convention sur la liberté syndicale et la protection du droit syndical, 1948.

PARTIE I. LIBERTÉ SYNDICALE

Article 1

Tout Membre de l'Organisation internationale du Travail pour lequel la pré-

vention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

sente convention est en vigueur s'engage à donner effet aux dispositions suivantes.

Article 2

Les travailleurs et les employeurs, sans distinction d'aucune sorte, ont le droit, sans autorisation préalable, de constituer des organisations de leur choix, ainsi que celui de s'affilier à ces organisations, à la seule condition de se conformer aux statuts de ces dernières.

Article 3

1. Les organisations de travailleurs et d'employeurs ont le droit d'élaborer leurs statuts et règlements administratifs, d'élire librement leurs représentants, d'organiser leur gestion et leur activité, et de formuler leur programme d'action.

2. Les autorités publiques doivent s'abstenir de toute intervention de nature à limiter ce droit ou à en entraver l'exercice légal.

Article 4

Les organisations de travailleurs et d'employeurs ne sont pas sujettes à dissolution ou à suspension par voie administrative.

Article 5

Les organisations de travailleurs et d'employeurs ont le droit de constituer des fédérations et des confédérations ainsi que celui de s'y affilier, et toute organisation, fédération ou confédération a le droit de s'affilier à des organisations internationales de travailleurs et d'employeurs.

Article 6

Les dispositions des articles 2, 3 et 4 ci-dessus s'appliquent aux fédérations et aux confédérations des organisations de travailleurs et d'employeurs.

Article 7

L'acquisition de la personnalité juridique par les organisations de travailleurs et d'employeurs, leurs fédérations et confédérations, ne peut pas être subordonnée à des conditions de nature à mettre en cause l'application des dispositions des articles 2, 3 et 4 ci-dessus.

Article 8

1. Dans l'exercice des droits qui leur sont reconnus par la présente convention, les travailleurs, les employeurs et leurs organisations respectives sont tenus, à l'instar des autres personnes ou collectivités organisées, de respecter la légalité.

2. La législation nationale ne devra porter atteinte ni être appliquée de manière à porter atteinte aux garanties prévues par la présente convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said Article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating—

(a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification ;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications ;

Article 9

1. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux forces armées et à la police sera déterminée par la législation nationale.

2. Conformément aux principes établis par le paragraphe 8 de l'article 19 de la Constitution de l'Organisation internationale du Travail, la ratification de cette convention par un Membre ne devra pas être considérée comme affectant toute loi, toute sentence, toute coutume ou tout accord déjà existants qui accordent aux membres des forces armées et de la police des garanties prévues par la présente convention.

Article 10

Dans la présente convention, le terme « organisation » signifie toute organisation de travailleurs ou d'employeurs ayant pour but de promouvoir et de défendre les intérêts des travailleurs ou des employeurs.

PARTIE II. PROTECTION DU DROIT SYNDICAL

Article 11

Tout Membre de l'Organisation internationale du Travail pour lequel la présente convention est en vigueur s'engage à prendre toutes mesures nécessaires et appropriées en vue d'assurer aux travailleurs et aux employeurs le libre exercice du droit syndical.

PARTIE III. MESURES DIVERSES

Article 12

1. En ce qui concerne les territoires mentionnés par l'article 35 de la Constitution de l'Organisation internationale du Travail telle qu'elle a été amendée par l'Instrument d'amendement à la Constitution de l'Organisation internationale du Travail, 1946, à l'exclusion des territoires visés par les paragraphes 4 et 5 dudit article ainsi amendé, tout Membre de l'Organisation qui ratifie la présente convention doit communiquer au Directeur général du Bureau international du Travail, en même temps que sa ratification, ou dans le plus bref délai possible après sa ratification, une déclaration faisant connaître :

a) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées sans modification ;

b) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées avec des modifications, et en quoi consistent lesdites modifications ;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable ;

(d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office—

(a) by two or more Members of the Organisation in respect of any territory which is under their joint authority ; or

(b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications ; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce

c) les territoires auxquels la convention est inapplicable et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;

d) les territoires pour lesquels il réserve sa décision.

2. Les engagements mentionnés aux alinéas a) et b) du premier paragraphe du présent article seront réputés parties intégrantes de la ratification et porteront des effets identiques.

3. Tout Membre pourra renoncer par une nouvelle déclaration à tout ou partie des réserves contenues dans sa déclaration antérieure en vertu des alinéas b), c) et d) du paragraphe 1 du présent article.

4. Tout Membre pourra, pendant les périodes au cours desquelles la présente convention peut être dénoncée conformément aux dispositions de l'article 16, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation dans des territoires déterminés.

Article 13

1. Lorsque les questions traitées par la présente convention entrent dans le cadre de la compétence propre des autorités d'un territoire non métropolitain, le Membre responsable des relations internationales de ce territoire, en accord avec le gouvernement dudit territoire, pourra communiquer au Directeur général du Bureau international du Travail une déclaration d'acceptation, au nom de ce territoire, des obligations de la présente convention.

2. Une déclaration d'acceptation des obligations de la présente convention peut être communiquée au Directeur général du Bureau international du Travail :

a) par deux ou plusieurs Membres de l'Organisation pour un territoire placé sous leur autorité conjointe ;

b) par toute autorité internationale responsable de l'administration d'un territoire en vertu des dispositions de la Charte des Nations Unies ou de toute autre disposition en vigueur, à l'égard de ce territoire.

3. Les déclarations communiquées au Directeur général du Bureau international du Travail conformément aux dispositions des paragraphes précédents du présent article doivent indiquer si les dispositions de la convention seront appliquées dans le territoire avec ou sans modification ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle doit spécifier en quoi consistent lesdites modifications.

4. Le Membre ou les Membres ou l'autorité internationale intéressés pourront renoncer entièrement ou partiellement par

in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General of the International Labour Office a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Part IV. Final Provisions

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour

une déclaration ultérieure au droit d'invoquer une modification indiquée dans une déclaration antérieure.

5. Le Membre ou les Membres ou l'autorité internationale intéressés pourront, pendant les périodes au cours desquelles la convention peut être dénoncée conformément aux dispositions de l'article 16, communiquer au Directeur général du Bureau international du Travail une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation en ce qui concerne l'application de cette convention.

Partie IV. Dispositions finales

Article 14

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 15

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 16

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 17

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale

Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 19

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force ;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

du Travail l'enregistrement de toutes les ratifications, déclarations et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 18

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications, de toutes déclarations et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 19

A l'expiration de chaque période de dix années à compter de l'entrée en vigueur de la présente convention, le Conseil d'administration du Bureau international du Travail devra présenter à la Conférence générale un rapport sur l'application de la présente convention et décidera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa revision totale ou partielle.

Article 20

1. Au cas où la Conférence adopterait une nouvelle convention portant revision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement :

a) la ratification par un Membre de la nouvelle convention portant revision entrainerait de plein droit, nonobstant l'article 16 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant revision soit entrée en vigueur ;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant revision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant revision.

Article 21

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-first Session which was held at San Francisco and declared closed the tenth day of July 1948.

IN FAITH WHEREOF we have appended our signatures this *thirty-first* day of *August* 1948.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa trente et unième session qui s'est tenue à San-Francisco et qui a été déclarée close le dix juillet 1948.

EN FOI DE QUOI ont apposé leurs signatures, ce *trente et unième* jour ~~de~~ *d'août* 1948.

The President of the Conference,
Le Président de la Conférence,

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

Document No. 121

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

International Labour Conference
Conférence internationale du Travail

CONVENTION 98

CONVENTION CONCERNING THE APPLICATION
OF THE PRINCIPLES OF THE RIGHT TO
ORGANISE AND TO BARGAIN COLLECTIVELY,
ADOPTED BY THE CONFERENCE AT ITS
THIRTY-SECOND SESSION, GENEVA, 1 JULY 1949

CONVENTION 98

CONVENTION CONCERNANT L'APPLICATION
DES PRINCIPES DU DROIT D'ORGANISATION ET DE
NÉGOCIATION COLLECTIVE,
ADOPTÉE PAR LA CONFÉRENCE A SA
TRENTE-DEUXIÈME SESSION, GENÈVE, 1er JUILLET 1949

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

CONVENTION CONCERNING THE APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949 :

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership ;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding articles.

CONVENTION CONCERNANT L'APPLICATION DES PRINCIPES DU DROIT D'ORGANISATION ET DE NÉGOCIATION COLLECTIVE.

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 8 juin 1949, en sa trente-deuxième session,

Après avoir décidé d'adopter diverses propositions relatives à l'application des principes du droit d'organisation et de négociation collective, question qui constitue le quatrième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce premier jour de juillet mil neuf cent quarante-neuf, la convention ci-après, qui sera dénommée Convention sur le droit d'organisation et de négociation collective, 1949 :

Article 1

1. Les travailleurs doivent bénéficier d'une protection adéquate contre tous actes de discrimination tendant à porter atteinte à la liberté syndicale en matière d'emploi.

2. Une telle protection doit notamment s'appliquer en ce qui concerne les actes ayant pour but de :

a) subordonner l'emploi d'un travailleur à la condition qu'il ne s'affilie pas à un syndicat ou cesse de faire partie d'un syndicat ;

b) congédier un travailleur ou lui porter préjudice par tous autres moyens, en raison de son affiliation syndicale ou de sa participation à des activités syndicales en dehors des heures de travail ou, avec le consentement de l'employeur, durant les heures de travail.

Article 2

1. Les organisations de travailleurs et d'employeurs doivent bénéficier d'une protection adéquate contre tous actes d'ingérence des unes à l'égard des autres, soit directement, soit par leurs agents ou membres, dans leur formation, leur fonctionnement et leur administration.

2. Sont notamment assimilées à des actes d'ingérence au sens du présent article des mesures tendant à provoquer la création d'organisations de travailleurs dominées par un employeur ou une organisation d'employeurs, ou à soutenir des organisations de travailleurs par des moyens financiers ou autrement, dans le dessein de placer ces organisations sous le contrôle d'un employeur ou d'une organisation d'employeurs.

Article 3

Des organismes appropriés aux conditions nationales doivent, si nécessaire, être institués pour assurer le respect du droit d'organisation défini par les articles précédents.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate—

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification ;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications ;

Article 4

Des mesures appropriées aux conditions nationales doivent, si nécessaire, être prises pour encourager et promouvoir le développement et l'utilisation les plus larges de procédures de négociation volontaire de conventions collectives entre les employeurs et les organisations d'employeurs d'une part, et les organisations de travailleurs d'autre part, en vue de régler par ce moyen les conditions d'emploi.

Article 5

1. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux forces armées ou à la police sera déterminée par la législation nationale.

2. Conformément aux principes établis par le paragraphe 8 de l'article 19 de la Constitution de l'Organisation internationale du Travail, la ratification de cette convention par un Membre ne devra pas être considérée comme affectant toute loi, toute sentence, toute coutume ou tout accord déjà existants qui accordent aux membres des forces armées et de la police des garanties prévues par la présente convention.

Article 6

La présente convention ne traite pas de la situation des fonctionnaires publics et ne pourra, en aucune manière, être interprétée comme portant préjudice à leurs droits ou à leur statut.

Article 7

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 8

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 9

1. Les déclarations qui seront communiquées au Directeur général du Bureau international du Travail, conformément au paragraphe 2 de l'article 35 de la Constitution de l'Organisation internationale du Travail, devront faire connaître :

a) les territoires pour lesquels le Membre intéressé s'engage à ce que les dispositions de la convention soient appliquées sans modification ;

b) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées avec des modifications, et en quoi consistent lesdites modifications ;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable ;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs *(a)* and *(b)* of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph *(b)*, *(c)* or *(d)* of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications ; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter,

c) les territoires auxquels la convention est inapplicable et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;

d) les territoires pour lesquels il réserve sa décision en attendant un examen plus approfondi de la situation à l'égard desdits territoires.

2. Les engagements mentionnés aux alinéas *a)* et *b)* du premier paragraphe du présent article seront réputés parties intégrantes de la ratification et porteront des effets identiques.

3. Tout Membre pourra renoncer par une nouvelle déclaration à tout ou partie des réserves contenues dans sa déclaration antérieure en vertu des alinéas *b), c)* et *d)* du premier paragraphe du présent article.

4. Tout Membre pourra, pendant les périodes au cours desquelles la présente convention peut être dénoncée conformément aux dispositions de l'article 11, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation dans des territoires déterminés.

Article 10

1. Les déclarations communiquées au Directeur général du Bureau international du Travail conformément aux paragraphes 4 et 5 de l'article 35 de la Constitution de l'Organisation internationale du Travail doivent indiquer si les dispositions de la convention seront appliquées dans le territoire avec ou sans modifications ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle doit spécifier en quoi consistent lesdites modifications.

2. Le Membre ou les Membres ou l'autorité internationale intéressés pourront renoncer entièrement ou partiellement, par une déclaration ultérieure, au droit d'invoquer une modification indiquée dans une déclaration antérieure.

3. Le Membre ou les Membres ou l'autorité internationale intéressés pourront, pendant les périodes au cours desquelles la convention peut être dénoncée conformément aux dispositions de l'article 11, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes d'une déclaration antérieure et faisant connaître la situation en ce qui concerne l'application de cette convention.

Article 11

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la

may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force ;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 12

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications, déclarations et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 13

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications, de toutes déclarations et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 14

A l'expiration de chaque période de dix années à compter de l'entrée en vigueur de la présente convention, le Conseil d'administration du Bureau international du Travail devra présenter à la Conférence générale un rapport sur l'application de la présente convention et décidera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa revision totale ou partielle.

Article 15

1. Au cas où la Conférence adopterait une nouvelle convention portant revision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement :

a) la ratification par un Membre de la nouvelle convention portant revision entraînerait de plein droit, nonobstant l'article 14 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant revision soit entrée en vigueur ;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant revision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant revision.

Article 16

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-second Session which was held at Geneva and declared closed the second day of July 1949.

IN FAITH WHEREOF we have appended our signatures this eighteenth day of August 1949.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa trente-deuxième session qui s'est tenue à Genève et qui a été déclarée close le 2 juillet 1949.

EN FOI DE QUOI ont apposé leurs signatures, ce dix-huitième jour d'août 1949 :

The President of the Conference,
Le Président de la Conférence,

GUILDHAUME MYRDDIN-EVANS.

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

DAVID A. MORSE.

Document No. 122

Abolition of Forced Labour Convention, 1957 (No. 105)

International Labour Conference
Conférence internationale du Travail

CONVENTION 105

CONVENTION CONCERNING THE ABOLITION
OF FORCED LABOUR,
ADOPTED BY THE CONFERENCE
AT ITS FORTIETH SESSION,
GENEVA, 25 JUNE 1957

CONVENTION 105

CONVENTION CONCERNANT L'ABOLITION
DU TRAVAIL FORCÉ,
ADOPTÉE PAR LA CONFÉRENCE
A SA QUARANTIÈME SESSION,
GENÈVE, 25 JUIN 1957

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

CONVENTION CONCERNING THE ABOLITION OF FORCED LABOUR.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and

Having considered the question of forced labour, which is the fourth item on the agenda of the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provides that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and

Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957 :

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—

(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system ;

(b) as a method of mobilising and using labour for purposes of economic development ;

CONVENTION CONCERNANT L'ABOLITION DU TRAVAIL FORCÉ

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 5 juin 1957, en sa quarantième session ;

Après avoir examiné la question du travail forcé, qui constitue le quatrième point à l'ordre du jour de la session ;

Après avoir pris note des dispositions de la convention sur le travail forcé, 1930 ;

Après avoir noté que la convention de 1926 relative à l'esclavage prévoit que des mesures utiles doivent être prises pour éviter que le travail forcé ou obligatoire n'amène des conditions analogues à l'esclavage et que la convention supplémentaire de 1956 relative à l'abolition de l'esclavage, de la traite des esclaves et des institutions et pratiques analogues à l'esclavage vise à obtenir l'abolition complète de la servitude pour dettes et du servage ;

Après avoir noté que la convention sur la protection du salaire, 1949, énonce que le salaire sera payé à intervalles réguliers et interdit les modes de paiement qui privent le travailleur de toute possibilité réelle de quitter son emploi ;

Après avoir décidé d'adopter d'autres propositions relatives à l'abolition de certaines formes de travail forcé ou obligatoire constituant une violation des droits de l'homme tels qu'ils sont visés par la Charte des Nations Unies et énoncés dans la Déclaration universelle des droits de l'homme ;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce vingt-cinquième jour de juin mil neuf cent cinquante-sept, la convention ci-après, qui sera dénommée Convention sur l'abolition du travail forcé, 1957 ;

Article 1

Tout Membre de l'Organisation internationale du Travail qui ratifie la présente convention s'engage à supprimer le travail forcé ou obligatoire et à n'y recourir sous aucune forme :

a) en tant que mesure de coercition ou d'éducation politique ou en tant que sanction à l'égard de personnes qui ont ou expriment certaines opinions politiques ou manifestent leur opposition idéologique à l'ordre politique, social ou économique établi ;

b) en tant que méthode de mobilisation et d'utilisation de la main-d'œuvre à des fins de développement économique ;

(c) as a means of labour discipline ;

(d) as a punishment for having participated in strikes ;

(e) as a means of racial, social, national or religious discrimination.

Article 2

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

Article 3

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 4

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 5

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 6

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 7

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in

c) en tant que mesure de discipline du travail ;

d) en tant que punition pour avoir participé à des grèves ;

e) en tant que mesure de discrimination raciale, sociale, nationale ou religieuse.

Article 2

Tout Membre de l'Organisation internationale du Travail qui ratifie la présente convention s'engage à prendre des mesures efficaces en vue de l'abolition immédiate et complète du travail forcé ou obligatoire tel qu'il est décrit à l'article 1 de la présente convention.

Article 3

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 4

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 5

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 6

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 7

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, confor-

accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 8

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 9

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 5 above, if and when the new revising Convention shall have come into force ;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 10

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Fortieth Session which was held at Geneva and declared closed the twenty-seventh day of June 1957.

IN FAITH WHEREOF we have appended our signatures this fourth day of July 1957.

mément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 8

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa revision totale ou partielle.

Article 9

1. Au cas où la Conférence adopterait une nouvelle convention portant revision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement :

a) la ratification par un Membre de la nouvelle convention portant revision entraînerait de plein droit, nonobstant l'article 5 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant revision soit entrée en vigueur ;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant revision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant revision.

Article 10

Les versions française et anglaise du texte de la présente convention font également foi.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa quarantième session, qui s'est tenue à Genève et qui a été déclarée close le 27 juin 1957.

EN FOI DE QUOI ont apposé leurs signatures, ce quatrième jour de juillet 1957 :

The President of the Conference,

Le Président de la Conférence,

HAROLD HOLT.

The Director-General of the International Labour Office,

Le Directeur général du Bureau international du Travail,

DAVID A. MORSE.

Document No. 123

Rural Workers' Organisations Convention, 1975 (No. 141)

International Labour Conference
Conférence internationale du Travail

CONVENTION 141

CONVENTION CONCERNING ORGANISATIONS
OF RURAL WORKERS AND THEIR ROLE IN ECONOMIC
AND SOCIAL DEVELOPMENT,
ADOPTED BY THE CONFERENCE AT ITS SIXTIETH SESSION,
GENEVA, 23 JUNE 1975

CONVENTION 141

CONVENTION CONCERNANT LES ORGANISATIONS
DE TRAVAILLEURS RURAUX ET LEUR RÔLE DANS
LE DÉVELOPPEMENT ÉCONOMIQUE ET SOCIAL,
ADOPTÉE PAR LA CONFÉRENCE A SA SOIXANTIÈME SESSION,
GENÈVE, 23 JUIN 1975

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

CONVENTION CONCERNING ORGANISATIONS OF RURAL WORKERS AND THEIR ROLE IN ECONOMIC AND SOCIAL DEVELOPMENT.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Recognising that the importance of rural workers in the world makes it urgent to associate them with economic and social development action if their conditions of work and life are to be permanently and effectively improved, and

Noting that in many countries of the world and particularly in developing countries there is massive under-utilisation of land and labour and that this makes it imperative for rural workers to be given every encouragement to develop free and viable organisations capable of protecting and furthering the interests of their members and ensuring their effective contribution to economic and social development, and

Considering that such organisations can and should contribute to the alleviation of the persistent scarcity of food products in various regions of the world, and

Recognising that land reform is in many developing countries an essential factor in the improvement of the conditions of work and life of rural workers and that organisations of such workers should accordingly co-operate and participate actively in the implementation of such reform, and

Recalling the terms of existing international labour Conventions and Recommendations—in particular the Right of Association (Agriculture) Convention, 1921, the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949—which affirm the right of all workers, including rural workers, to establish free and independent organisations, and the provisions of numerous international labour Conventions and Recommendations applicable to rural workers which call for the participation, inter alia, of workers' organisations in their implementation, and

Noting the joint concern of the United Nations and the specialised agencies, in particular the International Labour Organisation and the Food and Agriculture Organisation of the United Nations, with land reform and rural development, and

Noting that the following standards have been framed in co-operation with the Food and Agriculture Organisation of the United Nations and that, with a view to avoiding duplication, there will be continuing co-operation with that Organisation and with the United Nations in promoting and securing the application of these standards, and

Having decided upon the adoption of certain proposals with regard to organisations of rural workers and their role in economic and social development, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and seventy-five the following Convention, which may be cited as the Rural Workers' Organisations Convention, 1975:

CONVENTION CONCERNANT LES ORGANISATIONS DE TRAVAILLEURS RURAUX ET LEUR RÔLE DANS LE DÉVELOPPEMENT ÉCONOMIQUE ET SOCIAL.

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 4 juin 1975, en sa soixantième session ;

Reconnaissant qu'en raison de leur importance dans le monde il est urgent d'associer les travailleurs ruraux aux tâches du développement économique et social pour améliorer de façon durable et efficace leurs conditions de travail et de vie ;

Notant que, dans de nombreux pays du monde et tout particulièrement dans ceux en voie de développement, la terre est utilisée de manière très insuffisante et la main-d'œuvre très largement sous-employée, et que ces faits exigent que les travailleurs ruraux soient encouragés à développer des organisations libres, viables et capables de protéger et défendre les intérêts de leurs membres et d'assurer leur contribution effective au développement économique et social ;

Considérant que l'existence de telles organisations peut et doit contribuer à atténuer la pénurie persistante de denrées alimentaires dans plusieurs parties du monde ;

Reconnaissant que la réforme agraire est, dans un grand nombre de pays en voie de développement, un facteur essentiel à l'amélioration des conditions de travail et de vie des travailleurs ruraux et qu'en conséquence les organisations de ces travailleurs devraient coopérer et participer activement au processus de cette réforme ;

Rappelant les termes des conventions et recommandations internationales du travail existantes — en particulier la convention sur le droit d'association (agriculture) 1921, la convention sur la liberté syndicale et la protection du droit syndical, 1948, et la convention sur le droit d'organisation et de négociation collective, 1949 — qui affirment le droit de tous les travailleurs, y compris les travailleurs ruraux, d'établir des organisations libres et indépendantes, ainsi que les dispositions de nombreuses conventions et recommandations internationales du travail applicables aux travailleurs ruraux qui demandent notamment que les organisations de travailleurs participent à leur application ;

Notant que les Nations Unies et les institutions spécialisées, en particulier l'Organisation internationale du Travail et l'Organisation des Nations Unies pour l'alimentation et l'agriculture, portent toutes un intérêt à la réforme agraire et au développement rural ;

Notant que les normes suivantes ont été élaborées en coopération avec l'Organisation des Nations Unies pour l'alimentation et l'agriculture et que, pour éviter les doubles emplois, la coopération avec cette organisation et les Nations Unies se poursuivra en vue de promouvoir et d'assurer l'application de ces normes ;

Après avoir décidé d'adopter diverses propositions relatives aux organisations de travailleurs ruraux et à leur rôle dans le développement économique et social, question qui constitue le quatrième point à l'ordre du jour de la session ;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce vingt-troisième jour de juin mil neuf cent soixante-quinze, la convention ci-après, qui sera dénommée Convention sur les organisations de travailleurs ruraux, 1975 :

Article 1

This Convention applies to all types of organisations of rural workers, including organisations not restricted to but representative of rural workers.

Article 2

1. For the purposes of this Convention, the term " rural workers " means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or, subject to the provisions of paragraph 2 of this Article, as a self-employed person such as a tenant, sharecropper or small owner-occupier.

2. This Convention applies only to those tenants, sharecroppers or small owner-occupiers who derive their main income from agriculture, who work the land themselves, with the help only of their family or with the help of occasional outside labour and who do not—

(a) permanently employ workers; or

(b) employ a substantial number of seasonal workers; or

(c) have any land cultivated by sharecroppers or tenants.

Article 3

1. All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

2. The principles of freedom of association shall be fully respected; rural workers' organisations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression.

3. The acquisition of legal personality by organisations of rural workers shall not be made subject to conditions of such a character as to restrict the application of the provisions of the preceding paragraphs of this Article.

4. In exercising the rights provided for in this Article rural workers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

5. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Article.

Article 4

It shall be an objective of national policy concerning rural development to facilitate the establishment and growth, on a voluntary basis, of strong and independent organisations of rural workers as an effective means of ensuring the participation of rural workers, without discrimination as defined in the Discrimination (Employment and Occupation) Convention, 1958, in economic and social development and in the benefits resulting therefrom.

Article 5

1. In order to enable organisations of rural workers to play their role in economic and social development, each Member which ratifies this Convention shall adopt and carry out a policy of active encouragement to these organisations, particularly with a view to eliminating obstacles to their establishment, their growth and the pursuit of their lawful activities, as well as such legislative and administrative discrimination against rural workers' organisations and their members as may exist.

2. Each Member which ratifies this Convention shall ensure that national laws or regulations do not, given the special circumstances of the rural sector, inhibit the establishment and growth of rural workers' organisations.

Article 1

La présente convention s'applique à tous les types d'organisations de travailleurs ruraux, y compris les organisations qui ne se limitent pas à ces travailleurs mais qui les représentent.

Article 2

1. Aux fins de la présente convention, les termes « travailleurs ruraux » désignent toutes personnes exerçant, dans les régions rurales, une occupation agricole, artisanale ou autre, assimilée ou connexe, qu'il s'agisse de salariés ou, sous réserve du paragraphe 2 du présent article, de personnes travaillant à leur propre compte, par exemple les fermiers, métayers et petits propriétaires exploitants.

2. La présente convention ne s'applique qu'à ceux des fermiers, métayers ou petits propriétaires exploitants dont la principale source de revenu est l'agriculture et qui travaillent la terre eux-mêmes avec la seule aide de leur famille ou en recourant à des tiers à titre purement occasionnel et qui :

a) n'emploient pas de façon permanente de la main-d'œuvre, ou

b) n'emploient pas une main-d'œuvre saisonnière nombreuse, ou

c) ne font pas cultiver leurs terres par des métayers ou des fermiers.

Article 3

1. Toutes les catégories de travailleurs ruraux, qu'il s'agisse de salariés ou de personnes travaillant à leur propre compte, ont le droit, sans autorisation préalable, de constituer des organisations de leur choix ainsi que celui de s'affilier à ces organisations, à la seule condition de se conformer aux statuts de ces dernières.

2. Les principes de la liberté syndicale devront être respectés pleinement ; les organisations de travailleurs ruraux devront être indépendantes et établies sur une base volontaire et ne devront être soumises à aucune ingérence, contrainte ou mesure répressive.

3. L'acquisition de la personnalité juridique par les organisations de travailleurs ruraux ne peut être subordonnée à des conditions de nature à mettre en cause l'application des dispositions des paragraphes 1 et 2 du présent article.

4. Dans l'exercice des droits qui leur sont reconnus par le présent article, les travailleurs ruraux et leurs organisations respectives sont tenus, à l'instar des autres personnes ou collectivités organisées, de respecter la légalité.

5. La législation nationale ne devra porter atteinte ni être appliquée de manière à porter atteinte aux garanties prévues par le présent article.

Article 4

L'un des objectifs de la politique nationale de développement rural devra être de faciliter la constitution et le développement, sur une base volontaire, d'organisations de travailleurs ruraux, fortes et indépendantes, comme moyen efficace d'assurer que ces travailleurs, sans discrimination — au sens de la convention concernant la discrimination (emploi et profession), 1958 —, participent au développement économique et social et bénéficient des avantages qui en découlent.

Article 5

1. Pour permettre aux organisations de travailleurs ruraux de jouer leur rôle dans le développement économique et social, tout Membre qui ratifie la présente convention devra adopter et appliquer une politique visant à encourager ces organisations, notamment en vue d'éliminer les obstacles qui s'opposent à leur constitution, à leur développement et à l'exercice de leurs activités licites, ainsi que les discriminations d'ordre législatif et administratif dont les organisations de travailleurs ruraux et leurs membres pourraient faire l'objet.

2. Tout Membre qui ratifie la présente convention devra s'assurer que la législation nationale ne fait pas obstacle, compte tenu des conditions propres au secteur rural, à la constitution et au développement d'organisations de travailleurs ruraux.

Article 6

Steps shall be taken to promote the widest possible understanding of the need to further the development of rural workers' organisations and of the contribution they can make to improving employment opportunities and general conditions of work and life in rural areas as well as to increasing the national income and achieving a better distribution thereof.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 6

Des mesures devront être prises afin de promouvoir la plus large compréhension possible de la nécessité de développer les organisations de travailleurs ruraux et la contribution qu'elles peuvent apporter à une amélioration des possibilités d'emploi et des conditions générales de travail et de vie dans les régions rurales ainsi qu'à l'accroissement et à une meilleure répartition du revenu national.

Article 7

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 8

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque membre douze mois après la date où sa ratification aura été enregistrée.

Article 9

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 10

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 11

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte de Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 12

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixtieth Session which was held at Geneva and declared closed the twenty-fifth day of June 1975.

IN FAITH WHEREOF we have appended our signatures this twenty-sixth day of June 1975.

Article 13

1. Au cas où la Conférence adopterait une nouvelle convention portant révision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement :

a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit, nonobstant l'article 9 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur ;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 14

Les versions française et anglaise du texte de la présente convention font également foi.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa soixantième session qui s'est tenue à Genève et qui a été déclarée close le vingt-cinquième jour de juin 1975.

EN FOI DE QUOI ont apposé leurs signatures, ce vingt-sixième jour de juin 1975:

The President of the Conference,
Le Président de la Conférence,

BLAS F. OPLE

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

FRANCIS BLANCHARD

Document No. 124

Labour Relations (Public Service) Convention, 1978 (No.151)

International Labour Conference
Conférence internationale du Travail

CONVENTION 151

CONVENTION CONCERNING PROTECTION OF THE
RIGHT TO ORGANISE AND PROCEDURES FOR DETERMINING
CONDITIONS OF EMPLOYMENT IN THE PUBLIC SERVICE,
ADOPTED BY THE CONFERENCE AT ITS SIXTY-FOURTH SESSION,
GENEVA, 27 JUNE 1978

CONVENTION 151

CONVENTION CONCERNANT LA PROTECTION DU DROIT
D'ORGANISATION ET LES PROCÉDURES DE DÉTERMINATION
DES CONDITIONS D'EMPLOI DANS LA FONCTION PUBLIQUE,
ADOPTÉE PAR LA CONFÉRENCE A SA SOIXANTE-QUATRIÈME SESSION,
GENÈVE, 27 JUIN 1978

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

CONVENTION CONCERNING PROTECTION OF THE RIGHT TO ORGANISE AND PROCEDURES FOR DETERMINING CONDITIONS OF EMPLOYMENT IN THE PUBLIC SERVICE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Noting the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Workers' Representatives Convention and Recommendation, 1971, and

Recalling that the Right to Organise and Collective Bargaining Convention, 1949, does not cover certain categories of public employees and that the Workers' Representatives Convention and Recommendation, 1971, apply to workers' representatives in the undertaking, and

Noting the considerable expansion of public-service activities in many countries and the need for sound labour relations between public authorities and public employees' organisations, and

Having regard to the great diversity of political, social and economic systems among member States and the differences in practice among them (e.g. as to the respective functions of central and local government, of federal, state and provincial authorities, and of state-owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships), and

Taking into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument, owing to the differences in many countries between private and public employment, as well as the difficulties of interpretation which have arisen in respect of the application of relevant provisions of the Right to Organise and Collective Bargaining Convention, 1949, to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight the following Convention, which may be cited as the Labour Relations (Public Service) Convention, 1978:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or

CONVENTION CONCERNANT LA PROTECTION DU DROIT D'ORGANISATION ET LES PROCÉDURES DE DÉTERMINATION DES CONDITIONS D'EMPLOI DANS LA FONCTION PUBLIQUE

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 7 juin 1978, en sa soixante-quatrième session ;

Notant les dispositions de la convention sur la liberté syndicale et la protection du droit syndical, 1948, de la convention sur le droit d'organisation et de négociation collective, 1949, et de la convention et de la recommandation concernant les représentants des travailleurs, 1971 ;

Rappelant que la convention sur le droit d'organisation et de négociation collective, 1949, ne vise pas certaines catégories d'agents publics et que la convention et la recommandation concernant les représentants des travailleurs, 1971, s'appliquent aux représentants des travailleurs dans l'entreprise ;

Notant l'expansion considérable des activités de la fonction publique dans beaucoup de pays et le besoin de relations de travail saines entre les autorités publiques et les organisations d'agents publics ;

Constatant la grande diversité des systèmes politiques, sociaux et économiques des Etats Membres ainsi que celle de leurs pratiques (par exemple en ce qui concerne les fonctions respectives des autorités centrales et locales, celles des autorités fédérales, des Etats fédérés et des provinces, et celles des entreprises qui sont propriété publique et des différents types d'organismes publics autonomes ou semi-autonomes, ou en ce qui concerne la nature des relations d'emploi) ;

Tenant compte des problèmes particuliers que posent la délimitation du champ d'application d'un instrument international et l'adoption de définitions aux fins de cet instrument, en raison des différences existant dans de nombreux pays entre l'emploi dans le secteur public et le secteur privé, ainsi que des difficultés d'interprétation qui ont surgi à propos de l'application aux fonctionnaires publics de dispositions pertinentes de la convention sur le droit d'organisation et de négociation collective, 1949, et des observations par lesquelles les organes de contrôle de l'OIT ont fait remarquer à diverses reprises que certains gouvernements ont appliqué ces dispositions d'une façon qui exclut de larges groupes d'agents publics du champ d'application de cette convention ;

Après avoir décidé d'adopter diverses propositions relatives à la liberté syndicale et aux procédures de détermination des conditions d'emploi dans la fonction publique, question qui constitue le cinquième point à l'ordre du jour de la session ;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce vingt-septième jour de juin 1978, la convention ci-après, qui sera dénommée Convention sur les relations de travail dans la fonction publique, 1978.

PARTIE I. CHAMP D'APPLICATION ET DÉFINITIONS

Article 1

1. La présente convention s'applique à toutes les personnes employées par les autorités publiques, dans la mesure où des dispositions plus favorables d'autres conventions internationales du travail ne leur sont pas applicables.

2. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux agents de niveau élevé dont les fonctions sont normalement

managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Article 2

For the purpose of this Convention, the term " public employee " means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term " public employees' organisation " means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

Part II. Protection of the Right to Organise

Article 4

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;

(b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

Article 5

1. Public employees' organisations shall enjoy complete independence from public authorities.

2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

Part III. Facilities to Be Afforded to Public Employees' Organisations

Article 6

1. Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.

considérées comme ayant trait à la formulation des politiques à suivre ou à des tâches de direction ou aux agents dont les responsabilités ont un caractère hautement confidentiel sera déterminée par la législation nationale.

3. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux forces armées et à la police sera déterminée par la législation nationale.

Article 2

Aux fins de la présente convention, l'expression « agent public » désigne toute personne à laquelle s'applique cette convention conformément à son article 1.

Article 3

Aux fins de la présente convention, l'expression « organisation d'agents publics » désigne toute organisation, quelle que soit sa composition, ayant pour but de promouvoir et de défendre les intérêts des agents publics.

Partie II. Protection du droit d'organisation

Article 4

1. Les agents publics doivent bénéficier d'une protection adéquate contre tous actes de discrimination tendant à porter atteinte à la liberté syndicale en matière d'emploi.

2. Une telle protection doit notamment s'appliquer en ce qui concerne les actes ayant pour but de :

a) subordonner l'emploi d'un agent public à la condition qu'il ne s'affilie pas à une organisation d'agents publics ou cesse de faire partie d'une telle organisation ;

b) congédier un agent public ou lui porter préjudice par tous autres moyens, en raison de son affiliation à une organisation d'agents publics ou de sa participation aux activités normales d'une telle organisation.

Article 5

1. Les organisations d'agents publics doivent jouir d'une complète indépendance à l'égard des autorités publiques.

2. Les organisations d'agents publics doivent bénéficier d'une protection adéquate contre tous actes d'ingérence des autorités publiques dans leur formation, leur fonctionnement et leur administration.

3. Sont notamment assimilées aux actes d'ingérence, au sens du présent article, des mesures tendant à promouvoir la création d'organisations d'agents publics dominées par une autorité publique, ou à soutenir des organisations d'agents publics par des moyens financiers ou autrement, dans le dessein de placer ces organisations sous le contrôle d'une autorité publique.

Partie III. Facilités a accorder aux organisations d'agents publics

Article 6

1. Des facilités doivent être accordées aux représentants des organisations d'agents publics reconnues, de manière à leur permettre de remplir rapidement et efficacement leurs fonctions aussi bien pendant leurs heures de travail qu'en dehors de celles-ci.

2. L'octroi de telles facilités ne doit pas entraver le fonctionnement efficace de l'administration ou du service intéressé.

3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

Part IV. Procedures for Determining Terms and Conditions of Employment

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

Part V. Settlement of Disputes

Article 8

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

Part VI. Civil and Political Rights

Article 9

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

Part VII. Final Provisions

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour

3. La nature et l'étendue de ces facilités doivent être déterminées conformément aux méthodes mentionnées dans l'article 7 de la présente convention ou par tous autres moyens appropriés.

Partie IV. Procédures de détermination des conditions d'emploi

Article 7

Des mesures appropriées aux conditions nationales doivent, si nécessaire, être prises pour encourager et promouvoir le développement et l'utilisation les plus larges de procédures permettant la négociation des conditions d'emploi entre les autorités publiques intéressées et les organisations d'agents publics, ou de toute autre méthode permettant aux représentants des agents publics de participer à la détermination desdites conditions.

Partie V. Règlement des différends

Article 8

Le règlement des différends survenant à propos de la détermination des conditions d'emploi sera recherché, d'une manière appropriée aux conditions nationales, par voie de négociation entre les parties ou par une procédure donnant des garanties d'indépendance et d'impartialité, telle que la médiation, la conciliation ou l'arbitrage, instituée de telle sorte qu'elle inspire la confiance des parties intéressées.

Partie VI. Droits civils et politiques

Article 9

Les agents publics doivent bénéficier, comme les autres travailleurs, des droits civils et politiques qui sont essentiels à l'exercice normal de la liberté syndicale, sous la seule réserve des obligations tenant à leur statut et à la nature des fonctions qu'ils exercent.

Partie VII. Dispositions finales

Article 10

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 11

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque membre douze mois après la date où sa ratification aura été enregistrée.

Article 12

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau inter-

Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

national du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 13

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 14

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 15

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 16

1. Au cas où la Conférence adopterait une nouvelle convention portant révision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement :

a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit, nonobstant l'article 12 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur ;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 17

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-fourth Session which was held at Geneva and declared closed the twenty-eighth day of June 1978.

IN FAITH WHEREOF we have appended our signatures this twenty-seventh day of June 1978.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa soixante-quatrième session qui s'est tenue à Genève et qui a été déclarée close le 28 juin 1978.

EN FOI DE QUOI ont apposé leurs signatures, ce vingt-septième jour de juin 1978:

The President of the Conference,
Le Président de la Conférence,

PEDRO OJEDA PAULLADA

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

FRANCIS BLANCHARD

Document No. 125

Collective Bargaining Convention, 1981 (No. 154)

International Labour Conference
Conférence internationale du Travail

CONVENTION 154

CONVENTION CONCERNING THE PROMOTION
OF COLLECTIVE BARGAINING,
ADOPTED BY THE CONFERENCE AT ITS SIXTY-SEVENTH SESSION,
GENEVA, 19 JUNE 1981

CONVENTION 154

CONVENTION CONCERNANT LA PROMOTION
DE LA NÉGOCIATION COLLECTIVE,
ADOPTÉE PAR LA CONFÉRENCE À SA SOIXANTE-SEPTIÈME SESSION,
GENÈVE, 19 JUIN 1981

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

CONVENTION CONCERNING THE PROMOTION OF COLLECTIVE BARGAINING

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June 1981, and

Reaffirming the provision of the Declaration of Philadelphia recognising "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve... the effective recognition of the right of collective bargaining", and noting that this principle is "fully applicable to all people everywhere", and

Having regard to the key importance of existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Collective Agreements Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, the Labour Relations (Public Service) Convention and Recommendation, 1978, and the Labour Administration Convention and Recommendation, 1978, and

Considering that it is desirable to make greater efforts to achieve the objectives of these standards and, particularly, the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949, and in Paragraph 1 of the Collective Agreements Recommendation, 1951, and

Considering accordingly that these standards should be complemented by appropriate measures based on them and aimed at promoting free and voluntary collective bargaining, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Collective Bargaining Convention, 1981:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all branches of economic activity.

2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.

3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 2

For the purpose of this Convention the term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for–

CONVENTION CONCERNANT LA PROMOTION DE LA NÉGOCIATION COLLECTIVE

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 3 juin 1981, en sa soixante-septième session;

Réaffirmant le passage de la Déclaration de Philadelphie, qui reconnaît «l'obligation solennelle pour l'Organisation internationale du Travail de seconder la mise en œuvre, parmi les différentes nations du monde, de programmes propres à réaliser... la reconnaissance effective du droit de négociation collective», et notant que ce principe est «pleinement applicable à tous les peuples du monde»;

Tenant compte de l'importance capitale des normes internationales contenues dans la convention sur la liberté syndicale et la protection du droit syndical, 1948; la convention sur le droit d'organisation et de négociation collective, 1949; la recommandation sur les conventions collectives, 1951; la recommandation sur la conciliation et l'arbitrage volontaires, 1951; la convention et le recommandation sur les relations de travail dans la fonction publique, 1978; ainsi que la convention et la recommandation sur l'administration du travail, 1978;

Considérant qu'il est souhaitable de faire de plus grands efforts pour réaliser les buts de ces normes et particulièrement les principes généraux contenus dans l'article 4 de la convention sur le droit d'organisation et de négociation collective, 1949, et le paragraphe 1 de la recommandation sur les conventions collectives, 1951;

Considérant par conséquent que ces normes devraient être complétées par des mesures appropriées fondées sur lesdites normes et destinées à promouvoir la négociation collective libre et volontaire;

Après avoir décidé d'adopter diverses propositions relatives à la promotion de la négociation collective, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce dix-neuvième jour de juin mil neuf cent quatre-vingt-un, la convention ci-après, qui sera dénommée Convention sur la négociation collective, 1981:

Partie I. Champ d'application et définitions

Article 1

1. La présente convention s'applique à toutes les branches d'activité économique.

2. La mesure dans laquelle les garanties prévues par la présente convention s'appliquent aux forces armées et à la police peut être déterminée par la législation ou la pratique nationales.

3. Pour ce qui concerne la fonction publique, des modalités particulières d'application de la présente convention peuvent être fixées par la législation ou la pratique nationales.

Article 2

Aux fins de la présente convention, le terme «négociation collective» s'applique à toutes les négociations qui ont lieu entre un employeur, un groupe d'employeurs ou une ou plusieurs organisations d'employeurs, d'une part, et une ou plusieurs organisations de travailleurs, d'autre part, en vue de:

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 3

1. Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph *(b)*, of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term "collective bargaining" shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term "collective bargaining" also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned.

PART II. METHODS OF APPLICATION

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

PART III. PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs *(a)*, *(b)* and *(c)* of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Article 7

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and,

a) fixer les conditions de travail et d'emploi, et/ou

b) régler les relations entre les employeurs et les travailleurs, et/ou

c) régler les relations entre les employeurs ou leurs organisations et une ou plusieurs organisations de travailleurs.

Article 3

1. Pour autant que la loi ou la pratique nationales reconnaissent l'existence de représentants des travailleurs tels qu'ils sont définis à l'article 3, alinéa *b)*, de la convention concernant les représentants des travailleurs, 1971, la loi ou la pratique nationales peuvent déterminer dans quelle mesure le terme « négociation collective » devra également englober, aux fins de la présente convention, les négociations avec ces représentants.

2. Lorsque, en application du paragraphe 1 ci-dessus, le terme « négociation collective » englobe également les négociations avec les représentants des travailleurs visés dans ce paragraphe, des mesures appropriées devront être prises, chaque fois qu'il y a lieu, pour garantir que la présence de ces représentants ne puisse servir à affaiblir la situation des organisations de travailleurs intéressées.

PARTIE II. MÉTHODES D'APPLICATION

Article 4

Pour autant que l'application de la présente convention n'est pas assurée par voie de conventions collectives, par voie de sentences arbitrales ou de toute autre manière conforme à la pratique nationale, elle devra l'être par voie de législation nationale.

PARTIE III. PROMOTION DE LA NÉGOCIATION COLLECTIVE

Article 5

1. Des mesures adaptées aux circonstances nationales devront être prises en vue de promouvoir la négociation collective.

2. Les mesures visées au paragraphe 1 ci-dessus devront avoir les objectifs suivants :

a) que la négociation collective soit rendue possible pour tous les employeurs et pour toutes les catégories de travailleurs des branches d'activité visées par la présente convention ;

b) que la négociation collective soit progressivement étendue à toutes les matières couvertes par les alinéas *a)*, *b)* et *c)* de l'article 2 de la présente convention ;

c) que le développement de règles de procédure convenues entre les organisations d'employeurs et les organisations de travailleurs soit encouragé ;

d) que la négociation collective ne soit pas entravée par suite de l'inexistence de règles régissant son déroulement ou de l'insuffisance ou du caractère inapproprié de ces règles ;

e) que les organes et les procédures de règlement des conflits du travail soient conçus de telle manière qu'ils contribuent à promouvoir la négociation collective.

Article 6

Les dispositions de cette convention ne font pas obstacle au fonctionnement de systèmes de relations professionnelles dans lesquels la négociation collective a lieu dans le cadre de mécanismes ou d'institutions de conciliation et/ou d'arbitrage auxquels les parties à la négociation collective participent volontairement.

Article 7

Les mesures prises par les autorités publiques pour encourager et promouvoir le développement de la négociation collective feront l'objet de consultations

whenever possible, agreement between public authorities and employers' and workers' organisations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

Part IV. Final Provisions

Article 9

This Convention does not revise any existing Convention or Recommendation.

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

préalables et, chaque fois qu'il est possible, d'accords entre les pouvoirs publics et les organisations d'employeurs et de travailleurs.

Article 8

Les mesures prises en vue de promouvoir la négociation collective ne pourront être conçues ou appliquées de manière qu'elles entravent la liberté de négociation collective.

Partie IV. Dispositions finales

Article 9

La présente convention ne porte révision d'aucune convention ou recommandation existantes.

Article 10

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 11

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 12

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 13

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 14

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides–

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

Article 15

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 16

1. Au cas où la Conférence adopterait une nouvelle convention portant révision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement:

a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit, nonobstant l'article 12 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 17

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa soixante-septième session qui s'est tenue à Genève et qui a été déclarée close le vingt-quatre juin 1981.

EN FOI DE QUOI ont apposé leurs signatures, ce vingt-cinquième jour de juin 1981:

The President of the Conference,
Le Président de la Conférence,

ALIOUNE DIAGNE

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

FRANCIS BLANCHARD

Document No. 126

Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

International Labour Conference
Conférence internationale du Travail

RECOMMENDATION 92

RECOMMENDATION CONCERNING VOLUNTARY
CONCILIATION AND ARBITRATION,
ADOPTED BY THE CONFERENCE AT ITS
THIRTY-FOURTH SESSION, GENEVA, 29 JUNE 1951

RECOMMANDATION 92

RECOMMANDATION CONCERNANT LA CONCILIATION
ET L'ARBITRAGE VOLONTAIRES,
ADOPTÉE PAR LA CONFÉRENCE A SA
TRENTE-QUATRIÈME SESSION, GENÈVE, 29 JUIN 1951

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

RECOMMENDATION CONCERNING VOLUNTARY CONCILIATION AND ARBITRATION.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to voluntary conciliation and arbitration, which is included in the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation designed to be implemented by the parties concerned or by the public authorities as may be appropriate under national conditions,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Recommendation, which may be cited as the Voluntary Conciliation and Arbitration Recommendation, 1951.

I. Voluntary Conciliation

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

3. (1) The procedure should be free of charge and expeditious ; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.

(2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or *ex officio* by the voluntary conciliation authority.

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

RECOMMANDATION CONCERNANT LA CONCILIATION ET L'ARBITRAGE VOLONTAIRES.

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 6 juin 1951, en sa trente-quatrième session,

Après avoir décidé d'adopter diverses propositions relatives à la conciliation et l'arbitrage volontaires, question qui est comprise dans le cinquième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'une recommandation dont la mise en œuvre serait assurée par les parties intéressées ou par les autorités publiques, suivant la méthode qui correspond aux conditions nationales,

adopte, ce vingt-neuvième jour de juin mil neuf cent cinquante et un, la recommandation ci-après, qui sera dénommée Recommandation sur la conciliation et l'arbitrage volontaires, 1951.

I. Conciliation volontaire

1. Des organismes de conciliation volontaire adaptés aux conditions nationales devraient être établis en vue de contribuer à la prévention et au règlement des conflits de travail entre employeurs et travailleurs.

2. Tout organisme de conciliation volontaire établi sur une base mixte devrait comprendre une représentation égale des employeurs et des travailleurs.

3. (1) La procédure devrait être gratuite et expéditive : tout délai qui serait prescrit par la législation nationale devrait être fixé d'avance et réduit à un minimum.

(2) Des dispositions devraient être prises pour que la procédure puisse être engagée, soit sur l'initiative de l'une des parties au conflit, soit d'office par l'organisme de conciliation volontaire.

4. Si un conflit a été soumis à une procédure de conciliation avec le consentement de toutes les parties intéressées, celles-ci devraient être encouragées à s'abstenir de grèves et de lock-outs pendant que la conciliation est en cours.

5. Tous accords auxquels aboutissent les parties, soit au cours de la procédure, soit au terme de celle-ci, devraient être rédigés par écrit et assimilés à des conventions normalement conclues.

II. Voluntary Arbitration

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

III. General

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organisation during its Thirty-fourth Session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

II. Arbitrage volontaire

6. Si un conflit a été soumis pour règlement final à l'arbitrage avec le consentement de toutes les parties intéressées, celles-ci devraient, tant que la procédure d'arbitrage est en cours, être encouragées à s'abstenir de grèves et de lock-outs et à accepter la décision arbitrale.

III. Disposition générale

7. Aucune disposition de la présente recommandation ne pourra être interprétée comme limitant d'une manière quelconque le droit de grève.

Le texte qui précède est le texte authentique de la recommandation dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa trente-quatrième session qui s'est tenue à Genève et qui a été déclarée close le 29 juin 1951.

EN FOI DE QUOI ont apposé leurs signatures, ce deuxième jour d'août 1951.

The President of the Conference,
Le Président de la Conférence,

RAPPARD.

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

DAVID A. MORSE.

Document No. 127

Private Employment Agencies Recommendation, 1997 (No. 188)

International Labour Conference
Conférence internationale du Travail

RECOMMENDATION 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-FIFTH SESSION, GENEVA, 19 JUNE 1997

RECOMMANDATION 188

RECOMMANDATION CONCERNANT LES AGENCES D'EMPLOI PRIVÉES
ADOPTÉE PAR LA CONFÉRENCE À SA
QUATRE-VINGT-CINQUIÈME SESSION, GENÈVE, 19 JUIN 1997

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Recommendation 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. General provisions

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as "the Convention") and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

II. Protection of workers

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.

5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.

8. Private employment agencies should:

(a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;

RECOMMANDATION CONCERNANT LES AGENCES D'EMPLOI PRIVÉES

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 3 juin 1997, en sa quatre-vingt-cinquième session;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la convention sur les bureaux de placement payants (révisée), 1949, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation complétant la convention sur les agences d'emploi privées, 1997,

adopte, ce dix-neuvième jour de juin mil neuf cent quatre-vingt-dix-sept, la recommandation ci-après, qui sera dénommée Recommandation sur les agences d'emploi privées, 1997:

I. Dispositions générales

1. Les dispositions de la présente recommandation complètent celles de la convention sur les agences d'emploi privées, 1997 (ci-après dénommée «la convention») et devraient s'appliquer conjointement avec celles-ci.

2. (1) Des organes tripartites ou des organisations d'employeurs et de travailleurs devraient être associés, autant que possible, lors de l'élaboration et de l'application des dispositions visant à donner effet à la convention.

(2) Le cas échéant, la législation nationale applicable aux agences d'emploi privées devrait être complétée par des normes techniques, des directives, des codes de déontologie, des procédures d'autodiscipline ou d'autres moyens conformes à la pratique nationale.

3. Les Etats Membres devraient, lorsque cela est approprié et praticable, échanger les informations et partager l'expérience acquise au sujet des contributions des agences d'emploi privées au fonctionnement du marché du travail et en faire part au Bureau international du Travail.

II. Protection des travailleurs

4. Les Membres devraient adopter les mesures nécessaires et appropriées pour prévenir et pour éliminer les pratiques non conformes à la déontologie de la part des agences d'emploi privées. Ces mesures peuvent comprendre l'adoption de lois ou réglementations prévoyant des sanctions, y compris l'interdiction des agences d'emploi privées se livrant à des pratiques non conformes à la déontologie.

5. Les travailleurs employés par les agences d'emploi privées visées au paragraphe 1 *b)* de l'article 1 de la convention devraient, le cas échéant, avoir un contrat de travail écrit précisant leurs conditions d'emploi. Au minimum, ces travailleurs devraient être informés de leurs conditions d'emploi avant le début effectif de leur mission.

6. Les agences d'emploi privées ne devraient pas mettre à la disposition d'une entreprise utilisatrice des travailleurs aux fins de remplacer ceux de cette entreprise qui sont en grève.

7. L'autorité compétente devrait réprimer les pratiques déloyales en matière d'annonces ainsi que les annonces mensongères, y compris celles qui offrent des emplois inexistants.

8. Les agences d'emploi privées:

a) ne devraient pas sciemment recruter, placer ou employer des travailleurs à des emplois qui comportent des dangers et des risques inacceptables ou lorsqu'ils peuvent être victimes d'abus ou de traitements discriminatoires de toute sorte;

(b) inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.

9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.

13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.

14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

(a) prevent the user enterprise from hiring an employee of the agency assigned to it;

(b) restrict the occupational mobility of an employee;

(c) impose penalties on an employee accepting employment in another enterprise.

III. Relationship between the public employment service and private employment agencies

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

b) devraient informer les travailleurs migrants, autant que possible dans leur propre langue ou dans une langue qui leur soit familière, de la nature de l'emploi offert et des conditions d'emploi qui sont applicables.

9. Les agences d'emploi privées devraient se voir interdire, ou empêcher par d'autres moyens, de formuler ou de publier des annonces de vacances de postes ou des offres d'emploi qui auraient pour résultat, direct ou indirect, une discrimination fondée sur des motifs tels que la race, la couleur, le sexe, l'âge, la religion, l'opinion politique, l'ascendance nationale, l'origine sociale, l'origine ethnique, le handicap, le statut matrimonial ou familial, la préférence sexuelle ou l'appartenance à une organisation de travailleurs.

10. Les agences d'emploi privées devraient être encouragées à promouvoir l'égalité dans l'emploi par le moyen de programmes d'action positive.

11. Interdiction devrait être faite aux agences d'emploi privées de consigner, dans des fichiers ou des registres, des données personnelles qui ne soient pas nécessaires à l'évaluation de l'aptitude des candidats pour les emplois pour lesquels ils sont ou pourraient être considérés.

12. (1) Les agences d'emploi privées ne devraient pas conserver les données personnelles d'un travailleur plus longtemps qu'il n'est justifié par le but précis de leur collecte, ou au-delà de la période durant laquelle le travailleur souhaite figurer sur une liste de candidats.

(2) Des mesures devraient être prises pour garantir que les travailleurs puissent consulter toutes les données personnelles les concernant, qu'elles soient traitées automatiquement, par voie informatique ou manuellement. Ces mesures devraient comprendre le droit, pour le travailleur, d'obtenir et d'examiner une copie de toutes ces données, ainsi que celui d'exiger que les données incorrectes ou incomplètes soient supprimées ou rectifiées.

(3) A moins que ces données ne soient directement liées aux conditions requises par l'exercice d'une profession donnée et que le travailleur intéressé ne l'autorise expressément, les agences d'emploi privées ne devraient pas demander, conserver ou utiliser des informations sur l'état de santé d'un travailleur, ou utiliser ces informations pour décider de son aptitude à l'emploi.

13. Les agences d'emploi privées et l'autorité compétente devraient prendre des mesures pour promouvoir le recours à des méthodes de sélection appropriées, équitables et efficaces.

14. Les agences d'emploi privées devraient disposer d'un personnel suffisamment qualifié et formé.

15. En tenant dûment compte des droits et obligations prévus par la législation nationale, en ce qui concerne la cessation des contrats de travail, les agences d'emploi privées fournissant les services visés au paragraphe 1 *b)* de l'article 1 de la convention ne devraient pas:

a) empêcher l'entreprise utilisatrice de recruter le salarié mis à sa disposition;

b) limiter la mobilité professionnelle du salarié;

c) infliger des sanctions à un salarié qui accepte de travailler pour une autre entreprise.

III. Relations entre le service public de l'emploi et les agences d'emploi privées

16. La coopération entre le service public de l'emploi et les agences d'emploi privées en vue de la mise en œuvre d'une politique nationale sur l'organisation du marché du travail devrait être encouragée; à cet effet, des organes comprenant des représentants du service public de l'emploi et des agences d'emploi privées ainsi que des organisations d'employeurs et de travailleurs les plus représentatives pourraient être mis en place.

17. Les mesures tendant à établir une coopération entre le service public de l'emploi et les agences d'emploi privées pourraient inclure:

(a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;
(b) exchanging vacancy notices;
(c) launching of joint projects, for example in training;
(d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
(e) training of staff;
(f) consulting regularly with a view to improving professional practices.

a) la mise en commun d'informations et l'utilisation d'une terminologie commune pour améliorer la transparence du fonctionnement du marché du travail;

b) des échanges d'avis de vacances de poste;

c) le lancement de projets communs, par exemple dans le domaine de la formation;

d) la conclusion de conventions entre le service public de l'emploi et les agences d'emploi privées, relatives à l'exécution de certaines activités telles que des projets pour l'insertion des chômeurs de longue durée;

e) la formation du personnel;

f) des consultations régulières visant à améliorer les pratiques professionnelles.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organization during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.

IN FAITH WHEREOF we have appended our signatures this twentieth day of June 1997.

Le texte qui précède est le texte authentique de la recommandation dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa quatre-vingt-cinquième session qui s'est tenue à Genève et qui a été déclarée close le 19 juin 1997.

EN FOI DE QUOI ont apposé leurs signatures, ce vingtième jour de juin 1997:

The President of the Conference,
La Présidente de la Conférence,
OLGA KELTOSOVÁ

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,
MICHEL HANSENNE

Document No. 128

Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022

ILO Declaration on Fundamental Principles and Rights at Work

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

   (a) that in freely joining the ILO, all Members 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 Organization to the best of their resources and fully in line with their specific circumstances;

   (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

   (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; and

   (e) a safe and healthy working environment.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to

attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

(a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

(b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex (Revised)
Follow-up to the Declaration[1]

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report on the effect given to the promotion of the fundamental principles and rights at work that will serve to inform the recurrent discussion at the Conference on the needs of the Members, the ILO action undertaken, and the results achieved in the promotion of the fundamental principles and rights at work.

[1] Ed. note: The original text of the Follow-up to the Declaration, as established by the International Labour Conference in 1998, was superseded by the revised text of the annex adopted by the International Labour Conference in 2010.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover the five categories of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global Report on fundamental principles and rights at work

A. Purpose and scope

1. The purpose of the Global Report is to provide a dynamic global picture relating to the five categories of fundamental principles and rights at work noted during the preceding period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, including in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution. It will also refer to the experience gained from technical cooperation and other relevant activities of the ILO.

2. This report will be submitted to the Conference for a recurrent discussion on the strategic objective of fundamental principles and rights at work based on the modalities agreed by the Governing Body. It will then be for the Conference to draw conclusions from this discussion on all available ILO means of action, including the priorities and plans of action for technical cooperation to be implemented for the following period, and to guide the Governing Body and the Office in their responsibilities.

IV. It is understood that:

1. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

Document No. 129

Declaration on Social Justice for a Fair Globalization (2008), as amended in 2022

ILO Declaration on Social Justice for a Fair Globalization

The International Labour Conference, meeting in Geneva on the occasion of its Ninety-seventh Session,

Considering that the present context of globalization, characterized by the diffusion of new technologies, the flow of ideas, the exchange of goods and services, the increase in capital and financial flows, the internationalization of business and business processes and dialogue as well as the movement of persons, especially working women and men, is reshaping the world of work in profound ways:

— on the one hand, the process of economic cooperation and integration has helped a number of countries to benefit from high rates of economic growth and employment creation, to absorb many of the rural poor into the modern urban economy, to advance their developmental goals, and to foster innovation in product development and the circulation of ideas;

— on the other hand, global economic integration has caused many countries and sectors to face major challenges of income inequality, continuing high levels of unemployment and poverty, vulnerability of economies to external shocks, and the growth of both unprotected work and the informal economy, which impact on the employment relationship and the protections it can offer;

Recognizing that achieving an improved and fair outcome for all has become even more necessary in these circumstances to meet the universal aspiration for social justice, to reach full employment, to ensure the sustainability of open societies and the global economy, to achieve social cohesion and to combat poverty and rising inequalities;

Convinced that the International Labour Organization has a key role to play in helping to promote and achieve progress and social justice in a constantly changing environment:

— based on the mandate contained in the ILO Constitution, including the Declaration of Philadelphia (1944), which continues to be fully relevant

in the twenty-first century and should inspire the policy of its Members and which, among other aims, purposes and principles:

- affirms that labour is not a commodity and that poverty anywhere constitutes a danger to prosperity everywhere;
- recognizes that the ILO has the solemn obligation to further among the nations of the world programmes which will achieve the objectives of full employment and the raising of standards of living, a minimum living wage and the extension of social security measures to provide a basic income to all in need, along with all the other objectives set out in the Declaration of Philadelphia;
- provides the ILO with the responsibility to examine and consider all international economic and financial policies in the light of the fundamental objective of social justice; and

— drawing on and reaffirming the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, in which Members recognized, in the discharge of the Organization's mandate, the particular significance of the fundamental rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation, and a safe and healthy working environment;

Encouraged by the international community's recognition of Decent Work as an effective response to the challenges of globalization, having regard to:

— the outcomes of the 1995 World Summit for Social Development in Copenhagen;

— the wide support, repeatedly expressed at global and regional levels, for the decent work concept developed by the ILO; and

— the endorsement by Heads of State and Government at the 2005 World Summit of the United Nations of fair globalization and the goals of full and productive employment and decent work for all, as central objectives of their relevant national and international policies;

Convinced that in a world of growing interdependence and complexity and the internationalization of production:

— the fundamental values of freedom, human dignity, social justice, security and non-discrimination are essential for sustainable economic and social development and efficiency;

— social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards;

— the importance of the employment relationship should be recognized as a means of providing legal protection to workers;

— productive, profitable and sustainable enterprises, together with a strong social economy and a viable public sector, are critical to sustainable economic development and employment opportunities; and

— the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), as revised, which addresses the growing role of such actors in the realization of the Organization's objectives, has particular relevance; and

Recognizing that the present challenges call for the Organization to intensify its efforts and to mobilize all its means of action to promote its constitutional objectives, and that, to make these efforts effective and strengthen the ILO's capacity to assist its Members' efforts to reach the ILO's objectives in the context of globalization, the Organization must:

— ensure coherence and collaboration in its approach to advancing its development of a global and integrated approach, in line with the Decent Work Agenda and the four strategic objectives of the ILO, drawing upon the synergies among them;

— adapt its institutional practices and governance to improve effectiveness and efficiency while fully respecting the existing constitutional framework and procedures;

assist constituents to meet the needs they have expressed at country level based on full tripartite discussion, through the provision of high-quality information, advice and technical programmes that help them meet those needs in the context of the ILO's constitutional objectives; and

— promote the ILO's standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization;

Therefore adopts this tenth day of June of the year two thousand and eight the present Declaration.

I. Scope and principles

The Conference recognizes and declares that:

A. In the context of accelerating change, the commitments and efforts of Members and the Organization to implement the ILO's constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO, through which the Decent Work Agenda is expressed and which can be summarized as follows:

(i) promoting employment by creating a sustainable institutional and economic environment in which:

— individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being;

— all enterprises, public or private, are sustainable to enable growth and the generation of greater employment and income opportunities and prospects for all; and

— societies can achieve their goals of economic development, good living standards and social progress;

(ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances, including:

— the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes;

— healthy and safe working conditions; and

— policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection [*];

(iii) promoting social dialogue and tripartism as the most appropriate methods for:

— adapting the implementation of the strategic objectives to the needs and circumstances of each country;

— translating economic development into social progress, and social progress into economic development; translating economic development into social progress, and social progress into economic development;

— facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and

— making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems; and

(iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives, noting:

— that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and

— that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

B. The four strategic objectives are inseparable, interrelated and mutually supportive. The failure to promote any one of them would harm

[*] Ed. note: In drafting this text, priority was given in each language to concordance with the corresponding official version of article III(d) of the Declaration of Philadelphia adopted by the International Labour Conference in 1944.

progress towards the others. To optimize their impact, efforts to promote them should be part of an ILO global and integrated strategy for decent work. Gender equality and non-discrimination must be considered to be cross-cutting issues in the abovementioned strategic objectives.

C. How Members achieve the strategic objectives is a question that must be determined by each Member subject to its existing international obligations and the fundamental principles and rights at work with due regard, among others, to:

(i) the national conditions and circumstances, and needs as well as priorities expressed by representative organizations of employers and workers;

(ii) the interdependence, solidarity and cooperation among all Members of the ILO that are more pertinent than ever in the context of a global economy; and

(iii) the principles and provisions of international labour standards.

II. Method of implementation

The Conference further recognizes that, in a globalized economy:

A. The implementation of Part I of this Declaration requires that the ILO effectively assist its Members in their efforts. To that end, the Organization should review and adapt its institutional practices to enhance governance and capacity building in order to make the best use of its human and financial resources and of the unique advantage of its tripartite structure and standards system, with a view to:

(i) better understanding its Members' needs, with respect to each of the strategic objectives, as well as past ILO action to meet them in the framework of a recurring item on the agenda of the Conference, so as to:

— determine how the ILO can more efficiently address these needs through coordinated use of all its means of action;

— determine the necessary resources to address these needs and, if appropriate, to attract additional resources; and

— guide the Governing Body and the Office in their responsibilities;

(ii) strengthening and streamlining its technical cooperation and expert advice in order to:

— support and assist efforts by individual Members to make progress on a tripartite basis towards all the strategic objectives, through country programmes for decent work, where appropriate, and within the framework of the United Nations system; and

— help, wherever necessary, the institutional capacity of member States, as well as representative organizations of employers and workers, to facilitate meaningful and coherent social policy and sustainable development;

(iii) promoting shared knowledge and understanding of the synergies between the strategic objectives through empirical analysis and tripartite discussion of concrete experiences, with the voluntary cooperation of countries concerned, and with a view to informing Members' decision-making in relation to the opportunities and challenges of globalization;

(iv) upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations; and

(v) developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO operational programmes and activities, enlist their support in any appropriate way, and otherwise promote the ILO strategic objectives. This will be done in consultation with representative national and international organizations of workers and employers.

B. At the same time, Members have a key responsibility to contribute, through their social and economic policy, to the realization of a global and integrated strategy for the implementation of the strategic objectives, which encompass the Decent Work Agenda outlined in Part I of this Declaration. Implementation of the Decent Work Agenda at national level will depend on national needs and priorities and it will be for member States, in consultation with the representative organizations of workers and employers, to determine how to discharge that responsibility. To that end, they may consider, among other steps:

(i) the adoption of a national or regional strategy for decent work, or both, targeting a set of priorities for the integrated pursuit of the strategic objectives;

(ii) the establishment of appropriate indicators or statistics, if necessary with the assistance of the ILO, to monitor and evaluate the progress made;

(iii) the review of their situation as regards the ratification or implementation of ILO instruments with a view to achieving a progressively increasing coverage of each of the strategic objectives, with special emphasis on the instruments classified as core labour standards as well as those regarded as most significant from the viewpoint of governance covering tripartism, employment policy and labour inspection;

(iv) the taking of appropriate steps for an adequate coordination between positions taken on behalf of the member State concerned in relevant international forums and any steps they may take under the present Declaration;

(v) the promotion of sustainable enterprises;

(vi) where appropriate, sharing national and regional good practice gained from the successful implementation of national or regional initiatives with a decent work element; and

(vii) the provision on a bilateral, regional or multilateral basis, in so far as their resources permit, of appropriate support to other Members' efforts to give effect to the principles and objectives referred to in this Declaration.

C. Other international and regional organizations with mandates in closely related fields can have an important contribution to make to the implementation of the integrated approach. The ILO should invite them to promote decent work, bearing in mind that each agency will have full control of its mandate. As trade and financial market policy both affect employment, it is the ILO's role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies.

III. Final provisions

A. The Director-General of the International Labour Office will ensure that the present Declaration is communicated to all Members and, through them, to representative organizations of employers and workers, to

international organizations with competence in related fields at the international and regional levels, and to such other entities as the Governing Body may identify. Governments, as well as employers' and workers' organizations at the national level, shall make the Declaration known in all relevant forums where they may participate or be represented, or otherwise disseminate it to any other entities that may be concerned.

B. The Governing Body and the Director-General of the International Labour Office will have the responsibility for establishing appropriate modalities for the expeditious implementation of Part II of this Declaration.

C. At such time(s) as the Governing Body may find appropriate, and in accordance with modalities to be established, the impact of the present Declaration, and in particular the steps taken to promote its implementation, will be the object of a review by the International Labour Conference with a view to assessing what action might be appropriate.

Annex

Follow-up to the Declaration

I. Overall purpose and scope

A. The aim of this follow-up is to address the means by which the Organization will assist the efforts of its Members to give effect to their commitment to pursue the four strategic objectives important for implementing the constitutional mandate of the Organization.

B. This follow-up seeks to make the fullest possible use of all the means of action provided under the Constitution of the ILO to fulfil its mandate. Some of the measures to assist the Members may entail some adaptation of existing modalities of application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States.

II. Action by the Organization to assist its Members

Administration, resources and external relations

A. The Director-General will take all necessary steps, including making proposals to the Governing Body as appropriate, to ensure the means by which the Organization will assist the Members in their efforts under this Declaration. Such steps will include reviewing and adapting the ILO's institutional practices and governance as set out in the Declaration and should take into account the need to ensure:

(i) coherence, coordination and collaboration within the International Labour Office for its efficient conduct;

(ii) building and maintaining policy and operational capacity;

(iii) efficient and effective resource use, management processes and institutional structures;

(iv) adequate competencies and knowledge base, and effective governance structures;

(v) the promotion of effective partnerships within the United Nations and the multilateral system to strengthen ILO operational programmes and activities or otherwise promote ILO objectives; and

(vi) the identification, updating and promotion of the list of standards that are the most significant from the viewpoint of governance. [†]

Understanding and responding to Members' realities and needs

B. The Organization will introduce a scheme of recurrent discussions by the International Labour Conference based on modalities agreed by the Governing Body, without duplicating the ILO's supervisory mechanisms, so as to:

(i) understand better the diverse realities and needs of its Members with respect to each of the strategic objectives, respond more effectively to them, using all the means of action at its disposal, including standards related action, technical cooperation, and the technical and research capacity of the Office, and adjust its priorities and programmes of action accordingly; and

(ii) assess the results of the ILO's activities with a view to informing programme, budget and other governance decisions.

Technical assistance and advisory services

C. The Organization will provide, upon request of governments and representative organizations of workers and employers, all appropriate assistance within its mandate to support Members' efforts to make progress towards the strategic objectives through an integrated and coherent national or regional strategy, including by:

(i) strengthening and streamlining its technical cooperation activities within the framework of country programmes for decent work and that of the United Nations system;

ii) providing general expertise and assistance which each Member may request for the purpose of adopting a national strategy and exploring innovative partnerships for implementation;

(iii) developing appropriate tools for effectively evaluating the progress made and assessing the impact that other factors and policies may have on the Members' efforts; and

[†] The Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and those standards identified on subsequently updated lists.

(iv) addressing the special needs and capacities of developing countries and of the representative organizations of workers and employers, including by seeking resource mobilization.

Research, information collection and sharing

D. The Organization will take appropriate steps to strengthen its research capacity, empirical knowledge and understanding of how the strategic objectives interact with each other and contribute to social progress, sustainable enterprises, sustainable development and the eradication of poverty in the global economy. These steps may include the tripartite sharing of experiences and good practices at the international, regional and national levels in the framework of:

(i) studies conducted on an ad hoc basis with the voluntary cooperation of the governments and representative organizations of employers and workers in the countries concerned; or

(ii) any common schemes such as peer reviews which interested Members may wish to establish or join on a voluntary basis.

III. Evaluation by the Conference

A. The impact of the Declaration, in particular the extent to which it has contributed to promoting, among Members, the aims and purposes of the Organization through the integrated pursuit of the strategic objectives, will be the subject of evaluation by the Conference, which may be repeated from time to time, within the framework of an item placed on its agenda.

B. The Office will prepare a report to the Conference for evaluation of the impact of the Declaration, which will contain information on:

(i) actions or steps taken as a result of the present Declaration, which may be provided by tripartite constituents through the services of the ILO, notably in the regions, and by any other reliable source;

(ii) steps taken by the Governing Body and the Office to follow up on relevant governance, capacity and knowledge-base issues relating to the pursuit of the strategic objectives, including programmes and activities of the ILO and their impact; and

iii) the possible impact of the Declaration in relation to other interested international organizations.

C. Interested multilateral organizations will be given the opportunity to participate in the evaluation of the impact and in the discussion. Other interested entities may attend and participate in the discussion at the invitation of the Governing Body.

D. In the light of its evaluation, the Conference will draw conclusions regarding the desirability of further evaluations or the opportunity of engaging in any appropriate course of action.

Document No. 130

ILC, 30th Session, 1947, Resolution concerning Freedom of Association and Protection of the Right to Organise and to Bargain Collectively

Resolutions Adopted by the International Labour Conference at its 30th Session

I

Resolution concerning Freedom of Association and Protection of the Right to Organise and to Bargain Collectively

(Adopted on 11 July 1947)

Whereas the Preamble to the Constitution of the International Labour Organisation expressly declares " recognition of the principle of freedom of association " to be a means of improving conditions of labour and of establishing peace ; and

Whereas the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress " and recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve, among other things : " the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures " ; and

Whereas it also affirms that " the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilised world " ; and

Whereas standards of living, normal functioning of national economy and social and economic stability depend to a considerable degree on a properly organised system of industrial relations founded on the recognition of freedom of association ; and

Whereas, moreover, in many countries, employers' and workers' organisations have been associated with the preparation and application of economic and social measures ; and

Whereas the International Labour Conference, the regional conferences of the American States Members of the International Labour Organisation and the various industrial committees have, in numerous Resolutions, called the attention of the States Members of the International Labour Organisation to the need for establishing an appropriate system of industrial relations founded on the guarantee of the principle of freedom of association ;

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947,

adopts this eleventh day of July of the year one thousand nine hundred and forty-seven the following Resolution :

I. Freedom of Association

1. Employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

2. Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes ; there should be no interference on the part of the public authorities which would restrict this right or impede the organisations in the lawful exercise of this right.

3. Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

4. Employers' and workers' organisations should have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

5. The guarantees defined in paragraphs 1, 2 and 3 herein with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. The acquisition of legal personality by employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

7. The acquisition and exercise of the rights as outlined in this part should not exempt the employers' and workers' organisations from their full share of responsibilities and obligations.

II. Protection of the Right to Organise and to Bargain Collectively

8. There should be agreement between organised employers and workers mutually to respect the exercise of the right of association.

9. (1) Where full and effective protection is not already afforded, appropriate measures should be taken to enable guarantees to be provided for :

(a) the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source with the object of :

(i) making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member ;

(ii) prejudicing a worker because he is a member or agent or official of a trade union ;

(iii) dismissing a worker because he is a member or agent or official of a trade union.

(b) the exercise of the right of association by workers' organisations in such a way as to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

(i) furthering the establishment of trade unions under the domination of employers ;

(ii) interfering with the formation or administration of a trade union or contributing financial or other support to it ;

(iii) refusing to give practical effect to the principles of trade union recognition and collective bargaining.

(2) It should be understood, however, that a provision in a freely concluded collective agreement making membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

10. Appropriate agencies should be established, if necessary, for the purpose of ensuring the protection of the right of association as defined in paragraph 9 herein.

Document No. 131

ILC, 30th Session, 1947, Resolution concerning International Machinery for Safeguarding Freedom of Association

Resolutions Adopted by the International Labour Conference at its 30th Session

III

Resolution concerning International Machinery for Safeguarding Freedom of Association

(Adopted on 11 July 1947)

The Conference,

(1) Recalling the references to freedom of association in the Declaration of Philadelphia and the Constitution of the International Labour Organisation, reaffirms belief in and attachment to the principle of freedom of association in all countries as an essential element in those wider personal freedoms which are the foundation of peace, prosperity and happiness ;

(2) Is concerned at the widespread reports that conditions may exist prejudicial to freedom of association in many countries ;

(3) Feels that steps should be taken to encourage, expand and universally establish freedom of association both by reminding Governments of all States, whether Members of the I.L.O. or not, of their obligations in this respect under the Constitution of the I.L.O. and/or the Charter of the United Nations, and by other practicable means ;

(4) In this connection has noted with interest the proposals made by the W.F.T.U. and the A.F. of L. for the establishment of international machinery for safeguarding freedom of association and feels that these proposals deserve close and careful examination ;

(5) Recognises that the proposals raise issues of great complexity and difficulty including, for example,

(i) questions involving the sovereignty of States ;

(ii) the relationship of any such machinery to the proposals under examination by the United Nations for giving effect to a Bill of Rights and establishing machinery for supervising the exercise of other fundamental freedoms, including freedom of speech, of information and of lawful assembly ;

(iii) the composition, scope, powers (including powers of enquiry and investigation) and procedure of the proposed machinery ;

(iv) the authority under which the proposed machinery would act ;

(6) Considers it essential to give to such questions, which may involve changes in the inter-relationship of States, the detailed examination and careful preparation which they merit and without which any international action would be bound to fail and likely to leave the situation worse than it is at present ;

(7) Recognises however that the establishment in consultation with the United Nations of permanent international machinery may be an indispensable condition for the full observance of freedom of association throughout the world and that any such machinery should, if established, operate under the guarantees provided by the tripartite Constitution of the International Labour Organisation ;

(8) Accordingly requests the Governing Body to examine this question in all its aspects and to report back to the Conference at the 31st Session in 1948.

Document No. 132

ILC, 38th Session, 1955, Resolution concerning the Protection of Trade Union Rights

Resolutions
Adopted by the International Labour Conference
at its 38th Session
(Geneva, 1955)

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[1] Adopted unanimously on 9 June 1955.

V

Resolution concerning the Protection of Trade Union Rights [1]

The International Labour Conference—

Considering the fundamental importance of real respect for the trade union rights of the workers ; the serious violations of these rights in certain countries ; and the need in some countries for appropriate laws and regulations to safeguard the normal exercise of these rights,

Considering that the International Labour Conference adopted, in 1948, the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and, in 1949, the Right to Organise and Collective Bargaining Convention (No. 98), which define the fundamental rights both of employers and workers and of their respective organisations,

Considering that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has so far been ratified by 18 countries and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), by 19 countries,

Considering that, despite the outstanding achievements of the Governing Body Committee on Freedom of Association, the efforts of the International Labour Organisation to ensure adequate protection for the rights of workers to organise freely cannot be fully effective until those countries, which have hitherto refused to do so, agree to co-operate with the Governing Body and to permit the Fact-Finding and Conciliation Commission on Freedom of Association to carry out investigations on the spot ;

1. Addresses an urgent appeal to governments which have not yet ratified the above-mentioned Conventions and requests them to consider the possibility of doing so at as early a date as possible ;

2. Reaffirms the importance which it attaches to the fundamental rights both of employers and workers in their respective organisations, and in particular the rights of freedom and independence ;

3. Notes that the Governing Body has approved unanimous reports by the Committee on Freedom of Association on 108 cases and unanimous interim reports on five further cases, and invites the Governing Body to pursue expeditiously the examination of the cases still pending ;

4. Invites the Governing Body to keep under constant review the question of improving the procedure of its Committee on Freedom of Association and to give earnest consideration to any recommendations which may from time to time be made by the Committee to that end, including any recommendations relating to the question of hearings of all the parties concerned ;

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[1] Adopted on 22 June 1955 by 173 votes to 0, with 30 abstentions.

5. Requests the Governing Body—

(a) to study, on the occasion of the examination of the report of the independent committee on freedom of employers' and workers' organisations from government domination or control, whether out of this report certain points arise which would justify a revision in whole or in part of the existing Conventions dealing with freedom of association and industrial relations ;

(b) to take into account other points not arising from the report of the independent committee which may affect the existing Conventions or give rise to the need for a new Convention ;

(c) to report on the matter as a whole to an early session of the Conference.

Document No. 133

ILC, 40th Session, 1957, Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation

Resolutions Adopted by the International Labour Conference at Its 40th Session

(Geneva, 1957)

I

Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation [1]

The General Conference of the International Labour Organisation,

Considering that the freedom of trade union activity is one of the conditions of economic and social progress,

Considering that the right of workers to form trade unions and to conclude collective agreements is confirmed by the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949,

Considering that the work of the Committee on Freedom of Employers' and Workers' Organisations (1955-56) and also the discussion of the Committee's report at the International Labour Conference and in the Governing Body revealed the existence in many States Members of the International Labour Organisation of laws violating basic trade union rights ;

1. Notes that the existence of such anti-trade union legislation hampers the improvement of the working and living conditions of the workers and is in contradiction with the fundamental purposes of the International Labour Organisation ;

2. Calls upon the governments of the States Members of the International Labour Organisation to take measures to abolish within the shortest possible time all laws and administrative regulations hampering or restricting the free exercise of trade union rights, to adopt laws, where this had not as yet been done, ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers, and to guarantee the application of these laws in practice.

[1] Adopted on 26 June 1957 by 89 votes to 56, with 26 abstentions.

Document No. 134

ILC, 45th Session, 1961, Resolution concerning Freedom of Association and the Protection of the Right to Organise, Including the Protection of Representatives of Trade Unions at All Levels

Resolutions Adopted by the International Labour Conference at Its 45th Session

(Geneva 1961)

VI

Resolution concerning Freedom of Association and the Protection of the Right to Organise, Including the Protection of Representatives of Trade Unions at All Levels [1]

The General Conference of the International Labour Organisation,

Recognising that the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949, represent an advance in international labour standards in the field of trade union rights,

Considering that for the workers' and trade union organisations freedom of association entails the free and effective exercise of their functions by the representatives freely chosen by the workers through the trade union organisations, at every level, including the level of the workplace,

Emphasising that remuneration, hours of work, occupational health and safety, and other conditions of employment may fall within the scope of the activities of such representatives at all levels, including the level of the workplace,

Noting that in some countries restrictions are placed on the right of workers to establish and maintain organisations of their own choosing and that in other countries the representatives freely chosen by the workers through their trade union organisations are prevented from freely exercising their functions and are on occasion the subject of special measures by employers, governments, or both, against their rights as workers' representatives,

Concerned, in particular, that the Committee of Experts on the Application of Conventions and Recommendations has repeatedly directed the attention of the International Labour Conference to the fact that in some countries, including countries which have ratified the aforementioned Conventions, the free exercise of collective bargaining on behalf of the workers by representatives freely chosen by them is restricted by legislation and constitutional provisions which—

(a) require governmental approval of the establishment of trade union organisations without which such organisations cannot legally exist ;

[1] Adopted on 29 June 1961 by 147 votes to 35, with 10 abstentions.

(b) place restrictions on the right of trade unions to draw up their constitutions in freedom, to organise their administration and activities and to formulate their programmes ; and

(c) prohibit workers from establishing trade unions independent of the ruling political party,

Concerned also that in some countries some employers, sometimes backed by governmental authority, have taken drastic measures to prevent organisation by their employees in trade unions or have refused to engage in collective bargaining with the trade union representatives of such employees on their remuneration and other conditions of employment,

Recalling that the Freedom of Association and Protection of the Right to Organise Convention, 1948, gives workers the right to establish and join organisations of their own choosing and to conduct the affairs of such organisations without any restrictions by public authorities ; and the Right to Organise and Collective Bargaining Convention, 1949, assures workers' organisations against acts of interference by employers or their organisations and calls for measures to encourage and promote full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements ;

Towards the objective of advancing the rights of the workers freely to undertake action in defence of their social, occupational and economic interests,

1. Invites member States which have not already done so to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949, and to place fully into effect the provisions of those Conventions ;

2. Urges member States which have ratified the aforementioned Conventions but continue to have legal provisions or practices, or both, inconsistent with the requirements of such Conventions, to take immediate steps to eliminate such provisions and practices ;

3. Invites the Governing Body of the International Labour Office—

   (a) to take all appropriate steps, particularly through the Application of Conventions and Recommendations machinery, to ensure the full application by ratifying States Members of the principles laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949 ; and

   (b) to request the Director-General to prepare for the Governing Body a comprehensive report on all aspects of the rights of trade union representatives at all levels, including the level of the workplace, in order to permit the Governing Body to consider the possibility of including this question in the agenda of an early session of the International Labour Conference.

Document No. 135

ILC, 48th Session, 1964, Resolution concerning Freedom of Association

Resolutions Adopted by the International Labour Conference at Its 48th Session

(Geneva, 1964)

IV

Resolution concerning Freedom of Association [1]

The General Conference of the International Labour Organisation,

Considering the principle of freedom of association, an essential constituent of human rights, enshrined in the Constitution of the International Labour Organisation (Preamble),

Considering that it constitutes one of the fundamental principles on which the Organisation is based, and that the Declaration of Philadelphia, an integral part of the Constitution, proclaims that " freedom of expression and of association are essential to sustained progress ",

Considering that the International Labour Organisation has unmistakably laid down the minimum standards of freedom of association in international labour Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948), and 98 (Right to Organise and Collective Bargaining Convention, 1949),

Considering the resolution concerning the independence of the trade union movement, adopted by the Conference on 26 June 1952, and the resolution on freedom of association and the protection of the right to organise, including the protection of representatives of trade unions at all levels, adopted by the Conference on 29 June 1961,

Considering that the standards so defined have not yet found full expression in the Constitution and Standing Orders of the International Labour Organisation,

Considering that several member States have not yet ratified the above-mentioned Conventions,

Considering that in various member States the principle and the standards of freedom of association established by the International Labour Organisation are violated in defiance of democracy and to the detriment of the harmonious development of those countries,

Considering that the machinery for the protection of freedom of association as at present established by the International Labour Organisation is still inadequate for achieving full efficiency and should be strengthened ;

1. Invites the Governing Body of the International Labour Office—

(a) to strengthen its efforts to induce all the States Members of the International Labour Organisation to ratify and apply Conventions Nos. 87 and 98, reminding them that fundamental principles of the Organisation are involved ;

(b) to study the possibility of including in the Constitution of the International Labour Organisation certain essential principles contained in these Conventions ;

(c) to consider likewise how the machinery of the International Labour Organisation for the protection of freedom of association may best be strengthened ;

(d) in the light of findings resulting from the action recommended in *(b)* and *(c)* above, to consider including the whole question in the agenda of an early session of the Conference ;

2. Urges all governments to co-operate fully in strengthening the activities of the International Labour Organisation in the field of freedom of association.

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[1] Adopted on 9 July 1964.

Document No. 136

ILC, 54th Session, 1970, Resolution concerning Trade Union Rights and Their Relation to Civil Liberties

Resolutions Adopted by the International Labour Conference at Its 54th Session

(Geneva, 1970)

VIII

Resolution concerning Trade Union Rights and Their Relation to Civil Liberties [1]

The General Conference of the International Labour Organisation,

Considering that the preamble to the Constitution of the International Labour Organisation proclaims recognition of the principle of freedom of association as one of the objectives of the Organisation,

Considering that the Declaration of Philadelphia, an integral part of the Constitution, proclaims that freedom of expression and of association are essential to sustained progress and refers to other fundamental human rights inherent in human dignity,

Considering that the International Labour Organisation has laid down basic standards of freedom of association for trade union purposes in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),

Considering that without national independence and political liberty full and genuine trade unions rights could not exist,

Considering that trade unions, provided they enjoy their full rights, are an essential factor for the attainment of the objective of economic, social and cultural progress stated in the Constitution of the ILO,

Considering that the rights of workers' and employers' organisations and of human beings in general flourish in a climate of social and economic progress,

Considering that the advancement of the rights of workers' and employers' organisations is linked both to national social and economic development and to national, regional and international legislation,

Considering that, according to Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948, workers, employers and their organisations should respect the law of the land in exercising the rights provided

[1] Adopted without opposition on 25 June 1970.

for in that Convention, but the law of the land should not be such as to impair, nor should it be so applied as to impair, the guarantees provided for in the Convention, and that this principle should also be respected when trade unions assume responsibility in the interests of the common welfare,

Recalling earlier calls by the Conference for reinforcing the action and machinery of the International Labour Organisation for the protection of trade union rights, more particularly the resolution concerning freedom of association, adopted on 9 July 1964, and the resolution concerning action by the International Labour Organisation in the field of human rights and in particular with respect to freedom of association, adopted on 24 June 1968,

Considering the evolution which has taken place in various fields and the fact that the present session of the Conference has dealt with the question of protection and facilities afforded to workers' representatives,

Regretting that forty-five Members of the International Labour Organisation have not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948, and that thirty-two Members have not yet ratified the Right to Organise and Collective Bargaining Convention, 1949, and deploring that some of these States violate and infringe the principles laid down in these instruments,

Deploring also that amongst the member States which have ratified these Conventions some do not yet apply them fully and others violate them,

Considering that the supervisory machinery of the ILO, and particularly the Governing Body Committee on Freedom of Association, on the basis of existing standards, has taken supplementary decisions concerning infringements of trade union rights which refer also to specific civil liberties,

Considering that the possibilities of protecting trade union rights would be strengthened if the ILO gave the widest publicity to these decisions,

Considering that the question of the protection of civil liberties as such comes within the purview of the United Nations on the basis of the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and that the speedy ratification and application of these Covenants is of the utmost importance as a means of reinforcing the protection of trade union rights,

Considering that there exist firmly established, universally recognised principles defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations, enunciated in particular in the Universal Declaration of Human Rights and the International Covenants on Human Rights, but that the observance of the standards embodied in the Covenants will become a binding obligation for States only when the Covenants are ratified and enter into force,

Considering that war, colonial or neo-colonial domination and racial discrimination are major obstacles to the welfare of workers and a flagrant impediment to the work of the International Labour Organisation,

Considering that international measures to provide more effective protection for specific civil liberties by the United Nations would reinforce the action of the International Labour Organisation for the protection of trade union rights;

1. Recognises that the rights conferred upon workers' and employers' organisations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International

Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:

(a) the right to freedom and security of person and freedom from arbitrary arrest and detention;

(b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(c) freedom of assembly;

(d) the right to a fair trial by an independent and impartial tribunal;

(e) the right to protection of the property of trade union organisations.

3. Reaffirms the ILO's specific competence—within the United Nations system—in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties.

4. Emphasises the responsibility of the United Nations for protecting and promoting human rights in general political freedoms and civil liberties throughout the world.

5. Expresses its deep concern about and condemns the repeated violations of trade union rights and other human rights.

6. Calls upon all member States which have not done so to ratify and apply the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and invites the United Nations also to seek this.

7. Invites the Governing Body to pursue energetically the efforts of the ILO with a view to total decolonisation along the lines of the Declaration adopted on this subject by the United Nations.

8. Invites the Governing Body to extend and expand its efforts to eliminate the discriminatory practices on the basis of race, colour, sex, religion, nationality, political and trade union opinion which still exist in several countries, including countries and territories under a colonial régime or foreign domination in any form.

9. Reaffirms its belief in the principles which inspired the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and strongly urges that all member States which have not already done so to ratify these Conventions and, pending ratification, that they ensure that the principles embodied in these Conventions are observed and that they respect the principles enshrined in these Conventions in the enactment of their national legislation.

10. Invites the Governing Body of the ILO to take as soon as possible the necessary steps, pursuant to the resolution of 1964, with a view to including in the Constitution of the ILO the essential principles contained in these Conventions concerning trade union freedom.

11. Invites the Governing Body to instruct the Director-General to publish and distribute widely in a concise form the supplementary decisions taken by the Committee on Freedom of Association.

12. Invites the Governing Body to ensure wider knowledge of ILO principles and standards concerning trade union rights, using to this end, in particular, regional conferences, seminars, programmes for workers' and management education, etc.

13. Invites the Director-General of the ILO to express the support of the ILO for the action of the United Nations in the field of human rights and to draw the attention of the appropriate United Nations bodies to the relationship which exists between trade union rights and civil liberties.

14. Invites the Governing Body to undertake all efforts with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights.

15. Invites the Governing Body to instruct the Director-General to undertake further comprehensive studies and to prepare reports on law and practice in matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO, with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense;

For this purpose particular attention should be given to the following questions:

— right of trade unions to exercise their activities in the undertaking and other workplaces;

— right of trade unions to negotiate wages and all other conditions of work;

— right of participation of trade unions in undertakings and in the general economy;

— right to strike;

— right to participate fully in national and international trade union activities;

— right to inviolability of trade union premises as well as of correspondence and telephonic conversations;

— right to protection of trade union funds and assets against intervention by the public authorities;

— right of trade unions to have access to media of mass communication;

— right to protection against any discrimination in matters of affiliation and trade union activities;

— right of access to voluntary conciliation and arbitration procedures;

— right to workers' education and further training.

16. Invites the Governing Body, taking into account the studies and reports prepared by the ILO, to place on the agenda of a forthcoming session of the International Labour Conference one or more questions which could be the subject of new instruments with a view to enlarging trade union rights, taking into account those civil liberties which are a prerequisite for their exercise.

Document No. 137

ILC, 57th Session, 1972, Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau)

Resolutions Adopted by the International Labour Conference at Its 57th Session

(Geneva, 1972)

VI

Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau) [1]

The General Conference of the International Labour Organisation,

Recalling the many resolutions of the General Assembly of the United Nations, and in particular Resolution 2795 (XXVI) of 10 December 1971, which reaffirms the right to self-determination of the peoples of Angola, Mozambique and Guinea (Bissau), calls upon Portugal to cease its acts of military repression against the peoples of these territories and invites all States, particularly the Members of the North Atlantic Treaty Organisation, to refrain from lending Portugal any form of aid in pursuing its colonial war,

Considering that colonialism and apartheid have been frequently condemned by the United Nations and its specialised agencies,

[1] Adopted on 27 June 1972 by 211 votes in favour, 0 against, with 84 abstentions.

Recalling the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th (1970) Session, which states that " without national independence and political liberty full and genuine trade union rights could not exist ",

Considering that the basic principles of the ILO are being utterly disregarded in the African countries under Portuguese domination,

Recalling the resolution concerning apartheid and the contribution of the International Labour Organisation to the International Year for Action to Combat Racism and Racial Discrimination, adopted by the Conference at its 56th (1971) Session, which " condemns the continued suppression of fundamental human and trade union rights in several countries, including countries and territories under a colonial régime or foreign domination in any form ",

Considering that the situation created by Portugal in its colonies poses an extremely grave threat to international peace and security in Africa and so hampers the achievement of the ILO's aims of peace and social progress in that region,

Noting that in the areas of Angola, Mozambique and Guinea (Bissau) still under its rule the Government of Portugal is applying Portuguese trade union legislation which is in open and flagrant contradiction with the letter and spirit of ILO standards, in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),

Considering that the workers of Angola, Mozambique and Guinea (Bissau) are thereby denied basic trade union rights including, above all, the right to set up free and democratic trade unions and to join them, the right of assembly, the right to elect their officers freely and the right to strike,

Considering that the Government of Portugal is systematically driving African workers off fertile land and replacing them with white settlers and that discriminatory measures are being taken against African workers with regard to taxation, employment, vocational training, social security and housing,

Considering that in the territories improperly administered by it Portugal is pursuing a policy which, like that of South Africa, consists of oppression by a racial minority of a majority of the population and that such oppression brings about death, shame, humiliation and the denial of basic human rights and the destruction of the cultural environment which form an essential part of human life;

1. Pledges the entire support and the effective action of the International Labour Organisation to the lawful struggle of the peoples of Angola, Mozambique and Guinea (Bissau) for self-determination and civil and trade union liberties.

2. Condemns the constant violation by the Government of Portugal of human rights, civil liberties and trade union rights in the areas still under its rule, and in particular of the Universal Declaration of Human Rights and international labour Conventions Nos. 87, 98 and 105.

3. Notes with satisfaction the decision taken by the General Assembly of the United Nations at its 26th Session approving the representation of Angola, Mozambique and Guinea (Bissau) as associate members of the Economic Commission for Africa.

4. Urges member States and employers' and workers' organisations to intensify their efforts to give effective aid to the peoples of Angola, Mozambique and Guinea

(Bissau) in their just struggle and to cease to lend any form of human or material aid to the Government of Portugal.

5. Invites the Governing Body of the International Labour Office to instruct the Director-General—

(a) to ensure the widest possible dissemination, in the areas of Angola, Mozambique and Guinea (Bissau) still under Portuguese rule, of information and documentation on the exercise of civil liberties and trade union rights;

(b) to submit at a forthcoming session of the Conference proposals concerning a programme of ILO assistance in various fields to the peoples of Angola, Mozambique and Guinea (Bissau).

6. Invites the Governing Body of the International Labour Office to examine at its 188th Session the most appropriate ways of enabling representatives of Angola, Mozambique and Guinea (Bissau), which are associate members of the Economic Commission for Africa, to participate in ILO meetings and in particular in ILO African regional conferences.

Document No. 138

ILC, 63rd Session, 1977, Resolution concerning the Promotion, Protection and Strengthening of Freedom of Association, Trade Union and Other Human Rights

Resolutions Adopted by the International Labour Conference at Its 63rd Session

(Geneva, June 1977)

V

Resolution concerning the Promotion, Protection and Strengthening of Freedom of Association, Trade Union and Other Human Rights [1]

The General Conference of the International Labour Organisation,

Considering that full exercise of trade union rights and freedom of association are priority objectives of the International Labour Organisation and constitute essential elements of human rights,

Noting with concern that many member States have not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), which lay down the minimum standards of freedom of association,

Believing that one of the fundamental bases of democracy in all its forms is the existence of trade union freedoms as expressed in ILO standards and that the rights accorded to trade unions should reflect these freedoms,

Welcoming the adoption by the International Labour Conference at its 56th (1971) Session of the resolution concerning the strengthening of tripartism in the over-all activities of the ILO and at its 61st (1976) Session of Convention No. 144 concerning tripartite consultations to promote the implementation of international labour standards and of Recommendation No. 152 concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the ILO,

Convinced that the tripartite consultations envisaged in the said instruments would be meaningless unless within member States conditions exist which ensure that employer and worker participants are free to act effectively in accordance with the

[1] Adopted on 21 June 1977.

provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),

Considering that, in the context of national economic and social development of member States, the ILO, in view of its tripartite structure, should be able to promote conditions of work and life capable of exercising a dynamic and lasting influence in ensuring social progress,

Noting that over the years the constitutional supervisory bodies and other reporting procedures, including the special investigations and inquiries, carried out in a limited number of countries so far, have proved their effectiveness in varying degrees of success,

Considering that over the years special machinery for examining allegations of violation of human and trade union rights and other ad hoc methods to study specific questions have been evolved and have been useful in preparing the way for satisfactory solutions, while guaranteeing impartial treatment to the countries involved,

Considering the systematic violation in certain countries of the basic principles relating to universally recognised human rights and, in particular, freedom of association, and trade union and other human rights;

1. Invites the Governing Body of the International Labour Office to request the Director-General:

(a) strongly to urge member States to ratify and apply the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), and, pending ratification, to ensure strict observance of the basic principles in these Conventions;

(b) to urge the governments of member States:

(i) to ratify, as soon as possible, Convention No. 144 concerning tripartite consultations to promote the implementation of international labour standards and to give full effect thereto as well as to Recommendation No. 152 concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the ILO—both of which instruments were adopted by the International Labour Conference at its 61st (1976) Session—and to the resolution concerning the strengthening of tripartism in the over-all activities of the ILO, adopted by the International Labour Conference at its 56th (1971) Session;

(ii) to undertake to co-operate actively to ensure sound operation of the system for supervising the application of international labour standards, particularly in the field of human rights such as freedom of association and trade union freedoms, including in the rural sector, the elimination of discrimination in employment, remuneration and occupation and the abolition of forced labour, it being understood that such systems of control will be implemented with strict impartiality and with full regard for due process and the rights of Members involved in inquiries concerned with the application of those standards;

(c) to improve the operation of existing machinery and procedures for establishing facts relating to the application of standards, in order to ensure their full effectiveness, particularly by speeding up the consideration of complaints and representations relating thereto;

(d) to provide that such machinery and procedures guarantee, without reprisals to interested parties at the level among others of member States, full opportunities

to present such information and comments as may be necessary to reach objective and impartial conclusions.

2. Further requests the Governing Body of the International Labour Office:

(a) to remind member States that freedom of association and non-discrimination are basic principles of the ILO's Constitution and their furtherance constitutes a constitutional obligation for all member States;

(b) to study ways of establishing or strengthening procedures for supervision of this constitutional obligation;

(c) to consider whether improvements might be made in the functioning of the credentials procedure with a view to increasing its effectiveness.

3. Further requests the Governing Body of the International Labour Office:

(a) to instruct the Director-General to undertake direct contacts, wherever possible on a tripartite basis, whenever this promises to be useful;

(b) to improve the application of the existing procedures so as to ensure speedy and effective action in cases in which freedom of association is impaired, particularly when human life is in jeopardy;

(c) to invite the member States of the ILO and the employers' and workers' organisations to encourage and promote—in all instances where they possess the right to intervene—fullest co-operation with the established ILO complaints and supervisory machinery so as to ensure respect for trade union rights and freedom of association.

Document No. 139

ILC, 73rd Session, 1987, Resolution concerning the 40th anniversary of the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

IV

Resolution concerning the 40th anniversary of the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)[1]

The General Conference of the International Labour Organisation,

Considering that, in accordance with the Constitution of the International Labour Organisation, freedom of association constitutes a fundamental principle on which the Organisation is based and that the Declaration of Philadelphia, which is an integral part of the Constitution, affirms that "freedom of expression and of association are essential to sustained progress",

[1] Adopted on 23 June 1987.

Considering that the principles of freedom of association must be universally applied irrespective of the social and economic systems existing in the different countries,

Considering that the principles of freedom of association have been codified in a number of ILO instruments, in particular in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),

Considering that, according to Convention No. 87, "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation",

Noting with concern that not all member States have ratified Convention No. 87 and that in the past years the International Labour Office has received many complaints concerning violations of the principles of freedom of association in several countries,

Recognising that the supervisory procedures of the International Labour Organisation in the field of freedom of association, including the sending of ILO missions on the spot, have contributed to the improvement of the situation in a number of countries as regards respect for the principles of freedom of association,

Reaffirming the necessity for strict implementation of the principles of freedom of association in law as well as in practice and the obligation for all governments to co-operate fully with the supervisory bodies of the International Labour Organisation,

Recalling that in 1988 it will be 40 years since Convention No. 87 was adopted by the International Labour Conference;

1. Urges the governments of all those member States which have not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to do their utmost to ratify that Convention in the course of 1988.

2. Calls upon the governments of all member States to take all necessary steps for the full implementation of Convention No. 87, in particular by bringing their legislation into conformity with the principles enunciated in the Convention, and to seek as rapidly as possible the assistance of the International Labour Office when problems relating to the implementation of the principles of freedom of association are experienced or anticipated, with a view to resolving such problems.

3. Invites the Governing Body of the International Labour Office to instruct the Director-General to seize the occasion of the 40th anniversary of the adoption of Convention No. 87 to strengthen the ILO's efforts in favour of the ratification and full implementation of Convention No. 87 by all member States.

Document No. 140

Ratification status of Convention No. 87, as at 7 December 2023

Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Date of entry into force: 04 Jul 1950

158 ratifications

- Denounced: **0**

See also

- Countries have not ratified

Display the list by: (•) **Country** ( ) Status of convention

Number

Country	Date	Status	Note
Albania	03 Jun 1957	In Force	
Algeria	19 Oct 1962	In Force	
Angola	13 Jun 2001	In Force	
Antigua and Barbuda	02 Feb 1983	In Force	
Argentina	18 Jan 1960	In Force	
Armenia	02 Jan 2006	In Force	
Australia	28 Feb 1973	In Force	
Austria	18 Oct 1950	In Force	
Azerbaijan	19 May 1992	In Force	
Bahamas	14 Jun 2001	In Force	
Bangladesh	22 Jun 1972	In Force	
Barbados	08 May 1967	In Force	
Belarus	06 Nov 1956	In Force	
Belgium	23 Oct 1951	In Force	
Belize	15 Dec 1983	In Force	
Benin	12 Dec 1960	In Force	
Bolivia (Plurinational State of)	04 Jan 1965	In Force	
Bosnia and Herzegovina	02 Jun 1993	In Force	
Botswana	22 Dec 1997	In Force	
Bulgaria	08 Jun 1959	In Force	
Burkina Faso	21 Nov 1960	In Force	
Burundi	25 Jun 1993	In Force	
Cabo Verde	01 Feb 1999	In Force	
Cambodia	23 Aug 1999	In Force	

Country	Date	Status	Note
Cameroon	07 Jun 1960	In Force	
Canada	23 Mar 1972	In Force	
Central African Republic	27 Oct 1960	In Force	
Chad	10 Nov 1960	In Force	
Chile	01 Feb 1999	In Force	
Colombia	16 Nov 1976	In Force	
Comoros	23 Oct 1978	In Force	
Congo	10 Nov 1960	In Force	
Costa Rica	02 Jun 1960	In Force	
Croatia	08 Oct 1991	In Force	
Cuba	25 Jun 1952	In Force	
Cyprus	24 May 1966	In Force	
Czechia	01 Jan 1993	In Force	
Côte d'Ivoire	21 Nov 1960	In Force	
Democratic Republic of the Congo	20 Jun 2001	In Force	
Denmark	13 Jun 1951	In Force	
Djibouti	03 Aug 1978	In Force	
Dominica	28 Feb 1983	In Force	
Dominican Republic	05 Dec 1956	In Force	
Ecuador	29 May 1967	In Force	
Egypt	06 Nov 1957	In Force	
El Salvador	06 Sep 2006	In Force	
Equatorial Guinea	13 Aug 2001	In Force	
Eritrea	22 Feb 2000	In Force	
Estonia	22 Mar 1994	In Force	
Eswatini	26 Apr 1978	In Force	
Ethiopia	04 Jun 1963	In Force	
Fiji	17 Apr 2002	In Force	
Finland	20 Jan 1950	In Force	
France	28 Jun 1951	In Force	
Gabon	14 Oct 1960	In Force	
Gambia	04 Sep 2000	In Force	
Georgia	03 Aug 1999	In Force	
Germany	20 Mar 1957	In Force	
Ghana	02 Jun 1965	In Force	
Greece	30 Mar 1962	In Force	
Grenada	25 Oct 1994	In Force	
Guatemala	13 Feb 1952	In Force	
Guinea	21 Jan 1959	In Force	
Guinea - Bissau	09 Jun 2023	Not in force	The Convention will enter into force for Guinea - Bissau on 09 Jun 2024.

Country	Date	Status	Note
Guyana	25 Sep 1967	In Force	
Haiti	05 Jun 1979	In Force	
Honduras	27 Jun 1956	In Force	
Hungary	06 Jun 1957	In Force	
Iceland	19 Aug 1950	In Force	
Indonesia	09 Jun 1998	In Force	
Iraq	01 Jun 2018	In Force	
Ireland	04 Jun 1955	In Force	
Israel	28 Jan 1957	In Force	
Italy	13 May 1958	In Force	
Jamaica	26 Dec 1962	In Force	
Japan	14 Jun 1965	In Force	
Kazakhstan	13 Dec 2000	In Force	
Kiribati	03 Feb 2000	In Force	
Kuwait	21 Sep 1961	In Force	
Kyrgyzstan	31 Mar 1992	In Force	
Latvia	27 Jan 1992	In Force	
Lesotho	31 Oct 1966	In Force	
Liberia	25 May 1962	In Force	
Libya	04 Oct 2000	In Force	
Lithuania	26 Sep 1994	In Force	
Luxembourg	03 Mar 1958	In Force	
Madagascar	01 Nov 1960	In Force	
Malawi	19 Nov 1999	In Force	
Maldives	04 Jan 2013	In Force	
Mali	22 Sep 1960	In Force	
Malta	04 Jan 1965	In Force	
Mauritania	20 Jun 1961	In Force	
Mauritius	01 Apr 2005	In Force	
Mexico	01 Apr 1950	In Force	
Mongolia	03 Jun 1969	In Force	
Montenegro	03 Jun 2006	In Force	
Mozambique	23 Dec 1996	In Force	
Myanmar	04 Mar 1955	In Force	
Namibia	03 Jan 1995	In Force	
Netherlands	07 Mar 1950	In Force	
Nicaragua	31 Oct 1967	In Force	
Niger	27 Feb 1961	In Force	
Nigeria	17 Oct 1960	In Force	
North Macedonia	17 Nov 1991	In Force	
Norway	04 Jul 1949	In Force	

Country	Date	Status	Note
Pakistan	14 Feb 1951	In Force	
Panama	03 Jun 1958	In Force	
Papua New Guinea	02 Jun 2000	In Force	
Paraguay	28 Jun 1962	In Force	
Peru	02 Mar 1960	In Force	
Philippines	29 Dec 1953	In Force	
Poland	25 Feb 1957	In Force	
Portugal	14 Oct 1977	In Force	
Republic of Korea	20 Apr 2021	In Force	
Republic of Moldova	12 Aug 1996	In Force	
Romania	28 May 1957	In Force	
Russian Federation	10 Aug 1956	In Force	
Rwanda	08 Nov 1988	In Force	
Saint Kitts and Nevis	25 Aug 2000	In Force	
Saint Lucia	14 May 1980	In Force	
Saint Vincent and the Grenadines	09 Nov 2001	In Force	
Samoa	30 Jun 2008	In Force	
San Marino	19 Dec 1986	In Force	
Sao Tome and Principe	17 Jun 1992	In Force	
Senegal	04 Nov 1960	In Force	
Serbia	24 Nov 2000	In Force	
Seychelles	06 Feb 1978	In Force	
Sierra Leone	15 Jun 1961	In Force	
Slovakia	01 Jan 1993	In Force	
Slovenia	29 May 1992	In Force	
Solomon Islands	13 Apr 2012	In Force	
Somalia	20 Mar 2014	In Force	
South Africa	19 Feb 1996	In Force	
Spain	20 Apr 1977	In Force	
Sri Lanka	15 Sep 1995	In Force	
Sudan	17 Mar 2021	In Force	
Suriname	15 Jun 1976	In Force	
Sweden	25 Nov 1949	In Force	
Switzerland	25 Mar 1975	In Force	
Syrian Arab Republic	26 Jul 1960	In Force	
Tajikistan	26 Nov 1993	In Force	
Timor-Leste	16 Jun 2009	In Force	
Togo	07 Jun 1960	In Force	
Trinidad and Tobago	24 May 1963	In Force	
Tunisia	18 Jun 1957	In Force	
Turkmenistan	15 May 1997	In Force	

Country	Date	Status	Note
Türkiye	12 Jul 1993	In Force	
Uganda	02 Jun 2005	In Force	
Ukraine	14 Sep 1956	In Force	
United Kingdom of Great Britain and Northern Ireland	27 Jun 1949	In Force	
United Republic of Tanzania	18 Apr 2000	In Force	
Uruguay	18 Mar 1954	In Force	
Uzbekistan	12 Dec 2016	In Force	
Vanuatu	28 Aug 2006	In Force	
Venezuela (Bolivarian Republic of)	20 Sep 1982	In Force	
Yemen	29 Jul 1976	In Force	
Zambia	02 Sep 1996	In Force	
Zimbabwe	09 Apr 2003	In Force	

Document No. 141

Draft Resolution submitted by the World Federation of Trade Unions to the Economic and Social Council on Guarantees for the Exercise and Development of Trade Union Rights, 1947

APPENDICES

APPENDIX A

I. Draft Resolution submitted by the World Federation of Trade Unions to the Economic and Social Council on Guarantees for the Exercise and Development of Trade Union Rights.

1. Ever since the end of the Second World War, one notes that certain interventions tend, in various countries, to destroy the very foundations of trade union rights. The means employed to hinder the progress of the trade union movement are principally as follows: the large-scale dismissal of trade unionist workers, the arrest of active trade unionist and trade union leaders, the occupation of trade union premises, the revocation by the Government of bodies democratically chosen by the trade unions, the nomination of trade union leaders by the Government, the prohibition of all coloured or native workers against forming occupational organizations, the prohibition on occupational organizations against forming any federal occupational or inter-occupational organizations, whether locally, nationally or internationally, etc.

2. Such attacks on trade union rights can demonstrate the persistence in certain countries of nefarious ideologies which have placed the world in deadly peril. The respect for trade union rights as an element of peace and co-operation between the peoples should be assured on the international level.

3. Trade unionism when unhampered in its evolution tends to go further than the particular interests of its members and becomes, in an ever-increasing measure, the spokesman of the general interests. This aspect of the evolution is also clearly illustrated by the programmes of economic reorganization formulated in most countries by the workers' trade unions. Basing itself on the generally accepted idea that the exercise of the right of ownership is a social function, trade unionism, representing the producers, insists on the necessity of bringing the community into still greater participation in the general direction of economic policy.

4. In the social domain, the role of the trade unions is still more important. They conclude collective agreements which can be extended to embrace all workers in a profession or in a nation, that is to say, even those who are not members of these organizations. In certain cases therefore, the trade unions are given the power to make regulations.

In many countries also, they share in the control and direction of industrial undertakings and even in the activities of the State ; in this way, they take part in the preparation of social legislation through their advisory councils, labour councils and economic councils, and share in the application of social legislation by administering social security institutions, by collaborating with inspecting bodies and also on conciliation and arbitration boards and on labour tribunals by supervising employment, apprenticeships, occupational training, and control of prices, etc.

5. Thus, in war, as in peace, the States call on the aid of trade union organizations in order to introduce a higher degree of justice into their social system. In this way alone can there be the guarantee of a peaceful evolution in conformity with the facts and with the democratic development. If, for example, it is rendered impossible for workers to make collective agreements, they have no other means of redressing the wrongs inflicted on them than by the collective stoppage of work and by agitation.

6. This evolution, which must be guaranteed and made general, is merely the expression of the democratic principle, according to which those concerned, namely the producers, should have a say in determining economic and social policy. The value of this principle has been increased by the fact that the war for the triumph of democracy and liberty has been brought to a successful issue with the active help of the working class and as a result of its sacrifices. Already the victory of the United Nations has inspired the development of trade unionism in all quarters in close relationship with social progress and the development of popular liberties.

7. Within the State, the role of modern trade unionism is of ever-increasing importance. This role, however, can be effective and can be of value for the community only on condition that the trade union movement preserve its independence, its autonomy and its spontaneous character. It is therefore fitting that the State should not obtain a hold over the trade unions and over the workers' movement by means such as : the nomination of administrative bodies and leaders by the public authorities, or the interference of the latter on any other score in the running of trade unions.

8. Furthermore, any attempt to hinder the federation of trade union organizations on the occupational and inter-occupational level, locally, nationally and internationally, constitutes a very serious infringement of trade union liberty. In fact, the idea of organization is at the very basis of trade union movement which, by its very nature, tends to integrate into ever-widening entities. Trade union practice in every country is decisive in this direction and any effort to the contrary could only tend to restore a corporate system condemned by experience.

Moreover, the evolution of trade unionism extends beyond national frontiers and is manifested with equal intensity on the international level.

9. Even at the end of the First World War, the Peace Conference insisted on the necessity of organizing the working class. Through its representatives, the working class took part in a series of conferences and in a number of international organizations and in this way the international personality of the workers' organizations became an indisputable reality.

10. Attention should be drawn to the work undertaken by the W.F.T.U. after the Second World War, in order to assist trade union organization in liberated or defeated countries, an action which constitutes one of the most important factors in the spread of democracy in the political, social and economic domain, and of which the beneficial effect has been recognized by all the Governments concerned.

11. After the Second World War, the evolution which we have demonstrated, both on the national and international level, became more pronounced. Already relations of confidence have been established between the Economic and Social Council and the World Federation of Trade Unions.

12. Besides, according to Article 1 (3) of their Charter, the United Nations propose as one of their aims, the realization of international co-operation in solving international problems of an economic, social, intellectual or humanitarian nature, by developing and encouraging respect for the rights of man and the fundamental liberties for all without distinction of race, sex, language or religion. The same idea is to be found in Articles 55 *c.* and 62 of the Charter. The attainment of this objective presupposes the general expansion and consolidation of trade unionism on the national and international level.

13. Effective co-operation in economic and social matters is only feasible with the help of the masses of the peoples, who must be assured of an ever-increasing standard of comfort, and whose most responsible elements are organized within trade unions.

The recognition of trade union rights and the unrestricted and uncontested use of those rights should allow the full development of the trade union activities. These activities may lead the trade union organizations in each country to co-operation in establishing and implementing social legislation. The outcome of this progressive social legislation, setting out the constructive possibilities of trade unionism, can be a new right enabling the trade unions to determine the economic and social policies in each country.

14. Unorganized, spontaneous anarchic movements can be a danger to the internal peace of every country. If effective international co-operation is to be established, there must be pacification and consolidation of the democratic régime within each State.

15. Effective respect for trade union rights, apart from guarantees proper to every country, demands a safeguard of an international character whenever the use of these rights results in developments which might affect the international life. From national and international practice there can be established, for trade union rights, a real common international law, for which respect in all States should be assured by the Economic and Social Council.

* * *

On the basis of the preceding considerations, the W.F.T.U. submits to the Economic and Social Council, the following Resolutions:

1. Trade union rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.
2. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within

their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.

3. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally or internationally.
4. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.
5. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted.

Document No. 142

Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights, 1947

II. Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights.

1. On 28 February 1947, a document E/C.2/28 was circulated to the members of the Economic and Social Council on behalf of the World Federation of Trade Unions. This document contains a draft of the proposed Resolution regarding the guarantees for the exercise and development of trade unions' rights.

2. In the document E/CT.2/2 circulated to members of the Council as of 20 August 1946, the American Federation of Labor, in its draft of a proposed " International Bill of Rights " covered, among other questions, the basic points raised by the World Federation of Trade Unions.

Specifically, the American Federation of Labor draft urged the adoption of the following provisions as a part of the " International Bill of Rights " :

IV

Basic Human Rights

Without freedom from fear of tyranny by absolutist bureaucrats or dictators and without freedom from want, there can be no political or industrial democracy within nations or just relations and enduring peace between nations.

Only by removing the political, economic and social ills and maladjustments afflicting humanity will mankind be able to reach that long hoped-for stage of civilization in which peace and plenty shall truly prevail.

In this spirit, the American Federation of Labor proposes to the Economic and Social Council of the United Nations that it draft an

International Bill of Rights which shall be part of the general Peace Treaty and be binding on all its signatories. We propose that this International Bill of Rights shall include the following provisions :

1. Every human being — irrespective of race, colour, creed, sex or national origin — has the right to pursue his or her work and spiritual development in conditions of freedom and dignity.

2. Freedom of expression and association is vital to the preservation of the basic liberties and the enhancement of the spiritual and material progress of the human race. These rights must be inviolate for those who oppose, no less than for those who support, a ruling party or a régime at any specific moment.

Genuine freedom means the right of association and organization into various — into differing — educational, religious, economic, political and trade union organizations, without fear of direct or indirect control and compulsion by governmental or any other agencies.

3. The right to organize and work for a constantly more equitable distribution of the national income and wealth and the right to strive for the enhancement of the moral and material well-being of the people — for better health and security against the ravages of unemployment, accidents, sickness and old age — are to be considered inalienable. The conditions of work under modern large scale industry make it especially necessary for the working people to have an effective system of social legislation which will provide minimum wages and maximum working hours ; guarantee against the employment of child labour ; set up adequate medical care ; provide accident, unemployment and old-age insurance and other such vital measures making for effective social security of the population.

4. Raise labour standards throughout the world. There is no more effective way of stimulating the revival of production and the international expansion of markets than by increasing the purchasing power of the great mass of people in every country.

5. Freedom of religion and right to religious worship are indispensable to a truly democratic society.

6. The right of asylum is to be guaranteed by all nations. No human being who is a refugee from any political régime he disapproves of is to be forced to return to a territory under the sovereignty of that régime.

7. The right to migrate or leave temporarily or permanently a country in which a citizen does not want to remain must be assured, limited only by the laws of immigration of the country which he may wish to visit.

8. There must be freedom of opinion and expression and full access to the opinions of others.

9. The more full and complete knowledge of the world is extended and realized by the peoples of all nations, the less will be the distance and misunderstandings between nations and peoples. Therefore, the right of free access to and exchange of information — scientific, economic, social, religious and political — the promotion of knowledge and of cultural relations, the full and free dissemination of news by radio and press must be assured.

10. Involuntary servitude in any shape, manner or form or under any guise shall be outlawed and discontinued by all nations and all peoples.

11. Freedom from arbitrary arrest, detention, search and seizure; proper judicial determination of arrest and charges; a fair public trial by jury or competent and unprejudiced court constituted in accordance with normal judicial procedure; right of habeas corpus and freedom from arbitrary imposition of penalties.

12. The key to the entire approach of human rights must be the placing of respect for human personality and welfare above all else. In this spirit, the foregoing rights can have tangible meaning and practical application only if:

(a) All human beings have real security and are free from discrimination on account of race, colour, creed or difference of political belief from the Government in control or the party in power.

(b) There is to be no peacetime conscription or militarization of workers protesting or striking against conditions of labour which they consider unfair or unsatisfactory.

(c) All economic or political discrimination and punishment for differences of political opinion or religious belief and practices are to be eliminated. The threat of being sent to concentration or labour camps as a punishment for difference of opinion with any government authority or dominant political party must be completely removed.

(d) Freedom from censorship of books, press, radio and art, having due regard to the requirements of morals and decency.

(e) Freedom from the terror of secret police surveillance, arrest or torture. This can be assured only through the abolition of all political police and concentration camps in every country.

3. Basically, the protection of rights of trade union members and of their organizations is encompassed by the above proposals of the American Federation of Labor. These proposals were referred to the Human Rights Commission of the Economic and Social Council, were considered by that Commission and were referred by it to the Drafting Committee empowered to draft an International Bill of Rights.

4. There is no doubt that numerous problems which affect workers generally, or labour and trade union organizations more specifically, are outside the framework of reference set forth for the Human Rights Commission. The United Nations, under the terms of its Agreement with the International Labour Organization (document A/72), Article I, recognized the latter organization as " a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein ". The terms of reference of the International Labour Organization are indicated in its Constitution, Article 10 and Articles 19, 20, 21, 35 (Constitution and Rules, Montreal, 1946).

5. It is therefore quite proper for the Economic and Social Council to request the International Labour Organization to make a survey of labour conditions in the various countries, Members of the United Nations, in order to secure information on the treatment received by the individual workers in the exercise of their rights to form, join or belong

to trade union organizations without interference or coercion by the governmental authorities ; on the extent, if any, of government domination or interference with trade union organizations ; and regarding any coercive acts directed against individual workers insofar as their relations to their trade union organizations are concerned. On the basis of such inquiries, the International Labour Organization should be requested to undertake the necessary steps for the elimination of such practices which deny basic individual rights to workers or collective rights to their organizations.

6. The American Federation of Labor, after examining in detail the proposals submitted to the Economic and Social Council by the World Federation of Trade Unions, suggests that these proposals be amended to read as follows :

Draft Resolution

I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the International Labour Organization, that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows :

(A) To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the Government ?

(B) To what extent are trade unions free to operate in accordance with the decisions of their own members, whether on a local, regional or national basis, without interference by governmental authorities ?

(C) To what extent are workers free to select, elect or appoint officers of their own trade unions ?

(D) To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations, without governmental interference ?

(E) To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country ?

(F) To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference ?

(G) To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation ?

(H) To what extent is the right of workers and of their organizations to resort to strikes recognized and protected ?

(I) To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers ?

(J) To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf ?

(K) To what extent are workers free to move from one part of the country to another, within the confines of the national borders, and to what extent are they free to migrate outside the national boundaries ?

(L) To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference ?

(M) To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language or religion, protected against compulsory, or forced, labour ?

(N) To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection ?

II. The Economic and Social Council further recommends to the International Labour Organization that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various states, proposals for :

(a) incorporating the rights universally recognized ;

(b) protecting the workers and their organizations against the violation of basic labour or trade unions' rights ; and

(c) providing proper measures for the enforcement of such rights.

Document No. 143

Economic and Social Council, 4th Session, 1947, Official Records, Discussion of the resolution submitted by the World Federation of Trade Unions on guarantees for the exercise and development of trade union rights and memorandum submitted by the American Federation of Labor

UNITED NATIONS NATIONS UNIES

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS

SECOND YEAR : FOURTH SESSION

CONSEIL ECONOMIQUE ET SOCIAL

PROCES-VERBAUX OFFICIELS

DEUXIEME ANNEE : QUATRIEME SESSION

From the fifty-first meeting (28 February 1947) to the eighty-fourth meeting (29 March 1947)

De la cinquante et unième séance (28 février 1947) à la quatre-vingt-quatrième séance (29 mars 1947)

Lake Success, New York

1947

delegation appeared to indicate that it had merit and deserved further consideration. He agreed with the Chinese representative that the Gregorian calendar required modification, and stated that study by the Council of the proposed plan did not mean that that particular plan would have to be adopted.

Mr. MOE (Norway) pointed out that since, in the opinion of the United States Naval Observatory, failure by the General Assembly to take a decision with respect to a world calendar in 1947 would result in the postponement of the plan until 1956, the delay proposed by the United States representative was equivalent to a decision on the substance of the matter.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed with the United States representative that the matter should be postponed until the next session of the Council. The subject had not been placed on the agenda sufficiently early to permit study; discussions which had taken place in the League of Nations did not constitute a basis for decision by the Council; moreover, a substantial expense to the Secretariat was involved.

Mr. BORIS (France) supported the views of the representatives of the United States and of the Union of Soviet Socialist Republics.

The PRESIDENT then proposed that the matter might be postponed until the next session of the Council, but that in the meantime the Secretariat should be asked to assemble and prepare all the readily available material. He accepted the suggestion of Mr. ARCA PARRÓ (Peru) that the Secretary-General should be requested to circulate the Peruvian resolution to Member States between sessions of the Council. The *ad hoc* committee could be appointed at the beginning of the next session, and could report to the Council before the session ended.

Decision: *The President's proposal was adopted.*

55. Election of two members to the Agenda Committee

Decision: *The matter was referred to the Committee of the Whole.*

56. Discussion of the resolution submitted by the World Federation of Trade Unions on guarantees for the exercise and development of trade union rights and memorandum submitted by the American Federation of Labor (documents E/C.2/28[1] and E/C.2/32[2])

Mr. MAYHEW (United Kingdom) suggested that the Council should not discuss the substance

[1] See Annex 31.
[2] See Annex 32.

gation péruvienne semble indiquer que celui-ci a quelque valeur et mérite plus ample examen. M. Arca Parró pense, comme le représentant de la Chine, que le calendrier grégorien demande à être modifié, et précise que ce n'est pas parce que le projet soumis sera étudié par le Conseil que celui-ci sera tenu de l'adopter.

M. MOE (Norvège) fait remarquer que puisque, d'après l'*United States Naval Observatory*, si l'Assemblée générale ne prend pas en 1947 une décision quant à la question du calendrier universel, le projet devra être remis à 1956, l'ajournement proposé par le représentant des Etats-Unis équivaut à une décision sur le fond de la question.

M. MOROZOV (Union des Républiques socialistes soviétiques) demande, avec le représentant des Etats-Unis, que l'affaire soit renvoyée à la prochaine session du Conseil. La question n'a pas été inscrite à l'ordre du jour assez tôt pour qu'on ait pu l'étudier; les délibérations qui se sont réroulées à la Société des Nations ne constituent pas une base pour une décision du Conseil; d'autre part, la question entraînerait des frais assez importants pour le Secrétariat.

M. BORIS (France) se range à l'avis des représentants des Etats-Unis et de l'Union des Républiques socialistes soviétiques.

Le PRÉSIDENT propose alors de renvoyer la question à la prochaine session du Conseil, mais de demander dans l'intervalle au Secrétariat de rassembler et de préparer tous les documents qui peuvent être facilement obtenus. Il adopte la suggestion de M. ARCA PARRÓ (Pérou) qui demande que le Secrétaire général soit invité à faire distribuer la résolution du Pérou aux Etats Membres dans l'intervalle entre les sessions du Conseil. Le comité spécial pourrait être nommé au début de la prochaine session et pourrait faire rapport au Conseil avant la clôture de celle-ci.

Décision: *La proposition du Président est adoptée.*

55. Election de deux membres du Comité de l'ordre du jour

Décision: *La question est renvoyée au Comité plénier du Conseil.*

56. Discussion sur la résolution présentée par la Fédération syndicale mondiale concernant les garanties d'exercice et de développement des droits syndicaux et sur le mémorandum présenté par l'American Federation of Labor (documents E/C.2/28[1] et E/C.2/32[2])

M. MAYHEW (Royaume-Uni) est d'avis que le Conseil ne devrait pas discuter pour le mo-

[1] Voir l'annexe 31.
[2] Voir l'annexe 32.

of the WFTU draft resolution at the present time. It raised important issues, which required prolonged study by the various Governments; moreover, the subject fell clearly into the field of the International Labour Organization, one of the primary purposes of which was the promotion of freedom of association. Since the ILO had concluded an Agreement with the United Nations and had been recognized by the latter as a specialized agency competent in the field of labour, Mr. Mayhew proposed that the WFTU draft resolution should be referred for consideration to the ILO. The Council might also wish to refer certain points of the resolution to the Commission on Human Rights.

Mr. BORIS (France) pointed out that it was undesirable to enter upon a discussion of the WFTU draft resolution in the absence of the WFTU representative. Since, in his opinion, to refer the resolution to the ILO would be equivalent to prejudging the question, he suggested that the subject might be postponed until the following session of the Council.

Mr. MOROZOV (Union of Soviet Socialist Republics) recalled that, in accordance with a resolution of the General Assembly, the WFTU had been granted the right to propose items for the Council's agenda.[1] He agreed with Mr. Boris that, in the absence of the WFTU representative, the Council could not discuss the substance of the matter, and should, therefore, postpone it until the next session.

Should there be a discussion of the substance, he reserved the right to reply to the United Kingdom representative.

Mr. WINSLOW (United States of America) stated that his Government, which believed in free trade unionism and the right of association, viewed with alarm any threat to those principles. He agreed with the United Kingdom representative that the matter fell within the scope of the ILO. The Council had to guard itself against duplicating the work of the specialized agencies. He felt that referring the matter to the ILO for consideration and for a report containing recommendations as to measures that might be taken would in no way mean prejudging the case. He suggested that the WFTU draft resolution should at the same time be transmitted to the Commission on Human Rights, to be used by that Commission in its work of drafting the international bill of rights. The memorandum of the American Federation of Labor should be dealt with in the same manner.

Mr. MOE (Norway) said that the Norwegian delegation considered it most important that the item proposed by the WFTU should receive the thorough consideration of the Council. In Norway, the rights and duties of trade unions were

[1] See *Resolutions adopted by the General Assembly* during the second part of its first session, resolution 49 (I), page 77.

ment sur le fond du projet de résolution établi par la FSM. Il soulève d'importantes questions qui exigent un examen approfondi de la part des divers Gouvernements; en outre, la question est nettement du ressort de l'Organisation internationale du Travail, dont l'un des buts essentiels est de favoriser la liberté d'association. Puisque l'OIT a conclu un Accord avec l'Organisation des Nations Unies qui l'a reconnue comme institution spécialisée compétente dans le domaine du travail, M. Mayhew propose que le projet de résolution de la FSM soit transmis pour examen à l'OIT. Le Conseil pourrait également désirer renvoyer certains points de la résolution à la Commission des droits de l'homme.

M. BORIS (France) fait remarquer qu'il serait inopportun d'entamer une discussion relative au projet de résolution de la FSM en l'absence du représentant de cette organisation. D'après lui, envoyer la résolution à l'OIT reviendrait à préjuger la question; il propose en conséquence de remettre l'affaire à la prochaine session du Conseil.

M. MOROZOV (Union des Républiques socialistes soviétiques) rappelle que, conformément à une résolution de l'Assemblée générale, la FSM a reçu le droit de proposer l'inscription de points à l'ordre du jour du Conseil[1]. Il pense avec M. Boris qu'en l'absence du représentant de la FSM, le Conseil ne peut discuter la question au fond et doit donc en remettre la discussion à sa prochaine session.

Si une discussion au fond doit avoir lieu, il se réserve de répondre au représentant du Royaume-Uni.

M. WINSLOW (Etats-Unis d'Amérique) fait savoir que son Gouvernement, qui croit au syndicalisme libre et au droit d'association, s'alarmerait de voir ces principes menacés. Il convient avec le représentant du Royaume-Uni que la question est du ressort de l'OIT. Le Conseil doit éviter que son activité ne fasse double emploi avec celle des institutions spécialisées. A son avis, renvoyer la question à l'OIT pour examen en lui demandant un rapport comportant des recommandations quant aux mesures à prendre, ne reviendrait nullement à préjuger la question. Il propose que le projet de résolution de la FSM soit transmis simultanément à la Commission des droits de l'homme pour que celle-ci l'utilise pour la rédaction de la déclaration internationale des droits. Il conviendrait de procéder de même à l'égard du mémorandum de l'*American Federation of Labor*.

M. MOE (Norvège) déclare que la délégation norvégienne estime de la plus haute importance que le point proposé par la FSM fasse l'objet d'un examen approfondi de la part du Conseil. En Norvège, les droits et les devoirs des syndi-

[1] Voir les *Résolutions adoptées par l'Assemblée générale* pendant la seconde partie de sa première session, résolution 49 (I), page 77.

recognized both by public opinion and by law, and were an established part of the social machinery. Both labour and the general economic and social development of the country were benefited thereby. He believed that it would be useful to refer the WFTU draft resolution both to the ILO and to the Commission on Human Rights. The memorandum of the American Federation of Labor also contained valuable suggestions, but could not be used in its entirety, since it was based largely on conditions prevalent in the United States of America.

In view of the fact that the WFTU draft resolution had been presented at a late date and that the WFTU representative was absent, Mr. Moe supported the French suggestion that the whole matter should be postponed until the next session of the Council.

Mr. PAPANEK (Czechoslovakia) was also in favour of postponement. He pointed out that there had been a request from the WFTU to that effect. He felt, however, that the Council should form its own opinion of the matter before referring it to the ILO.

Mr. SMITH (Canada) agreed with the representative of the Union of the Soviet Socialist Republics that the substance of the matter should not be discussed at the present time. Of the two alternatives which had been proposed, he preferred referring the question at once to the ILO and to the Commission on Human Rights. Such a course of action could not be construed as prejudging the issue; it would merely be in conformity with the Agreement concluded with the ILO. The Council would be in no way bound by the results of the ILO study, but it was wise practice to obtain competent advice before attempting to reach a conclusion.

Mr. VAN KLEFFENS (Netherlands) and Mr. TURHAN (Turkey) agreed that the question should be referred at once to the ILO and the Commission on Human Rights.

Mr. KAMINSKY (Byelorussian Soviet Socialist Republic) was in favour of granting the WFTU request for postponement.

Mr. REID (New Zealand) felt that the question of the rights of trade unions was one of the most important before the Council. In view of the WFTU request, consideration of the question should be postponed; however, because of its urgency, it would be well to refer it as well as the memorandum of the American Federation of Labor to the ILO and the Commission on Human Rights at once.

Speaking as the representative of a country which was a leader in the field of trade union rights, Mr. Reid remarked that, in his opinion, both documents lacked breadth and depth, and

cats ont été reconnus tant par le public que par la loi, et constituent un élément bien établi du système social. Les travailleurs et le progrès économique et social du pays en ont tous deux bénéficié. Il estime qu'il y aurait intérêt à renvoyer le projet de résolution de la FSM, et à l'OIT, et à la Commission des droits de l'homme. Le mémorandum de l'*American Federation of Labor* contient également des idées intéressantes, mais ne peut être entièrement utilisé car il se fonde en grande partie sur la situation existant aux Etats-Unis d'Amérique.

Le projet de résolution de la FSM ayant été soumis tardivement et le représentant de cette organisation étant absent, M. Moe appuie la proposition de la France qui demande que l'ensemble de la question soit renvoyé à la prochaine session du Conseil.

M. PAPANEK (Tchécoslovaquie) est également partisan de l'ajournement. Il signale que la FSM a présenté une demande à cet effet. Le Conseil, estime-t-il cependant, doit se faire une opinion sur la question avant de la renvoyer à l'OIT.

M. SMITH (Canada) pense, comme le représentant de l'Union des Républiques socialistes soviétiques qu'il ne convient pas de discuter du fond de la question pour le moment. Quant à l'alternative qui a été proposée, il préfère voir renvoyer immédiatement la question à l'OIT et à la Commission des droits de l'homme. On ne saurait en conclure que cette méthode revienne à préjuger la question; elle serait simplement conforme à l'Accord passé avec l'OIT. Le Conseil ne serait en aucune manière lié par les conclusions de l'OIT, mais il est sage de s'entourer d'avis compétents avant d'essayer d'arriver à une décision.

M. VAN KLEFFENS (Pays-Bas) et M. TURHAN (Turquie) s'accordent à déclarer qu'il faudrait renvoyer immédiatement la question à l'OIT et à la Commission des droits de l'homme.

M. KAMINSKY (République socialiste soviétique de Biélorussie) est d'avis d'accéder à la demande de la FSM et de reporter la question à une date ultérieure.

D'après M. REID (Nouvelle-Zélande), la question des droits des syndicats est l'une des plus importantes parmi celles dont le Conseil a été saisi. En raison de la demande de la FSM, il conviendrait de différer l'examen de la question; cependant, étant donné son caractère d'urgence, il serait opportun de la renvoyer sans tarder, ainsi que le mémorandum de l'*American Federation of Labor,* à l'OIT et à la Commission des droits de l'homme.

Parlant à titre de représentant d'un pays qui compte parmi les plus avancés en matière de droits syndicaux, M. Reid fait observer qu'à son avis les deux documents manquent d'envergure

should have gone considerably further in their proposals.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that a simple question was becoming confused. The request of the WFTU should be granted, and the matter should be postponed, without being referred to any other organization.

Mr. MAYHEW (United Kingdom) pointed out that there was general agreement as regards the competence of the ILO in the matter. The ILO was to hold a conference in June, and it was desirable that the question should be referred to it at once, so that it might be discussed at that conference. The proposal for simple postponement was contrary to the United Nations' agreement with the ILO.

Mr. PÉREZ CISNEROS (Cuba) said that, in view of the WFTU request that the discussion of the question by the Council should be postponed until the next session, it would be advisable in the meantime to obtain the advice of the ILO.

Mr. BORIS (France) felt that the question was so important that it deserved the full consideration of the Council during the next session. The Council could decide at that time to what commission the subject might be referred. He agreed with the Cuban representative that it might be desirable to obtain the advice of the ILO in time for the next session of the Council.

Mr. WINSLOW (United States of America) observed that the Council had taken a considerable amount of trouble and had revised its rules of procedure in such a manner that the WFTU draft resolution could be placed on the agenda. He was not aware that the WFTU representative had indicated his desire to be present during the discussion of the present question.

The PRESIDENT replied that the WFTU representative had, in fact, indicated that desire upon a previous occasion.

Mr. MOROZOV (Union of Soviet Socialist Republics) felt that there was an attempt to give the ILO a monopoly in the labour field, and to enlarge its prerogatives at the expense of those of other organizations. It would be a mistake, he thought, to require the WFTU to address itself to the specialized agencies rather than to the Council direct. The WFTU represented many millions of people, and had the right to communicate direct with the Council. He believed that the decision to refer the WFTU draft resolution to a specialized agency would affect adversely the prestige of the Council.

After a brief discussion concerning procedure, the PRESIDENT proposed that, as there was general agreement that the Council should deal with the WFTU draft resolution at the next

et de profondeur, et que leurs propositions auraient dû avoir une portée beaucoup plus ample.

M. MOROZOV (Union des Républiques socialistes soviétiques) fait observer qu'on est en train d'embrouiller une question fort simple. Il faut accéder à la demande de la FSM et ajourner l'examen de la question sans la renvoyer à aucune autre organisation.

M. MAYHEW (Royaume-Uni) fait observer qu'il y a accord, en général, pour reconnaître la compétence de l'OIT en la matière. Cette Organisation doit se réunir en juin, et il conviendrait de lui renvoyer immédiatement la question, pour que celle-ci puisse venir en discussion lors de la conférence. La proposition tendant à un simple ajournement est contraire aux clauses de l'Accord de l'Organisation des Nations Unies avec l'OIT.

M. PÉREZ CISNEROS (Cuba) déclare que, étant donné la demande de la FSM tendant à ce que la discussion de la question par le Conseil soit remise à la prochaine session, il conviendrait, dans l'intervalle, de recueillir l'opinion de l'OIT.

M. BORIS (France) estime que la question présente une importance telle qu'elle mérite l'examen approfondi du Conseil lors de sa prochaine session. A cette époque, le Conseil pourra décider à quelle commission la question pourra être renvoyée. Il pense, avec le représentant de Cuba, qu'il serait bon de recueillir l'opinion de l'OIT avant la prochaine session du Conseil.

M. WINSLOW (Etats-Unis d'Amérique) fait observer que le Conseil a pris grand soin de reviser son règlement intérieur pour que le projet de résolution de la FSM puisse être inscrit à son ordre du jour. A sa connaissance, le représentant de cette organisation n'a pas manifesté le désir d'assister à la discussion de la question.

Le Président répond que le représentant de la FSM avait en fait exprimé ce désir lors d'une occasion antérieure.

M. MOROZOV (Union des Républiques socialistes soviétiques) a le sentiment qu'on s'efforce d'accorder à l'OIT le monopole dans le domaine du travail, et d'étendre les prérogatives de cet organisme aux dépens de celles d'autres organisations. A son avis, ce serait une erreur que d'amener la FSM à s'adresser aux institutions spécialisées plutôt que directement au Conseil. La FSM représente des millions de personnes, et a le droit de communiquer directement avec le Conseil. A son avis, la décision de renvoyer le projet de résolution de la FSM à une institution spécialisée nuirait au prestige du Conseil.

Après une brève discussion concernant la procédure à adopter, le Président propose que, la majorité des membres estimant que le Conseil doit discuter la question du projet de résolution

session, whether or not the resolution was in the meantime referred to the ILO, the question of referring the resolution to the ILO should be put to the vote first.

Mr. RICHES (International Labour Office) stated that, while the agenda for the coming ILO conference was already established, any delegate to the conference could introduce a new question for discussion by proposing a resolution to that effect. He felt sure that, should the Council decide to refer the WFTU draft resolution to the ILO, the ILO would be able to give it full consideration and would report upon it to the next session of the Council, at which time the regular ILO report to the Council would be made.

Decision: *The United Kingdom proposal that the draft resolution of the World Federation of Trade Unions and the memorandum of the American Federation of Labor should be referred for consideration to the International Labour Organization and considered by the Council at its next session was adopted.*

The United States proposal that the two documents should be referred to the Commission on Human Rights for consideration of those aspects which might appropriately form part of the international bill of rights, was adopted.

57. Discussion of the request by UNRRA for transfer to United Nations of UNRRA responsibilities in regard to utilization by receiving countries of local currency proceeds derived from sale of UNRRA supplies (document E/315)[1]

The PRESIDENT said that the Council would have to decide whether or not the item concerning UNRRA should be placed upon the agenda.

Mr. MOROZOV (Union of Soviet Socialist Republics) felt that it was poor practice to introduce new subjects for discussion when the session was nearing its end. He recalled that at the first meeting of the present session a number of representatives had complained that their Government had not had sufficient time to study the various items on the agenda.

Mr. OWEN (Assistant Secretary-General) said that the Secretary-General asked the indulgence of the Council with respect to the present item. Document E/315 had been in circulation since 5 March; the delay in circulation was the fault, not of UNRRA, but of the Secretariat. Exceptional circumstances were involved, since UNRRA would have ceased to exist before the

[1] See Annex 33.

de la FSM lors de sa prochaine session (que cette résolution ait été ou non renvoyée dans l'intervalle à l'OIT), il y a lieu de mettre aux voix en premier lieu la question du renvoi de la résolution à l'OIT.

M. RICHES (Organisation internationale du Travail) déclare que, l'ordre du jour de la prochaine conférence de l'OIT ayant déjà été arrêté, tout délégué à la conférence peut proposer la discussion d'une nouvelle question en soumettant une résolution à cet effet. Il est convaincu que, si le Conseil décidait de renvoyer le projet de résolution de la FSM à l'OIT, cette dernière pourrait l'étudier à fond et faire un rapport à ce sujet lors de la session suivante du Conseil, époque à laquelle sera présenté au Conseil le rapport annuel de l'OIT.

Décision: *La proposition du Royaume-Uni demandant que le projet de résolution de la Fédération syndicale mondiale et le mémorandum de l'*American Federation of Labor *soient renvoyés pour examen à l'Organisation internationale du Travail et examinés par le Conseil lors de sa prochaine session, est adoptée.*

La proposition des Etats-Unis demandant que les deux documents soient renvoyés à la Commission des droits de l'homme pour que celle-ci examine quelles parties pourraient être incorporées à la déclaration internationale des droits, est adoptée.

57. Discussion de la demande présentée par l'UNRRA relative au transfert à l'Organisation des Nations Unies des fonctions de l'UNRRA concernant l'utilisation par les pays bénéficiaires des recettes en monnaie locale provenant de la vente des fournitures de l'UNRRA (document E/315)[1]

Le PRÉSIDENT annonce que le Conseil devra se prononcer sur l'opportunité d'inscrire à l'ordre du jour le point concernant l'UNRRA.

M. MOROZOV (Union des Républiques socialistes soviétiques) estime que c'est là une mauvaise méthode que d'introduire de nouveaux sujets de discussion au moment où la session touche à sa fin. Il rappelle qu'à la fin de la première séance de la session en cours, un certain nombre de représentants se sont plaints de ce que leurs Gouvernements n'avaient pas disposé d'assez de temps pour examiner les différents points de l'ordre du jour.

M. OWEN (Secrétaire général adjoint) fait savoir que le Secrétaire général a demandé l'indulgence du Conseil en ce qui concerne le point dont il s'agit. Le document E/315 a été distribué dès le 5 mars; le retard apporté dans sa distribution est imputable, non à l'UNRRA, mais au Secrétariat. Les circonstances étaient exceptionnelles, puisque l'UNRRA devait cesser d'exister

[1] Voir l'annexe 33.

Document No. 144

Economic and Social Council, 4th Session, 1947, Resolution 52 (IV) on Guarantees for the exercise and development of trade unions

Resolutions

adopted by the

Economic and Social Council

during its Fourth Session from
28 February to 29 March 1947

Résolutions

adoptées par le

Conseil économique et social

pendant sa Quatrième Session du
28 février au 29 mars 1947

UNITED NATIONS
Lake Success, New York

the Secretary-General to obtain a report on this subject from the Co-ordination Committee for submission to the Council if possible at its fifth session;

C. *Instructs* the Secretary-General, in co-operation with the Co-ordination Committee, and without prejudice to any action to be taken on immediate requests, to study the general procedures and terms, including financial arrangements, which might be followed by the United Nations and specialized agencies in respect of technical assistance provided by them to Member Governments.

52 (IV). Guarantees for the exercise and development of trade union rights

Resolution of 24 March 1947
(document E/372)

The Economic and Social Council,

Having taken note of the item regarding trade union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,

Resolves to transmit these documents to the International Labour Organization with a request that it [the item] may be placed upon its agenda and considered at the forthcoming session of the International Labour Organization, and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council;

The Economic and Social Council

Further resolves to transmit the documents to the Commission on Human Rights, in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights.

53 (IV). Translation of the classics

Resolution of 28 March 1947
(document E/426)

The Economic and Social Council,

Taking note of the resolution No. 60 (I) of the General Assembly of 14 December 1946[1] whereby the question of the translation of the world's classics into the languages of the Members of the United Nations was referred to the Economic and Social Council for reference to The United Nations Educational, Scientific and Cultural Organization; and of the principles recommended therein for consideration in the study of this question; and

Considering

(*a*) That the translation of the classics is a project of international concern and of great

[1] See *Resolutions adopted by the General Assembly* during the second part of its first session, pages 60, 61.

également d'obtenir du Comité de coordination un rapport sur cette question qui sera soumis à l'examen du Conseil, si possible lors de sa cinquième session;

C. *Charge* le Secrétaire général, en collaboration avec le Comité de coordination et sans préjudice des mesures qu'il pourrait y avoir lieu de prendre pour répondre à des demandes immédiates, d'étudier les méthodes et les conditions générales, en particulier les arrangements d'ordre financier, selon lesquelles pourront procéder l'Organisation des Nations Unies et les institutions spécialisées en fournissant une assistance technique aux Gouvernements des Etats Membres.

52 (IV). Garanties de l'exercice et de la mise en œuvre des droits syndicaux

Résolution du 24 mars 1947
(document E/372)

Le Conseil économique et social,

Ayant pris acte de la question relative aux droits syndicaux inscrite à son ordre du jour à la demande de la Fédération syndicale mondiale, ainsi que des notes présentées par la Fédération syndicale mondiale et par *l'American Federation of Labor,*

Décide de transmettre ces documents à l'Organisation internationale du Travail en la priant de porter cette question à l'ordre du jour de sa prochaine session, et d'envoyer un rapport au Conseil économique et social pour examen lors de sa prochaine session.

Le Conseil économique et social,

Décide en outre de transmettre ces documents à la Commission des droits de l'homme pour qu'elle étudie ceux des aspects de la question qui pourraient avoir leur place dans la déclaration des droits de l'homme.

53 (IV). Traduction des classiques

Résolution du 28 mars 1947
(document E/426)

Le Conseil économique et social,

Prenant acte de la résolution de l'Assemblée générale No 60, (I) en date du 14 décembre 1946[1], en vertu de laquelle la question de la traduction des classiques du monde entier dans les différentes langues des Etats Membres des Nations Unies a été renvoyée au Conseil économique et social pour que celui-ci la transmette à l'Organisation des Nations Unies pour l'éducation, la science et la culture; prenant acte également des principes dont la dite résolution recommande de tenir compte dans l'examen de cette question; et

Considérant

a) Que la traduction des classiques est un projet de caractère international et présente une

[1] Voir les *Résolutions adoptées par l'Assemblée générale* pendant la deuxième partie de sa première session, pages 60 et 61.

Document No. 145

Agreement between the United Nations and the International Labour Organization, 1946, article III

Agreement between the United Nations and the International Labour Organization

Article 57 of the Charter of the United Nations provides that specialized agencies established by intergovernmental agreement and having wide international responsibilities as defined in their basic instruments in economic, social, cultural, educational, health and related fields shall be brought into relationship with the United Nations.

The International Labour Conference, meeting in its twenty-seventh session in Paris on 3 November 1945, adopted a resolution confirming the desire of the International Labour Organization to enter into relationship with the United Nations on terms to be determined by agreement.

Therefore, the United Nations and the International Labour Organization agree as follows:

ARTICLE I

The United Nations recognizes the International Labour Organization as a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein.

ARTICLE II

Reciprocal representation

1. Representatives of the United Nations shall be invited to attend the meetings of the International Labour Conference (hereinafter called the Conference) and its committees, the Governing Body and its committees, and such general, regional or other special meetings as the International Labour Organization may convene, and to participate, without vote, in the deliberations of these bodies.

2. Representatives of the International Labour Organization shall be invited to attend meetings of the Economic and Social Council of the United Nations (hereinafter called the Council) and of its commissions and committees and to participate, without vote, in the deliberations of these bodies with respect to items on their agenda in which the International Labour Organization has indicated that it has an interest.

3. Representatives of the International Labour Organization shall be invited to attend, in a consultative capacity, meetings of the General Assembly and shall be afforded full opportunity for presenting to the General Assembly the views of the International Labour Organization on questions within the scope of its activities.

4. Representatives of the International Labour Organization shall be invited to attend meetings of the main committees of the General Assembly in which the International Labour Organization has an interest and to participate, without vote, in the deliberations thereof.

5. Representatives of the International Labour Organization shall be invited to attend the meetings of the Trusteeship Council and to participate, without vote, in the deliberations thereof with respect to items on the agenda in which the International Labour Organization has indicated that it has an interest.

6. Written statements of the Organization shall be distributed by the Secretariat of the United Nations to all Members of the General Assembly, the Council and its commissions and the Trusteeship Council as appropriate.

Article III

Proposal of agenda items

Subject to such preliminary consultation as may be necessary, the International Labour Organization shall include on the agenda of the Governing Body items proposed to it by the United Nations. Similarly, the Council and its commissions and the Trusteeship Council shall include on their agenda items proposed by the International Labour Organization.

Article IV

Recommendations of the General Assembly and of the Council

1. The International Labour Organization, having regard to the obligation of the United Nations to promote the objectives set forth in Article 55 of the Charter and the function and power of the Council, under Article 62 of the Charter, to make or initiate studies and reports with respect to international economic, social, cultural, educational, health and related matters and to make recommendations concerning these matters to the specialized agencies concerned, and having regard also to the responsibility of the United Nations, under Articles 58 and 63 of the Charter, to make recommendations for the co-ordination of the policies and activities of such specialized agencies, agrees to arrange for the submission, as soon as possible, to the Governing Body, the Conference or such other organ of the International Labour Organization, as may be appropriate, of all formal recommendations which the General Assembly or the Council may make to it.

Document No. 146

Minutes of the 102nd Session of the Governing Body, June-July 1947, Appendix III, Relations with Other International Organisations

INTERNATIONAL LABOUR OFFICE

MINUTES

OF THE

102ND SESSION

OF

THE GOVERNING BODY

GENEVA—13 JUNE-10 JULY 1947

APPENDIX III

THIRD ITEM ON THE AGENDA

RELATIONS WITH OTHER INTERNATIONAL ORGANISATIONS

I. UNITED NATIONS

Fourth Session of the Economic and Social Council

INTRODUCTION

1. The Fourth Session of the Economic and Social Council met at the headquarters of the United Nations at Lake Success from 28 February to 29 March 1947. The Council had before it, among other questions, the reports of the work of the first sessions of the following Commissions of the Council, which had met before the Council and at all of which the International Labour Organisation was represented:

Economic and Employment Commission;
Statistical Commission;
Transport Commission;
Population Commission;
Social Commission;
Commission on Human Rights;
Commission on the Status of Women;
Working Group for Asia and the Far East of the Temporary Sub-Commission on Economic Reconstruction of Devastated Areas.

2. During consideration of the proposal to establish an Economic Commission for Europe, a representative of the International Labour Organisation participated in the debates of the Council for the first time and made the following statement:

> This is the first occasion, Mr. President, on which a representative of the International Labour Organisation has participated in the proceedings of the Economic and Social Council.
>
> The Director-General of the International Labour Office has therefore asked me to convey to the Council, on behalf of the Chairman of the Governing Body and on his own behalf, their keen regret that it has not been possible to arrange for the attendance of either a delegation of the Governing Body or the Director-General, at a session of the Council which represents an important stage in the development of the relations between the two organisations.
>
> The Governing Body of the International Labour Office is about to hold its 101st Session in Geneva, and in these circumstances neither Sir Guildhaume Myrddin-Evans and his colleagues, the representatives of the Employers' and Workers' groups of the Governing Body, nor Mr. Phelan, have been able to come to New York on this occasion. Every endeavour will be made in the future to avoid holding major I.L.O. meetings simultaneously with sessions of the Council, but our experience has been that it is impossible to do our work efficiently unless the dates of our meetings are settled well in advance. As soon as a fixed schedule has been agreed upon for the meetings of the General Assembly and the Economic and Social Council, the I.L.O. will endeavour so to arrange its future meetings as to eliminate avoidable overlapping, but it will necessarily be some time before such arrangements can take effect. Meanwhile, we shall do our best to co-operate fully with the Council and with its Commissions and Committees. [1]

GUARANTEES FOR THE EXERCISE AND DEVELOPMENT OF TRADE UNION RIGHTS

3. The Council adopted a resolution concerning the question of guarantees for the exercise and development of trade union rights.

[1] E/P.V.54, pp. 41-46.

4. The Secretary-General of the United Nations communicated this resolution to the Director-General by the following letter dated 18 April 1947:

Sir,

I have the honour to transmit to you the following resolution which was adopted by the Economic and Social Council on 24 March 1947 (Document E/372):

The Economic and Social Council,

Having taken note of the item regarding trade union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,

Resolves to transmit these documents to the International Labour Organisation with a request that it may be placed upon its agenda and considered at the forthcoming Session of the International Labour Organisation, and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council.

The Economic and Social Council

Further resolves to transmit the documents to the Commission on Human Rights in order that it may consider those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights.

The agenda item referred to in this resolution concerned guarantees for the exercise and development of trade union rights. I am enclosing copies of the documents relating to this item which were before the Council, together with copies of the relevant verbatim records, as follows:

E/C2/27 Letter to the Secretary-General from the World Federation of Trade Unions.

E/C2/28 Letter to the Secretary-General from the World Federation of Trade Unions incorporating a memorandum on the subject of guarantees for the exercise and development of trade union rights.

E/C2/32 Letter to the Secretary-General from the American Federation of Labor incorporating a memorandum on basic human rights.

E/372 Resolution adopted by the Economic and Social Council on 24 March 1947.

E/372 Add. 1. Proposal of the Delegation of the Union of Soviet Socialist Republics concerning the guarantees for the exercise and development of trade unions.

Verbatim Records of the twenty-ninth, thirty-third and thirty-fourth plenary meetings of the Fourth Session of the Council:

E/PV/79 (see pp. 31 *et seq.*).
E/PV/83 (see pp. 1 *et seq.*).
E/PV/84 (see pp. 67 *et seq.*).

I should be grateful if in pursuance of this resolution you would arrange for the requests of the Economic and Social Council to be dealt with at the next session of the International Labour Organisation.

I have the honour to be, etc.,

(Signed) Trygve LIE,
Secretary-General.

5. On 19 April 1947, the Governing Body was consulted by telegram as follows:

Economic and Social Council had before it at Fourth Session proposals from WFTU and AFL concerning trade union rights. Council decided by majority request matter be placed agenda forthcoming session ILO Conference and also referred question to its Human Rights Commission for consideration aspects appropriate Bill Human Rights. Council further decided request report from ILO for consideration its next session. Since question freedom of association is basic element in ILO Constitution matter unquestionably within ILO's competence and since in view agreement with United Nations Govbody will certainly wish give effect Council's request suggest in agreement with Chairman that brief report on freedom of association and industrial relations be laid before forthcoming conference and that Governments be informed so that they may include in delegations qualified persons. As constitutional four months' notice cannot be given Convention or Recommendation cannot be adopted but Conference could hold general discussion and consider future action by ILO. Immediate decision desirable in order that Governments may have longest possible notice and would therefore appreciate telegraphic reply.

(Signed) Edward PHELAN,
Director-General,
International Labour Office.

6. Thirty replies have been received. The members of the Governing Body who replied agreed unanimously, subject to certain reservations on the part of one member, to include the item "Freedom of Association and Industrial Relations" in the agenda of the forthcoming 30th Session of the International Labour Conference.

7. On 8 May 1947 the Governing Body was further consulted by telegram as follows:

Reference telegraphic consultation concerning submission Conference report Freedom of Association and Industrial Relations twentyeight affirmative replies received. Governments informed. Assume that Governments may be informed they are entitled nominate additional advisers in respect this item in accordance terms Constitution. Please cable reply.

Edward PHELAN.

8. Twenty-three replies have been received. The members of the Governing Body who replied agreed unanimously that Governments may be informed that they are entitled to nominate additional advisers in respect of this item in accordance with the terms of the Constitution.

9. The report on the question was published in French on 12 June 1947. The English and Spanish editions will be circulated before the Conference.

10. The Director-General has sent the following letter to the Secretary-General indicating the action which has been taken on the request made by the Economic and Social Council:

13 June 1947.

Sir,

I have the honour to acknowledge your letter of 18 April 1947 by which you transmitted to me, in accordance with Article 3 of the Agreement between the United Nations and the International Labour Organisation, the resolution which was adopted by the Economic and Social Council at its Fourth Session concerning guarantees for the exercise and development of trade union rights, and requested me to arrange for this matter to be dealt with at the next session of the International Labour Organisation.

The Governing Body of the International Labour Office has been consulted in regard to this matter and has decided to include in the agenda of the forthcoming 30th Session of the International Labour Conference the item " Freedom of Association and Industrial Relations". I enclose herewith for your information a copy in French of the report on this subject which will be submitted to the Conference. I shall forward to you copies of the report in English and Spanish as soon as they are available.

The decisions concerning this matter taken at the forthcoming session of the International Labour Conference will be communicated to you for the information of the Economic and Social Council as soon as they are available.

I have the honour to be, etc.,

(Signed) Edward PHELAN,
Director-General.

ECONOMIC COMMISSION FOR EUROPE

11. The Council, in pursuance of a recommendation made by the General Assembly, established an Economic Commission for Europe with terms of reference as follows:

(1) The Economic Commission for Europe, acting within the framework of the policies of the United Nations and subject to the general supervision of the Council shall, provided that the Commission takes no action in respect to any country without the agreement of the Government of that country—

(a) initiate and participate in measures for facilitating concerted action for the economic reconstruction of Europe, for raising the level of European economic activity, and for maintaining and strengthening the economic relations of the European countries both among themselves and with other countries of the world;

(b) make or sponsor such investigations and studies of economic and technological problems of and developments within member countries of the Commission and within Europe generally as the Commission deems appropriate;

(c) undertake or sponsor the collection, evaluation and dissemination of such economic, technological and statistical information as the Commission deems appropriate.

(2) The Commission shall give prior consideration, during its initial stages, to measures to facilitate the economic reconstruction of devastated countries of Europe which are Members of the United Nations.

(3) Immediately upon its establishment, the Commission shall consult with the Member Governments of the Emergency Economic Committee for Europe, the European Coal Organisation and the European Central Inland Transport Organisation with a view to the prompt termination of the first, and the absorption or termination of the activities of the second and third, while ensuring that the essential work performed by each of the three is fully maintained.

(4) The Commission is empowered to make recommendations on any matter within its competence directly to its Member Governments, Governments admitted in a consultative

Document No. 147

ILC, 30th Session, 1947, Report VII, Freedom of Association and Industrial Relations

REPORT VII

International Labour Conference

THIRTIETH SESSION

GENEVA, 1947

FREEDOM OF ASSOCIATION AND INDUSTRIAL RELATIONS

Seventh Item on the Agenda

GENEVA
International Labour Office
1947

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[1] See footnote, p. 16.

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INTRODUCTION

At its Fourth Session (February-March 1947), the Economic and Social Council of the United Nations was called upon to examine the question of " guarantees for the exercise and development of trade union rights ", which had been referred to it by the World Federation of Trade Unions.

At the conclusion of its discussions, the Economic and Social Council adopted the following Resolution, which the Secretary-General of the United Nations officially communicated to the Director-General of the International Labour Office on 18 April 1947 :

> The Economic and Social Council,
>
> Having taken note of the items regarding trade union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,
>
> Resolves to transmit these documents to the International Labour Organisation with a request that the question may be placed upon the agenda of its next session and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council.
>
> The Economic and Social Council,
>
> Further resolves to transmit the documents to the Commission on Human Rights in order that it may consider those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights.

The Economic and Social Council referred this question to the International Labour Organisation, under the terms of the Agreement between the United Nations and the International Labour Organisation [1], which, as will be remembered, was formally ratified both by the Assembly of the United Nations and by the International Labour Conference.

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[1] See text of the Agreement : *Official Bulletin*, Vol. XXIX, No. 4, 15 November 1946, p. 293.

Article III of that Agreement provides that " subject to such preliminary consultation as may be necessary, the International Labour Organisation shall include on the agenda of the Governing Body items proposed to it by the United Nations. Similarly, the Council and its commissions and the Trusteeship Council shall include on their agenda items proposed by the International Labour Organisation ".

Following the communication of this Resolution, the Governing Body, having been consulted by telegraph by the Director-General, decided to place the question of " freedom of association and industrial relations " on the agenda of the 30th Session of the Conference, which opens in Geneva on 19 June 1947. At the same time, it authorised the Director-General to inform the Governments of the States Members that, in accordance with the Constitution of the International Labour Organisation, they had the right to appoint advisers for the discussion of this question.

It appears expedient, for the information of the delegates to the Conference, to recall briefly the circumstances under which the problem of freedom of association came before the Economic and Social Council, and to summarise the discussions to which its consideration gave rise.

The Economic and Social Council had received two memoranda, one from the World Federation of Trade Unions, and one from the American Federation of Labor.

These two texts will be included as an appendix to this report but, as they represent the opinions of two very important trade union organisations, a substantial summary will be given in the following pages.

Memorandum of the World Federation of Trade Unions

The memorandum of the World Federation of Trade Unions [1] begins with an observation that, ever since the end of the Second World War,

> Certain interventions tend, in various countries, to destroy the very foundations of trade union rights. The means employed to hinder the progress of the trade union movement are principally as follows : large-scale dismissal of trade unionist workers, the arrest of active trade unionists and trade union leaders, the occupation of trade union premises,

[1] See Economic and Social Council : E.C. 2/28, 28 February 1947 (original in French), p. 2.

the revocation by the government of bodies democratically chosen by the trade unions, the nomination of trade union leaders by the government, the prohibition of all coloured or native workers from forming occupational organizations, the prohibition on occupational organizations from forming any federal occupational or inter-occupational organizations, whether locally, nationally or internationally, etc.

Such attacks on trade union rights can demonstrate the persistence in certain countries of nefarious ideologies which have placed the world in deadly peril. The respect for trade union rights as an element of peace and co-operation between the peoples should be assured on the international level.

The memorandum then goes on to emphasise the part which trade unionism can play if its development is not systematically impeded.

Trade unionism tends to go further than the particular interests of its members and becomes, in an ever-increasing measure, the spokesman of the general interests. This aspect of the evolution is also clearly illustrated by the programmes of economic reorganization formulated in most countries by the workers' trade unions. Basing itself on the generally accepted idea that the exercise of the right of ownership is a social function, trade unionism, representing the producers, insists on the necessity of bringing the community into still greater participation in the general direction of economic policy.

In the social domain, the role of the trade unions is still more important. They conclude collective agreements which can be extended to embrace all workers in a profession or in a nation, that is to say, even those who are not members of these organizations. In certain cases therefore the trade unions are given the power to make regulations. In many countries also, they share in the control and direction of industrial undertakings and even in the activities of the State ; in this way, they take part in the preparation of social legislation through their advisory councils, labour councils and economic councils, and share in the application of social legislation by administering social security institutions, by collaborating with inspecting bodies and also on conciliation and arbitration boards and on labour tribunals by supervising employment, apprenticeships, occupational training, and control of prices, etc.

This evolution, which must be guaranteed and made general, is merely the expression of the democratic principle, according to which those concerned, namely the producers, should have a say in determining economic and social policy. The value of this principle has been increased by the fact that the war for the triumph of democracy and liberty has been brought to a successful issue with the active help of the working class and as a result of its sacrifices. Already the victory of the United Nations has inspired the development of trade unionism in all quarters in close relationship with social progress and the development of popular liberties.

But the role of trade unionism... can be of value for the community only on condition that the trade union movement preserves its independence, its autonomy and its spontaneous character. It is therefore fitting that the State should not obtain a hold over the trade unions and over the workers' movement by means such as : the nomination of administrative bodies and leaders by the public authorities, or the interference of the latter on any other score in the running of trade unions.

Furthermore, any attempt to hinder the federation of trade union organizations on the occupational and inter-occupational level, locally, nationally and internationally, constitutes a very serious infringement of trade union liberty

The memorandum emphasises, moreover, that the evolution of trade unionism extends beyond national frontiers and is manifested with equal intensity at the international level.

Even at the end of the First World War, the Peace Conference insisted on the necessity of organizing the working class. Through its representatives, the working class took part in a series of conferences and in a number of international organizations and in this way the international personality of the workers' organizations became an indisputable reality.

After the Second World War, the evolution which we have demonstrated both on the national and international level became more pronounced.

Attention should be drawn to the work undertaken by the W.F. T.U. after the Second World War in order to assist trade union organization in liberated or defeated countries, an action which constitutes one of the most important factors in the spread of democracy in the political, social and economic domain, and of which the beneficial effect has been recognized by all the governments concerned.

Furthermore, relations of confidence have been established between the Economic and Social Council and the World Federation of Trade Unions.

The memorandum goes on to state that

According to Article 1 (3) of their Charter, the United Nations propose as one of their aims " to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ". The same idea is to be found in Articles 55 *c* and 62 of the Charter. The attainment of this objective presupposes the general expansion and consolidation of trade unionism on the national and international level.

The memorandum concludes that

Effective respect for trade union rights, apart from guarantees proper to every country, demands a safeguard of an international character whenever the use of these rights results in developments which might affect the international life. From national and international practice there can be established, for trade union rights, a real common international law, for which respect in all States should be assured by the Economic and Social Council.

On the basis of the preceding considerations, the World Federation of Trade Unions submitted to the Economic and Social Council the following Resolution :

I. Trade union rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.

II. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.

III. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally or internationally.

IV. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.

V. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted.

MEMORANDUM OF THE AMERICAN FEDERATION OF LABOR [1]

In its memorandum the American Federation of Labor begins by recalling that it had circulated, on 20 August 1946, a document (E/CT.2/2) relating to the " International Bill of Rights ", which covered, among other questions, the basic points raised by the World Federation of Trade Unions. The document was eventually transmitted for consideration to the Human Rights Commission of the Economic and Social Council.

The memorandum of the American Federation of Labor emphasises, however, that numerous problems affecting workers generally, or labour and trade union organisations more specifically, are outside the framework of reference set forth for the Human Rights Commission, and adds :

The United Nations, under the terms of its Agreement with the International Labour Organization (document A/72) Article I, recognized the latter organization as " a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein ". The terms of reference of the International Labour Organization are indicated in its Constitution, Articles 10, 19, 20, 21 and 35. [2]

It is therefore quite proper for the Economic and Social Council to request the International Labour Organization to make a survey of labour conditions in the various countries, Members of the United Nations, in order to secure information on the treatment received by the individual workers in the exercise of their rights to form, join or belong to Trade Union organizations without interference or coercion by the

[1] See ECONOMIC AND SOCIAL COUNCIL : E.C. 2/32, 13 March 1947 (original in English), pp. 5-8.

[2] *International Labour Organisation, Constitution and Rules* (Montreal, 1946).

governmental authorities ; on the extent, if any, of government domination or interference with trade union organizations ; and regarding any coercive acts directed against individual workers in so far as their relations to their trade union organizations are concerned. On the basis of such inquiries, the International Labour Organization should be requested to undertake the necessary steps for the elimination of such practices which deny basic individual rights to workers or collective rights to their organizations.

The American Federation of Labor, after examining in detail the proposals submitted to the Economic and Social Council by the World Federation of Trade Unions, suggests that these proposals be amended to read as follows :

I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the International Labour Organization, that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows :

1. To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the government ?
2. To what extent are trade unions free to operate in accordance with the decisions of their own members, whether on a local, regional or national basis, without interference by governmental authorities ?
3. To what extent are workers free to select, elect or appoint officers of their own trade unions ?
4. To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations, without governmental interference ?
5. To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country ?
6. To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference ?
7. To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation ?
8. To what extent is the right of workers and of their organizations to resort to strikes recognized and protected ?
9. To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers ?
10. To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf ?
11. To what extent are workers free to move from one part of the country to another, within the confines of the national borders, and to what extent are they free to migrate outside the national boundaries ?

12. To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference ?

13. To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language or religion, protected against compulsory, or forced labour ?

14. To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection?

II. The Economic and Social Council further recommends to the International Labour Organization that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various States, proposals for :

(a) incorporating the rights universally recognized,

(b) protecting the workers and their organizations against the violation of basic labour or trade unions' rights, and

(c) providing proper measures for the enforcement of such rights.

It will be observed that, while the first ten questions relate directly to the problem of freedom of association, the last four are of much more general application.

Discussion of the Problem of Association by the Economic and Social Council

The Council unanimously expressed the view that, because of the extensive nature of the matter, " the consequences of which would be manifold and important ", it was not desirable to embark upon the substance of it at the end of the session.

The only question to be discussed was whether the matter should be postponed for examination at the next session of the Economic and Social Council or whether it would be desirable, in accordance with the Agreement concluded between the United Nations and the International Labour Organisation, to refer the question directly to the International Labour Organisation, as well as to the Human Rights Commission, with regard to those aspects of it which might come within its competence.

A short summary is given of the arguments advanced in support of these respective proposals. [1]

In favour of the suggestion to refer the question immediately to the International Labour Organisation, the representative of the United Kingdom argued as follows :

[1] See : United Nations, Economic and Social Council E/P.V.79, 24 March 1947, pp. 22-71.

This Council has, on behalf of the United Nations, negotiated an Agreement with the International Labour Organisation, and that Agreement has now been formally ratified by the Assembly and the Conference of the I.L.O. It is binding on us all, no less than on the I.L.O.

Under that Agreement, the United Nations recognises the International Labour Organisation as " a specialised agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein ". One of these purposes is the promotion of freedom of association as one of the essential conditions of attaining social justice.

That aim was written into the Constitution when it was framed in 1919, and was re-affirmed at Philadelphia in 1944 . . .

The substance of the item which we are considering relates to one of the essential purposes of the I.L.O. We have recognised the I.L.O. as an agency responsible for taking appropriate action to accomplish such purposes, and it surely follows that for the Council to take the matter into detailed consideration now, and not refer it to the I.L.O. so it may consider what action it could or should take, would be contrary to the letter and certainly to the spirit of the Agreement which we have entered into.

Consequently, the representative of the United Kingdom called the attention of the Economic and Social Council to the fact that the General Conference of the International Labour Organisation was meeting in June 1947, and added :

If we therefore defer this matter until our next session we shall most conclusively and definitely by-pass this Conference of the I.L.O. I would like to see this item at an early stage on the agenda of that full Conference of the I.L.O. To defer this decision until our next session is not a deferment of a decision, because it is in fact a decision not to refer it to the Conference of the I.L.O. It is apparently a decision to discuss the substance of the item at the next session of the Economic and Social Council. I think it is important, therefore, not to feel that by deferring this item to the next Council, we are in any way deferring our decision on this very important point of substance, whether or not this matter should be referred to the International Labour Organisation.

Now I feel that to adopt, therefore, the proposal of our French colleague, would be outside both the letter and spirit of the Agreement which we have arranged with the International Labour Organisation. I think indeed it would be hard to imagine a more startling instance of lack of co-ordination with a specialised agency. And I do feel that our job is to refer this highly important matter, without the additional delay which would be imposed by postponing it to our next session, for early and immediate consideration by the International Labour Organisation.

The United States representative to the Economic and Social Council stated :

The matter squarely falls within the scope of the International Labour Organisation and our Agreement with that Organisation.

The principle of freedom of association has permeated many of the Conventions and Resolutions adopted by the various Sessions of the I.L.O. Conference. The Third Conference of the American States Members of the I.L.O., meeting in Mexico City in April of 1946, adopted a Resolution containing principles that seemed to that Conference to constitute an effective definition of freedom of association as applied to trade unions and employer associations. These principles include, among other things, a statement of the right of workers and employers to form organisations of their own choosing, whether federations or confederations, which should not be subject to dissolution by administrative orders.

The Mexico City I.L.O. Conference, which was attended by the United States and other Member States in the Americas, adopted a Resolution containing these principles that seemed to go to the heart of the matter raised by the World Federation of Trade Unions' document.

The representative of the Netherlands stressed that, in his opinion, the Economic and Social Council did not require to take a preliminary decision on the matter before referring it to the International Labour Organisation. He added :

All we have to do, it seems to me, is to see that this is a matter which, in the first instance, at any rate, should be dealt with by the I.L.O. and then, once the matter has been dealt with by that body, or if that body, which seems to me inconceivable, should fail to deal with it, then this Council will have to decide whether to take action itself and, if so, what action.

In favour of a formal reference of the matter to the next session of the Economic and Social Council, the argument was advanced that, before referring the question to a specialised agency, it was desirable to examine the substance of it in the Council itself.

The French representative declared :

The World Federation of Trade Unions, invoking the principles of the Charter, has urged that the United Nations has a mission, among other functions, to ensure respect for trade union rights.

We have a two-fold solution before us. We can send the whole question to the International Labour Organisation for consideration ; however, to take such a decision would be to prejudge the substance of the problem and, in particular, the facts which the World Federation of Trade Unions might submit to the Council. The other solution (which the speaker supported) is simply to adjourn the consideration of this question until the next session of the Council.

In such a matter, the persons concerned (that is to say, the members of these great international associations) would not understand how the Council could dispose so rapidly at the end of its session of a discussion which it would have to resume at a future date.

The French delegation is of the opinion that the general discussion should take place as soon as possible, in other words, at the next session of the Council. The Council could then decide whether it wished to refer the question to this or that agency or commission, calling its attention to the various points raised in the text submitted to the Council.

He concluded by stating :

If the consideration at the next session could take place with the advantage of certain documents being available, I see no objection to this, and should be glad if a compromise of this kind could be achieved.

The representative of Czechoslovakia pointed out that, before transmitting Resolutions which had been referred to it to another agency for consideration, the Council should obviously discuss the question as a matter of principle.

If we are discussing the substance and if we are to refer it to some other bodies before discussing it here, we must adopt certain principles contained in this Resolution, so that whether it is the Social Commission or whether it is the Commission on Human Rights or the International Labour Organisation, they would know what the opinion of this Council is on this subject. We have to accept or reject the principles contained in it. But I would be of the opinion that it should be deferred and that it be discussed in the next session of the Council.

The representative of the U.S.S.R. began by calling attention to the importance of the Resolution adopted by the General Assembly of the United Nations concerning the right granted to the World Federation of Trade Unions and other organisations to propose items for inclusion on the agenda of the Economic and Social Council. He added :

Because of various reasons, the representative of the World Federation of Trade Unions, who proposed the placing of this particular question on the agenda of the Economic and Social Council, had to leave New York. Under these circumstances, I believe that the Economic and Social Council could only take one decision concerning this whole question ; that is, to postpone its consideration until the next session of the Economic and Social Council and not to start any discussion on the substance of this question ...

If any other organisation or agency shows interest in one particular aspect of the question, then they can make recommendations and they can proceed in such a manner without any decision to this effect by the Economic and Social Council.

The representative of the U.S.S.R. continued :

The Members of the Economic and Social Council who proposed to transfer the study of the question which has been raised by the World Federation of Trade Unions to another organisation seem, in fact, to desire a change in an organisation, in a specialised agency, and more specifically speaking in the International Labour Organisation. It would grant the International Labour Organisation a sort of monopoly and would extend its rights, contrary to the agreement which has been reached with that organisation.

In addition, it would encourage the World Federation of Trade Unions not to address itself to the Council but to address itself to a specialised agency such as the I.L.O. This would be a great mistake indeed, and the Economic and Social Council would not be right in taking such a decision concerning an organisation whose membership

counts tens of millions of persons. This organisation — in other words the World Federation of Trade Unions — wants to state its opinion directly to the Economic and Social Council. And we would answer to this organisation that before we consider their opinion, we must have it verified by another organisation. If such a decision were taken, we would undermine the authority of the Economic and Social Council; and this would be a great mistake indeed.

The President of the Economic and Social Council summed up the discussion as follows :

... The United Kingdom, Soviet and other delegations have said that this matter can be considered at the next meeting of the Council. The United Kingdom delegation has said that this matter may be first referred to the International Labour Organisation, which meets in June, and that after having its report, the matter may be considered at the next session of the Council. Both the delegations wished that the matter should be considered at the next meeting of the Council, but the United Kingdom interposes a consideration by the I.L.O. and a report by the I.L.O. after such consideration, before the matter is taken up for consideration at the next meeting of the Council...

The Economic and Social Council, when called upon to take a decision on the two proposals, adopted by a majority vote the Resolution previously cited, asking the International Labour Organisation to place the question relating to trade union rights on the agenda of its next session and to send a report to the Economic and Social Council for consideration at its next session.

The Council further resolved to transmit the documents which had been referred to it to the Commission on Human Rights, in order that it might consider those aspects of the subject which might appropriately form part of a Bill or Declaration on Human Rights.

In this connection it may be observed that, by the terms of the Constitution of the International Labour Organisation and of the Declaration of Philadelphia, the question of the *right of occupational association*, conceived as the right of the *employers* and *workers* to form free associations, remains indisputably within the competence of the International Labour Organisation.

The same conclusion naturally follows with regard to the question of industrial relations, since that again is a problem regarding the relations which may be established, either between *occupational organisations* of employers and workers, or between those organisations and the public authorities.

Indeed, freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another, including freedom

of assembly and of meeting, freedom of speech and opinion, freedom of expression and of the press, and so forth.

It was with these various aspects of the question of freedom of association in mind that the Economic and Social Council referred the question of freedom of occupational association to the International Labour Organisation, and that of freedom of association in general to the Commission on Human Rights. In this connection, it should be recalled that the Commission on Human Rights is at present contemplating the drafting of an International Charter on Human Rights.

In taking this decision, the Economic and Social Council rightly considered that only by the combined endeavours of all the various institutions of the United Nations would it be possible to arrive at a comprehensive solution of the problem of guaranteeing the fundamental rights written into the United Nations Charter.

Accordingly, the International Labour Organisation will not have to concern itself with the general right of association, except in so far as the employers and the workers may invoke the principles of common law with regard to association or constitutional provisions concerning freedom of association in general.

It is within these limits that the Office, in the short space of time which has been at its disposal between the communication of the Resolution of the Economic and Social Council to the International Labour Office and the meeting of the Conference, has drawn up a short report on the general question of freedom of association and industrial relations.

The first chapter of the report deals with the history of the problem of freedom of association and industrial relations before the International Labour Organisation.

The second chapter is devoted to an analysis of legislation and practice.

A third chapter, entitled " Conclusions and Observations ", includes a number of suggestions with regard to the action which the International Labour Organisation might find it possible to undertake in connection with freedom of association and industrial relations.

The Conference, which will have before it a problem the urgent nature of which was made extremely evident during the discussion which took place in the Economic and Social Council, will, of course, have to decide in full freedom what action it can take with regard to that problem.

CHAPTER I

HISTORY OF THE PROBLEM OF FREEDOM OF ASSOCIATION AND INDUSTRIAL RELATIONS BEFORE THE INTERNATIONAL LABOUR ORGANISATION

Freedom of Association

The problem of freedom of association and industrial relations, which, as is well known, is vital to the very existence and functioning of the International Labour Organisation, has been in the forefront of its activities ever since its foundation. Hence, in order to view the new consideration of this question in its proper perspective, it is desirable to outline the history — a history as long as that of the Organisation itself — of the problem of freedom of association and industrial relations, which is now before the I.L.O.

The reasons which have caused the International Labour Organisation to concern itself from the beginning with the problem of freedom of association are, so to speak, fundamental to its very Constitution.

The part played by the association of workers and employers, both in the settlement of wages and conditions of labour and in the economic and social organisation of modern States, appeared so essential to the authors of Part XIII of the Versailles Peace Treaty that they based the Constitution of the International Labour Organisation not only on the States — in accordance with traditional diplomatic practice — but also on the autonomous organised forces of labour and industry.

Moreover, they took the view that the accomplishment of the task which thus devolved on the employers' and workers' organisations, not only on the national but also on the international plane, required full and complete recognition of freedom of association.

It is for these reasons that the Preamble to the Constitution of the International Labour Organisation expressly declares " recognition of the principle of freedom of association " to be one of the means of improving the conditions of the workers and of securing peace, and that Article 41, paragraph 2 includes among the principles of special and urgent importance " the right of association for all lawful purposes by the employed as well as by the employers ". [1]

At the Washington Conference, in 1919, certain questions concerning freedom of association were discussed, complaints were made relating to restrictions applied to the right of association for trade purposes, and a demand was made for the whole question to be placed on the agenda of the next Session of the Conference. [2]

In June 1920, the Governing Body was called upon for the first time to deal directly with this question. A short time previously, the Director of the International Labour Office had received a telegram from the Hungarian Government requesting him to send a mission to Hungary to ascertain on the spot whether the current rumours regarding an alleged " white terror " and persecutions of the workers had any foundation.

In consequence of this request, the Governing Body authorised the Director of the International Labour Office to take steps, on his own responsibility, to verify the facts which were alleged by the Hungarian Government or by the workers' organisations. In the autumn of 1920, three officials of the Office were sent to Hungary and the results of their enquiry were published in a report under the title of " Trade Union Conditions in Hungary ". [3]

This report comprises two parts : the first, entitled " Data of the Inquiry ", includes a survey of the actual status of trade unions, and of the existing legislation and its application. The second part — " The Inquiry " — contains the statements made by the workers, employers and Government representatives who were questioned during the enquiry, together with the documents which they produced to confirm their statements.

In December 1920, the International Labour Office received a complaint from the General Federation of Spanish Workers

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[1] As will be observed subsequently (see pp. 27-28), the Declaration of Philadelphia reaffirms these same principles with particular emphasis.

[2] See League of Nations, International Labor Conference, 1st annual meeting, October 29, 1919-November 29, 1919, pp. 52, 140, 143, 160 and 272, Washington, 1920.

[3] International Labour Office, Geneva, 1921.

accusing the Spanish Government of having taken measures which were contrary to the principle of freedom of association. On this occasion the Governing Body could not take any action with regard to the complaint, because, in the case in question, it was not the Government but a private organisation which had communicated with the International Labour Organisation, and it was apparent to the Governing Body that no intervention by virtue of Article 23 of the Constitution was possible without the consent of the Government concerned, in the absence of any international Convention governing freedom of association.

Thus it was made evident that a mere affirmation of the principle of freedom of association by the Constitution of the International Labour Organisation was not sufficient to ensure its observance.

It was this consideration which caused the Governing Body to decide to examine, at its 20th Session, in October 1923, the whole problem of freedom of association. Mr. Jouhaux, workers' representative, invoking Articles 1, 10 and 41 of the Constitution, asked that the International Labour Office should undertake an enquiry concerning the application of the principle of freedom of association. The Governing Body gave effect to his request by adopting the following Resolution :

> The Governing Body,
>
> Considering that the permanent organisation created by Part XIII of the Treaty is entrusted with the duty of carrying out the programme set forth in the Preamble of that Part of the Treaty,
>
> Considering that this programme affirms *inter alia* the principle of the freedom of association,
>
> Draws the attention of the Director of the International Labour Office to the value of collecting the most complete documentary evidence with reference to the position in all countries which are Members of the International Labour Organisation with regard to the application of this principle.

In pursuance of this decision, the International Labour Office undertook a most comprehensive enquiry into freedom of association, the results of which were published in five volumes.[1]

This enquiry was actually being undertaken when the Japanese workers' representative, Mr. Suzuki, put forward, at the 6th Session of the International Labour Conference (1924), a

[1] International Labour Office, Studies and Reports, Series A (Industrial Relations), Nos. 28, 29, 30, 31, 32 : *Freedom of Association*, Geneva, 1927, 1928, 1930.

Resolution which the Conference considered, and referred to the Governing Body in the following terms :

> The International Labour Conference,
>
> Considering that respect for the principle of freedom of association is essential to the proper working of the Organisation, which should unite in a common effort the Governments and the most representative associations of employers and workers,
>
> That the development of international social legislation, the object for which the Organisation exists, cannot be fully realised unless this right is fully recognised and conceded,
>
> Recalls the fact that amongst the principles enumerated in the Labour Portion of the Treaties of Peace, the right of association of the workers is expressly affirmed,
>
> Instructs the Governing Body of the International Labour Office to continue the documentary enquiry regarding liberty of association and to enlarge its scope so as to deal with the actual application of the principle in different countries,
>
> And requests the Governing Body, when this enquiry is completed, to consider the advisability of placing the question on the Agenda of a future Session of the Conference, with a view to determining measures to ensure full respect for the principle of freedom of association.

The Governing Body shortly afterwards gave effect to the request contained in this Resolution and, at its 30th Session (January 1926), placed the question of freedom of association on the agenda of the 1927 Session of the Conference.

It should be recalled that as far back as 1921 the International Labour Conference adopted a Convention concerning the rights of association and combination of agricultural workers, requiring that " each Member who ratifies the Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture ".

Discussion of the Problem of Freedom of Association at the 1927 Session of the Conference

Without going into all the details of the discussions which took place at the 1927 Session of the Conference, it is necessary to recall the chief reasons for the failure of this first attempt to deal with the question, if only to apprehend the lesson taught by that failure.

The documentary enquiry on freedom of association had disclosed the fact that the legislation concerning trade associations[1]

[1] This expression is used throughout the report as the equivalent of the French word *syndicats*, to include both employers' and workers' organisations.

differed considerably in detail and in form from country to country, but that the fundamental questions were dealt with on a fairly uniform basis.

The Office therefore preferred, instead of submitting to the Conference a draft scheme of detailed regulations which would have obliged the majority of countries to amend their legislation, to frame the essential elements of the problem in a number of precise formulae, the adoption of which would have constituted a sufficient guarantee for the free functioning of employers' and workers' associations.

The draft submitted to the Conference was limited to a guarantee, on the one hand, of the freedom of workers and employers to organise for the collective defence of their occupational interests and, on the other hand, of the freedom of trade associations to pursue their objects by all means not contrary to law or to the regulations enacted for the maintenance of public order.

As is well known, the scope of the draft submitted by the Office was considerably modified by the adoption of a whole series of amendments, two of which in particular helped to decide the fate of the Convention.

The first of these amendments proposed the extension of the guarantee of freedom of association to the freedom not to associate.

The authors of the amendment appear to have feared that the guarantee of the single right of association might lead to an obligation to organise, a question which, in fact, was quite irrelevant to the issue. It was a logical inference that the mere affirmation of the right of association fully safeguarded the right not to associate because, on the one hand, the individual naturally remained free to make use of his right or not and, on the other hand, the legislature remained free to prohibit or suppress any abuse of this right and to protect the freedom of the wage-earner against any unlawful pressure or constraint.

The second amendment, on the plea of safeguarding the prerogatives of the State in this connection, was designed to make the establishment of trade associations dependent on " the observing of the legal formalities ".

Such a general formula, with no definitive limitation, would, in fact, have given States the right to regulate the status of associations just as they pleased. It would, for instance, have enabled the legislator, in accordance moreover with the practice followed in certain countries, to make the very existence of trade associations

subject to previous authorisation. Such a provision was clearly contrary to the whole object of a proposed guarantee of freedom of association.

Furthermore, a Convention which did not include any precise undertaking and which, therefore, would have left the States free to interpret it as they chose, had evidently lost its purpose. For these reasons, the workers' members united with the employers' members in opposing the placing of the question of freedom of association on the agenda of the 1928 Session of the Conference.

But in fact, as was stated by the Director in his closing address, these apparent divergencies concealed more serious divergencies of opinion. He added that perhaps it was external circumstances, influencing the Conference and passing beyond its control, which had caused the temporary failure of the plan.

By his remark concerning external circumstances which were influencing the Conference, the Director of the International Labour Office was no doubt referring to the totalitarian regimes which had been set up in a considerable number of European countries and in other continents, and which had resulted either in the suppression or in the domestication of both employers' and workers' organisations.

It was this obstacle — plainly political in character — which was to prove insurmountable when further attempts were made to regulate the question of freedom of association.

Guarantee of the Principle of Freedom of Association

Since the unsuccessful attempt to solve the problem in 1927, not a session of the International Labour Conference has been held without reference being made to the problem of freedom of association and Resolutions adopted requesting the Governing Body to reconsider the question with a view to its subsequent settlement.

Hence the Governing Body, yielding to the requests of a large number of delegates to the Conference but warned of the difficulties in the way of a solution, decided, at its 50th Session (October 1930), to take up the problem again, but to follow a new procedure.

Unanimously adopting a Resolution proposed by Mr. Cantilo, Government representative of the Argentine Republic, the Governing Body decided to deal with the international regulation of the problem of freedom of association by successive stages, the first consisting simply of the guarantee of the principle of freedom

of association ; moreover, it instructed the Office to study the question on these lines.

In accordance with this decision, the Office submitted to the Governing Body, at its 55th Session (October 1931), a study[1] supporting in its conclusions, both on theoretical and practical grounds, the preparation of a proposed Convention based on Article 41, paragraph 2, of the Constitution of the International Labour Organisation.

The Governing Body accepted this proposal and instructed the Committee on Freedom of Association, specially set up for this purpose, to submit to it a report on the scope of a Convention drawn up on this basis.

The report of the Committee on Freedom of Association was submitted to the Governing Body at its 61st Session, and was adopted by a large majority. Following logically on the result of this first vote, the Governing Body also decided to retain the question of freedom of association among those which it would consider when it was drawing up the agenda for the next session of the Conference.

It will be remembered that this second attempt also had to be abandoned. What were the reasons ? Before considering them, it is necessary to summarise in a few words the contents and implications of the report which the Committee on Freedom of Association had submitted to the Governing Body and which the latter had adopted.

The Committee on Freedom of Association, basing the prospective proposed Convention on the text of Article 41, paragraph 2 of the Constitution, suggested in the first place that the States should be asked to renew, in the form of a definite legal undertaking, the moral undertaking into which they had entered by the mere fact of joining the International Labour Organisation.

Secondly, the Committee, by submitting for the approval of the Conference a formula already approved in the Constitution and sufficiently precise to be adequate in itself, hoped to be able to avoid the series of amendments which had compromised the first effort to obtain regulation.

Finally, the report of the Committee on Freedom of Association, which served, so to speak, as an exposé of the reasons for the future proposed Convention, defined with the greatest possible

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[1] Minutes of the 55th Session of the Governing Body of the I.L.O., Geneva, October 1931, pp. 716-723 : *Appendix IX, Annex A, Note on Freedom of Association.*

precision the obligation which would devolve upon the States from the adoption of the principle of freedom of association as expressed in Article 41, paragraph 2.

According to the report, any State ratifying the Convention would undertake to recognise the principle of freedom of association as being one of the fundamental principles of the State, the observance of which was incumbent on the legislature. The consequence of this would be that a trade association would have the right to establish itself freely without previous authorisation and to function secure from any interference or control by the administrative authority.

Furthermore — the report went on to say — that right necessarily implies that organisations of employers and workers may draw up their statutes, their regulations and their programme as they please. It is of course, understood that such measures of publicity as the requirement to register and the publication of statutes do not run counter to the principle thus defined, for the State has obviously the right to require associations of employers and workers to signify their existence if only to enable it to verify their identity.

On the other hand, any " legal formality " which would require preliminary authorisation for the creation and working of organisations of employers or workers or subject them to any administrative control would obviously be contrary both to the letter and the spirit of the Convention.

As for the limits imposed on the exercise of the right so guaranteed, they would result from the definition of the objects of trade associations contained in the formula : " any objects not contrary to the law ".

It was indeed apparent to the Committee on Freedom of Association — in the light of the discussions which had been held on this matter in the Committee entrusted with the preparation of the Constitution of the International Labour Organisation — that this formula implied in fact that trade associations, like all other organised collectivities or individual citizens, are bound, when exercising their rights, to respect the general laws concerning public order which are imperative and inherently obligatory for everyone.

In other words, any reservation with regard to " legality " or " public order ", even if it was not expressly stipulated, would nevertheless be contained by implication in any text guaranteeing a right or freedom. The report added that, whatever might be the actual meaning of this conception — a very complicated conception the interpretation of which varies from one political regime to another, and even from one Government to another —

it was sufficient to state that by virtue of any Convention based on the terms of Article 41, paragraph 2, the maintenance of public order within the State must be compatible with the principle of freedom of occupational association, just as it must be compatible with any other measure of social welfare or protection.

The Governing Body, having adopted the report of the Committee on Freedom of Association, then adopted a proposal put forward by the representative of the Italian Government for the purpose of supplementing the report of the Committee on certain points. This proposal clearly demonstrated the fundamental conflict between the conceptions of democratic States and those of totalitarian States with regard to freedom of association.

When explaining the object of his proposal, the representative of the Italian Government declared that the Office had studied the question of freedom of association particularly from the point of view of the freedom enjoyed by trade associations. He added that it would be equally desirable to study the regulation of the activities of trade associations in those cases in which they were not only private agencies but agencies of public policy. He explained that in certain countries there existed a system of trade associations under which such associations were not only private associations, able to exercise functions which were either tolerated or suppressed by the law, but were also recognised as agencies of public policy, endowed by the State with powers which, in certain cases, even included functions of a legislative kind.

Following the adoption of this proposal, the Governing Body decided to postpone for the time being the international regulation of the problem of freedom of association.

Protection of the Freedom of Occupational Association in Relation to the Other Party to the Labour Contract

If it thus appeared to be demonstrated that it was impossible, in view of the political circumstances prevailing at the time, to obtain the guarantee of freedom of association in relation to the State, might it not be possible to attempt the solution of a second problem : the guarantee of freedom of association in relation to the other party to the labour contract ?

It is evident, indeed, that any trade union action for the purpose of establishing or maintaining a collective regime of conditions of employment would be paralysed if it was open to

the other party to the labour contract to undertake reprisals, either against organised workers or against the trade unions.

Two Resolutions, the first of which submitted by Mr. Yagi, Japanese workers' delegate, was adopted by the Conference at its 19th Session [1], while the second, submitted by the Government delegates of the United States of America, was adopted by the Conference at its 20th Session [2], were intended to enable the Committee on Freedom of Association to consider the question along these lines.

The Committee on Freedom of Association submitted a unanimous report to the Governing Body, recommending the placing of the question of safeguarding the right of association of the workers on the agenda of an early session of the Conference. [3]

The Governing Body adopted the report of the Committee by 19 votes to 7, but nevertheless refrained from placing the question on the agenda of the Conference.

* * *

[1] The text of this Resolution is as follows :

" Whereas workers' trade union right is incorporated in the Preamble of Part XIII of the Peace Treaty, and whereas a resolution concerning freedom of association was voted by the Fifteenth Session (1931) of the International Labour Conference :

" The Conference requests the Governing Body to consider the desirability of placing on the Agenda of one of its early Sessions the question of the workers' right of association, in order to prevent the dismissal of, or imposition of unfair treatment on, workers on account of their joining or receiving help from trade unions. "

[2] The text of this Resolution is as follows :

" Whereas the Constitution of the International Labour Organisation truly declares that ' conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled ; and an improvement of those conditions is urgently required as, for example, by the recognition of the principle of freedom of association ' ; and

" Whereas the Governing Body, pursuant to a resolution adopted by the Conference at its Nineteenth Session and to a report of the Committee of the Governing Body on Freedom of Association, has decided that it would be desirable to include in the Agenda of an early Session of the Conference ' the question of safeguarding the right of association of individual workers ' ; and

" Whereas the Conference desires soon to enter upon the consideration of this subject with a view to taking some formal decision ;

" Therefore, the Conference requests the Governing Body to consider including in the Agenda of an early Session of the Conference the item of the safeguarding of individual workers in the exercise of their freedom of association from pressure by private employers on account of their joint participation in labour activities which are lawful for individuals acting singly. "

[3] I.L.O. Governing Body, 75th Session, Geneva, April 1936 : *Report of the Committee on Freedom of Association*, and Annex : *Study on the Protection of the Right of Association.* (G.B.75/17/77.)

It will be clear from this brief historical survey, that, in the interval between the two world wars, the International Labour Organisations has concerned itself continuously with the various aspects of the problem of freedom of association and has spared no effort to ensure international regulation of this matter.

It will be equally clear that, if in spite of these efforts it has not been possible to reach agreement, this has been due solely to political reasons which, as the Director of the International Labour Office declared in 1927, have paralysed the action of the Governing Body and of the International Labour Conference. It would appear that at the present time these political difficulties have considerably diminished as the result of the defeat of the totalitarian countries ; the present moment, therefore, appears to be particularly auspicious for attempting, with a maximum chance of success, the international regulation of the problem of freedom of association.

Industrial Relations and Co-operation between Public Authorities and Employers' and Workers' Organisations

In addition to the problem of freedom of association, the closely related problems of industrial relations and of co-operation between public authorities and employers' and workers' organisations have engaged the attention of the International Labour Organisation from the earliest days of its existence.

The factors which, during the period between the two wars, frustrated the efforts of the International Labour Organisation in the field of freedom of association, have also prevented any results being achieved in the field of industrial relations. The role of the International Labour Office was limited, therefore, by force of circumstances, to matters of information and study.

A brief survey will be made of the principal events in their chronological sequence.

Conciliation and Arbitration

At its Session in 1924, the International Labour Conference instructed the Office to give particular attention to the question of the settlement of industrial disputes, and to study the methods adopted in the various countries to ensure the establishment of an adequate system of conciliation and arbitration.

In pursuance of this decision, the Office undertook an enquiry, the results of which were published in its study: *Conciliation and Arbitration in Industrial Disputes.*[1]

This study consists of two parts. The first part, under the title: "General Problems of Conciliation and Arbitration", gives a systematic international summary of conciliation and arbitration for the settlement of industrial disputes. The intention was to demonstrate, by the method of comparing different legal systems, the variations between the legislation in one country and another, ranging from ordinary conciliation and enquiry to compulsory arbitration and the compulsory enforcement of awards.

The second part, entitled "Conciliation and Arbitration in the different Countries", consists of a series of descriptive monographs on the legal position with regard to conciliation and arbitration in 50 different States. These various monographs were prepared on as uniform a basis as possible considering the special nature of the legislation analysed in the case of each country. In each case, in an opening chapter, a survey is made of the economic background and the development of the legislation governing conciliation and arbitration. A second chapter is devoted to the system in force. A third chapter contains a summary of the opinions of the parties concerned and statistical information regarding industrial disputes and their settlement.

Collective Agreements

The problem of collective agreements has engaged the attention of the International Labour Organisation, viewed both as a particularly appropriate method of fixing wages and other conditions of employment and as a means of applying national legislation and international labour Conventions.

In this latter connection, it should be remembered that many international Conventions refer to collective agreements for the purpose of applying certain of their provisions within the limits of national legislation. Moreover, the Maritime Conference, held in Seattle in 1946, conceded for the first time that effect might be given to the provisions of an international labour Convention not only by means of legislation, but also, in certain circumstances and with certain safeguards, by means of collective agreements.

[1] International Labour Office, Studies and Reports, Series A (Industrial Relations), No. 34, Geneva, 1933.

The report on collective agreements published by the Office in 1936 [1] took into account all the various aspects of the problem of collective agreements.

The first part deals with the practical problem ; consideration is there given to the *de facto* scope of collective agreements or the like in various countries and in different industries.

The second part is concerned with the legal aspect of the problem ; in that part, the various methods of regulating working conditions and the effects of such regulation are examined.

The third part contains an analysis of the social and economic problem ; a study is made of the incorporation of collective agreements in the national economic structure.

In the fourth part the possibilities are considered of using collective agreements, together with national labour legislation, as a means of ratifying and applying international labour Conventions.

Co-operation between the Public Authorities and Employers' and Workers' Organisations

In the early part of the war (February 1940) — at a time when the totalitarian States had withdrawn from membership of the International Labour Organisation — the Governing Body, feeling that the time had come to take up again the whole problem of industrial relations, decided to place the question of " methods of collaboration between the public authorities, workers' organisations and employers' organisations " on the agenda of the Conference which was to be held in June 1940.

Anticipating to a certain extent the tremendous role which employers' and workers' organisations would have to play in the mobilisation of all national resources, it considered that well-organised collaboration between Governments and employers' and workers' organisations would be calculated to increase the capacity for resistance of the democratic countries against the aggression of the totalitarian States.

The Office prepared a general report [2] on the question of industrial relations and collaboration, but the Conference could not be held owing to circumstances over which it had no control.

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[1] International Labour Office, Studies and Reports, Series A (Industrial Relations), No. 39, Geneva, 1936.

[2] International Labour Conference, 26th Session, Geneva, 1940 : *Methods of Collaboration between the Public Authorities, Workers' Organisations and Employers' Organisations* (Geneva, 1940).

The report reviews the principal problems involved in the organisation of relations between the parties, in the first place as between themselves, and, secondly, as between the State and trade associations.

The first part is concerned with the position of industrial organisations within the State, as the establishment of a relationship of collaboration naturally depends, in the first instance, on the recognition accorded to associations by the State.

The second part deals with collaboration between the authorities and the employers' and workers' organisations in determining wages and other conditions of employment, either by means of direct negotiation in the form of collective agreements, or by means of joint agencies in which the parties, and sometimes the State, are represented, or by means of conciliation and arbitration.

The third part is concerned with collaboration between public authorities, workers' organisations and employers' organisations, in regard to social legislation, a collaboration both in the framing and the application of social enactments.

The fourth part deals with collaboration between the public authorities, workers' organisations and employers' organisations in the economic field.

During the war, the question of collaboration assumed increased importance because, in the majority of countries, trade associations were closely associated in the direction of the war economy as a whole.

Hence, when it was decided to convene the New York Conference for October 1941, it was agreed that the question of methods of collaboration should be placed on its agenda. The Office submitted to the delegates a supplementary report, concerned particularly with recent developments which had taken place in the various countries during the early part of the war.[1]

The New York Conference, after discussing the methods and practice as to collaboration followed in the different countries, adopted several Resolutions. The following passages in those Resolutions may be quoted :

The Conference,

Recognises the universal and permanent importance for all nations of effective collaboration between the public authorities and workers' organisations and employers' organisations, which occupy a place of increasing prominence in economic and social development ;

[1] Conference of the International Labour Organisation, New York, October 1941 : *Wartime Developments in Government — Employer — Worker Collaboration* (Montreal, 1941).

Underlines the special importance of such collaboration —

(a) during the present war, because the success of the military operations largely depends on the result of the battle of production which will be won by the democracies only by the complete collaboration between the workers and the employers in the work of national defence ;

(b) after victory, for the transition from war economy to peace economy and for the economic and social reconstruction of the world, which will be of interest to all countries, belligerent and neutral, and which will call for a gigantic and co-ordinated effort on the part of the public authorities, workers and employers ;

Declares that real collaboration is possible only within the framework of democratic political institutions which guarantee the freedom of association of workers and employers ;

Affirms that the application of the principle of collaboration requires that in law and in fact —

(a) the right of industrial organisations to represent workers and employers should be recognised by the State ;

(b) the workers' and employers' organisations should recognise each other's right to represent workers and employers respectively ;

Recognises that methods of collaboration vary... from country to country and within the experience of a single nation... and that positive results can best be assured by development along the lines of national experience, always provided that collaboration is based on the principles enunciated above and subject to the fundamental necessity for full participation of employers' and workers' organisations through representatives of their own designation being fully assured ;

Desires to express its conviction that the International Labour Organisation can render the greatest possible service in extending the practice of collaboration, both in emergency organisation and in the field of permanent industrial and economic organisation ;

Requests the Governing Body of the International Labour Office to take steps to ensure the fullest use of the resources of the Organisation for —

(a) the exchange between Governments and organisations of workers and employers of information concerning both wartime and permanent machinery of collaboration so as to facilitate its widest developments, and

(b) aiding interested countries to make use in their machinery for emergency industrial and economic organisation of the most suitable methods of collaboration in the field under consideration ;

Urges the Governments to provide the Office not only with a record of structural developments, but with adequate information on the operation of the machinery of collaboration, both where it is successful and where it falls short of achieving its purpose, so as to permit comparative analysis.

The Conference requested the Governing Body of the International Labour Office to place the question on the agenda of the next Session of the Conference.

Declaration of Philadelphia

In 1944, again during the full tide of war, the Conference met for its 26th Session in Philadelphia. The " Declaration of Philadelphia ", by which the Conference intended to define the aims and purposes of the International Labour Organisation and the principles which should inspire the policy of its Members, declared in its first Article, as one of the fundamental principles on which the International Labour Office is based, that " freedom of expression and of association are essential to sustained progress ".

And among the programmes which it is the solemn obligation of the International Labour Organisation to further, the Declaration refers, in Article III, paragraph *(e)*, to " the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures ".

In these concise terms, the Declaration defines the essential elements in the policy of the International Labour Organisation with regard to industrial relations and collaboration.

As soon as hostilities came to an end the International Labour Organisation endeavoured to give practical effect to the programme formulated by the Declaration of Philadelphia.

Conference of Mexico City

The Third Regional Conference of the American States Members of the International Labour Organisation, which was held in Mexico City in April 1946, adopted several Resolutions relating to industrial relations. These Resolutions were not confined to a mere affirmation of principle, but laid down in precise terms a number of rules to which the American States ought to conform when preparing legislation concerning industrial relations.

Conscious of the fact that the problem of industrial relations is a general problem which cannot be treated from various separate aspects, the Conference of Mexico City endeavoured to trace the broad outline of a " charter of industrial relations ", embracing at the same time the guarantee of freedom of association, the protection of the right to organise and the right of collective bargaining, voluntary conciliation and arbitration and collective agreements.

In view of the importance of the principles accepted by the States represented at the Conference, the text of the principal Resolutions adopted is given below :

Resolution concerning Freedom of Association

(1) Employers and workers, whether public or private, without distinction of occupation, sex, colour, race, creed or nationality should be entitled to form organisations of their own choosing without previous authorisation ;

(2) Organisations of employers and workers should be granted full autonomy in organising their administration and activity, in drawing up their constitution and administrative rules, and in framing their policies ;

(3) Organisations of employers and workers should not be subject to dissolution by administrative orders ; in those countries where forced dissolution is imposed by way of penalty for certain acts deemed illegal, the trade unions should be entitled to the full protection of the appropriate procedure ;

(4) Organisations should have the right to constitute federations and confederations of trade organisation ; the formation, operation and dissolution of federations and confederations should not be subject to formalities other than those prescribed for employers' and workers' organisations ;

(5) Where the acquisition of special privileges by organisations is subordinated to certain conditions of substance and of form, these conditions should not be such as to imperil freedom of association as defined above.

Resolution concerning Protection of the Right to Organise and to Bargain Collectively

I. Protection of the Exercise of the Right to Organise.

(1) In view of the fact that the individual worker's right to organise may be placed in jeopardy by discriminatory measures directed against him at the time of hiring or during tenure of employment, the law should particularly prohibit on the part of the employer or his agents all acts designed to —

(a) make the hiring of the worker subject to the express condition that he does not join a certain trade union or withdraws from a trade union of which he is already a member ;

(b) prejudice or injure in any manner whatsoever a worker on account of his being a member, agent or official of a certain trade union ;

(c) dismiss a worker for the sole reason that he is a member, agent or official of a certain trade union ;

(d) in general, exert any kind of pressure upon a worker with the object of compelling him to join or not to join a certain trade union.

(2) With a view to ensuring that collective bargaining be undertaken in good faith, the law should particularly prohibit on the part of the employer or of the employers' organisations or their agents all acts designed to —

(a) promote the formation of trade unions controlled by the employer ;

(b) interfere in the formation or administration of a trade union, or support it by financial means or otherwise except that an employer should not be prohibited from permitting workers to confer with him during working hours without loss of time or pay, and further that nothing in these provisions should prohibit the collection of dues ;

(c) hamper the exercise of the workers' right to form organisations, conclude collective agreements and take concerted action for the defence and protection of their interests ;

(d) refuse to recognise trade unions and to negotiate with them with a view to the conclusion of collective agreements.

It should however be understood that a clause in a collective agreement requiring compulsory membership in a certain trade union, not only as a condition precedent to employment but also as a condition of continued employment, is not barred by this resolution.

(3) Appropriate legislative measures should safeguard in each country the exercise of labour union rights and the activities of the labour leaders, particularly during the preparation and the period of strikes so that labour leaders may not be dismissed, prosecuted or deprived of their liberties because of their legitimate union activities.

II. Collective Bargaining Machinery.

(1) The State should undertake to place at the disposal of the parties agencies to secure the due observance of the right to organise as defined above.

(2) These agencies should be given exclusive power, in so far as the judicial system permits, to take cognisance of and impose penalties for violations of the exercise of the right to organise.

(3) The agencies should be entrusted with the authority to determine which labour organisation represents a majority of the workers for collective bargaining purposes ; in case of disagreement they should hold a secret-ballot election and certify the union which represents the majority of those voting in the appropriate collective bargaining unit as the exclusive representative of all the employees in that unit for the purposes of collective bargaining.

Resolution concerning Voluntary Conciliation and Arbitration

I. Voluntary Conciliation.

(1) Conciliation agencies should be established on a permanent basis in all parts of the country and should be in sufficiently large number to assist the parties whenever a labour dispute becomes imminent.

(2) In those countries which have a formal conciliation machinery and in which the agencies operate on a group basis they should be tripartite in character ; labour organisations concerned in a dispute should be permitted to intervene in all stages of the proceedings.

(3) Conciliation procedures should be free of charge and expeditious ; the time limits for the appearance of the parties and the hearing of the evidence should be fixed in advance and reduced to a minimum.

(4) Recourse to conciliation procedures should be voluntary, but once a dispute has been submitted to a conciliation agency by consent of all the parties concerned the parties should agree to refrain from strike or lockout while conciliation is in progress.

(5) The parties should be free to accept or reject the recommendations of the conciliation agencies ; but once a recommendation has been accepted it should be binding on the parties.

(6) Agreements arrived at by the parties in the course of the proceedings as well as recommendations of the conciliation agencies that are accepted by the parties should legally have the same force as voluntarily concluded collective agreements.

II. Voluntary Arbitration.

(1) There should be instituted voluntary arbitration machinery which may be resorted to either before or after conciliation procedures.

(2) Recourse to arbitration should be voluntary ; but once a dispute has been submitted to arbitration by consent of all the parties concerned the parties should agree to accept the award.

Resolution concerning the Validity of Collective Agreements

The provisions of the collective agreement should be applicable to all the workers in the appropriate collective bargaining unit in the undertaking or undertakings even though they are not members of the organisation which concluded the agreement.

Moreover, the Mexico City Conference, considering that the problem of industrial relations was of equal importance in all parts of the world, adopted a Resolution requesting the Governing Body to place this question on the agenda of early sessions of other Regional Conferences and of early sessions of the International Labour Conferences.

It may be mentioned in this connection that the problem of industrial relations is to be discussed both by the Preparatory Asian Conference, which is to be held in New Delhi in the autumn of 1947, and by the Regional Conference for the Near and Middle East which is to meet in Cairo at the end of 1947.

Industrial Committees

In the meantime, the International Labour Organisation has approached the problem on another front. By virtue of a decision taken by the Governing Body in January 1945, international industrial committees have been set up for the following eight industries : inland transport ; coal mining ; the iron and steel industry ; the metal trades ; the textile industry ; building, civil

engineering and public works ; petroleum production and refining ; and the chemical industry.

By setting up the international industrial committees, the Governing Body did not intend merely to endow the International Labour Organisation with agencies particularly competent — by virtue of the technical qualifications of their members — to cope with the existing situation in the industrial life of each country, but also, and above all, to correlate the methods of negotiation and collaboration in the various industries on the national plan with the methods of negotiation and collaboration on the international plan.

The industrial committees have so fully realised that the effectiveness of their activities is to a large extent dependent on the stability of the system of industrial relations and methods of collaboration established in each country, that they adopted at their first sessions Resolutions emphasising the need to guarantee the right of association and of collective bargaining and to establish machinery for collaboration, both at the level of the nation-wide industry and at the level of the undertaking. Accordingly, they instructed the Office to submit reports on these questions to them at their next sessions.

In order to permit the industrial committees to make a thorough examination of the problem, the Governing Body, when determining the agendas for the second sessions of several of the Committees, decided to place on them the questions of industrial relations and of labour-management co-operation.

In pursuance of this decision, the Committee on Inland Transport, which met in Geneva in May 1947, adopted a Resolution on industrial relations and collaboration in the following terms :

Resolution on Industrial Relations in Inland Transport

I. Freedom of Association.

1. Employers and workers, whether in public or private inland transport undertakings, should be entitled to form, without previous authorisation and without restriction of occupation, sex, colour, race creed or nationality, organisations of their own choosing.

2. Such organisations should be granted full autonomy in drawing up their constitution and administrative rules, in organising their administration and activity, and in framing their policies.

3. Where full and effective protection is not already afforded, appropriate legislation should be enacted to protect the individual worker —

(a) from discriminatory or punitive measures directed against him at the time of engagement or during tenure of employment for the reason that he is a member, agent or official of a trade union ;

(b) against coercion with respect to his right to join a trade union.

4. Where full and effective protection is not already afforded, appropriate legislation should be enacted to prohibit on the part of the employer or of the employers' organisations or their agents, all acts designed to

(a) promote the formation of trade unions controlled by the employer ;

(b) interfere in the formation or administration of a trade union, or support it by financial means or otherwise interfere in its control ;

(c) refuse to give practical effect to the principles of trade union recognition and collective bargaining.

II. Determination of Conditions of Employment.

5. The negotiation of collective agreements should be developed both in private and publicly owned transport undertakings.

Collective Bargaining.

6. (1) The State should, through the appropriate agencies, make available to the parties facilities for the development of collective bargaining.

(2) These agencies should be entrusted with the authority where necessary to determine the representative workers' organisations entitled to enter into collective agreements with employers or employers' organisations.

7. (1) Collective agreements freely entered into should be observed in good faith, and employers' and workers' organisations should do all in their power to ensure the observance by their members of the agreements to which they are parties.

(2) All individual or collective disputes arising out of the interpretation or application of collective agreements should be referred for settlement to a procedure accepted by the parties. There should be effective and expeditious means for reaching a final determination of all such issues.

(3) Employers, employers' organisations and trade unions which are parties to collective agreements should be entitled to institute legal proceedings to secure the observance of such agreements enforceable at law.

8. Immediate attention should be paid to the practice obtaining in certain countries whereby the provisions of collective agreements covering substantial proportions of employers and workers in a trade or industry are extended to include other such employers and workers who would not otherwise be covered by such agreements, in view of the fact that, in the conditions obtaining in the countries in question, arrangements of this nature have had the effect of strengthening the authority of the collective bargaining system.

Minimum Working Standards.

9. Governments should set up machinery whereby minimum wage rates, hours of work and other conditions of employment can be fixed in branches or sections of the inland transport services where there are no arrangements for the effective regulation of such matters by collective agreements or otherwise.

10. For this purpose account should be taken of the necessity of enabling the workers to maintain a suitable standard of living.

11. Whatever method is applied for fixing such minimum wages and conditions of employment, employers' and workers' organisations concerned should be directly associated in the framing of all necessary provisions.

12. An adequate system of inspection should be provided with power to make investigations with a view to ascertaining whether such wages and conditions of employment are in fact being applied and to take such steps as may be authorised to deal with infringements.

III. Adjustment of Labour Disputes.

13. (1) A free society cannot coerce any section of its population into working under conditions which are not freely and generally acceptable.

(2) Having regard to the vital position which transport occupies in the national economy, employers and workers, with due regard to their responsibility to society, should consider lockouts and strikes as an extreme and ultimate means of bringing pressure to bear upon one another. Consequently, they should undertake to utilise to the full extent all existing facilities for the expeditious and effective settlement of disputes before considering recourse to a lockout or a strike.

Voluntary Conciliation and Arbitration.

14. (1) The State should place at the disposal of the parties conciliation machinery with a view to helping them to adjust differences arising out of the negotiation and application of collective agreements.

(2) Once a dispute has been submitted to a conciliation agency by consent of all the parties concerned, the parties should agree to refrain from strike or lockout while conciliation is in progress.

(3) Agreements arrived at by the parties in the course of the proceedings, as well as recommendations of the conciliation agencies that are accepted by the parties, should have the same validity as normal collective agreements.

15. There should be instituted machinery for voluntary arbitration, and when a dispute has been submitted to arbitration by consent of the parties concerned this should imply acceptance of the award and the intention to abstain from strikes and lockouts while arbitration is in progress.

16. In the event of a serious labour dispute threatening to cause a stoppage of work in any essential transport service, and if there is no more effective and appropriate means of securing a settlement, the Government should be able to cause a public investigation to be made into the origin and terms of the controversy. The results of the investigation, together with the recommendations of the investigating agency as to the just solution of the dispute, should be made public without delay.

Right to Lockout and Strike.

17. While the right to lockout and strike applies in inland transport as in other industries, in the event of a dispute arising during the operation of temporary restrictions placed by legislation upon the normal exercise of the right to lockout or strike, effective guarantees should be provided for the maintenance of wages and conditions of employment while negotiations are in progress.

IV. Labour-Management Co-operative Machinery.

18. Suitable machinery should be established at all appropriate levels for promoting the application and observance of collective agreements in particular establishments and the prompt handling of grievances affecting individuals or small groups of workers.

19. Suitable machinery should be established at all appropriate levels for promoting joint consultation between accredited representatives of employers and workers on all matters in which they have a common interest, with a view to improving both the wellbeing of the workers and the prosperity of the industry. All necessary information should be placed at the disposal of joint committees established for the above purposes.

20. Committee members should be compensated at normal wage rates for loss of working time incurred in attending committee meetings and other necessary activities authorised by their committee. This compensation should be paid by the employer or by the trade unions as the case may be.

21. Employers' and workers' organisations should, so far as it is reasonable and practicable, having regard to national practice, be associated with the framing and application of any special official schemes, as for example training schemes, instituted for the benefit of the inland transport industry.

22. In the appointment of members of policy-making bodies of publicly owned inland transport undertakings regard should be paid to the opinion of the trade unions as to the need to include persons with knowledge and experience of trade union organisation and the needs and interests of the worker.

International Labour Conference

The problem of industrial relations and of collaboration has also, on many occasions, come before the General Conference of the International Labour Organisation. At its 28th Session, in Seattle, it adopted a Resolution concerning the recognition of seafarers' organisations, the text of which is as follows :

The Conference,

Affirms the principle that shipowners and seafarers of all ranks and grades in all countries have a right to organise themselves in voluntary, self-governing associations, free from compulsion or improper influence from outside, and subject only to the observance of such formalities as may be required by national laws or regulations, which formalities should be consistent with the principle of freedom of association ;

Emphasises the need for mutual recognition as between organisations of shipowners and seafarers and the value of collective bargaining between stable and representative organisations as a means of achieving satisfactory regulation of hours of work, wages, holidays and other conditions of employment ;

Urges Governments to consult such stable and representative organisations on the drafting of all laws and regulations affecting

their members and to collaborate with the organisations, so far as may be reasonable and practicable, in securing the effective application of such laws and regulations ; and

Recognises that it is desirable that such organisations should, so far as may be reasonable and practicable, having regard to national practice, be associated with the organisation and administration of institutions (such as, for example, employment offices, social insurance systems, conciliation and arbitration machinery and training schemes) in which both shipowners and seafarers have a common concern.

At its coming Session, the Conference will have before it a proposed Convention concerning the right of association and the settlement of labour disputes in non-metropolitan territories.[1]

Finally, at its 101st Session (March 1947), the Governing Body instructed the Office to undertake an extensive international enquiry into the methods of collaboration between the public authorities and employers' and workers' organisations — which enquiry should be concerned equally with freedom of association and industrial relations — with a view to this question being placed on the agenda of an early session of the Conference.

Thus, during the three years which have passed since the Conference of Philadelphia, the implementation of the programme prescribed by that Conference has been tirelessly pursued by the International Labour Organisation. In concluding this historical chapter on the activities of the International Labour Organisation in the field of the right of association and industrial relations, it is only fair to mention that, in spite of the temporary set-back to the attempts at regulation in 1927, the many efforts made in every sphere of its activities by the International Labour Organisation have played a large part in extending the right of association and improving industrial relations throughout the world. The ground is thus prepared for the problem to be dealt with as a whole.

The programme which the Office submits to the Conference is a natural sequence, so to speak, of the decisions taken by the International Labour Organisation, which have been briefly reviewed above. It is concerned with : (1) freedom of association ; (2) protection of the right to organise and the right of collective bargaining ; (3) collective agreements ; (4) conciliation and arbitration ; (5) co-operation between the public authorities, employers' organisations and workers' organisations.

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[1] International Labour Conference, 30th Session, Geneva 1947, Report III (2) : *Non-Metropolitan Territories. Proposed Conventions* (Geneva, 1947).

CHAPTER II

SURVEY OF LEGISLATION AND PRACTICE

Reference was made in the preceding chapter to the fact that the problems of " freedom of association ", " collective agreements ", " conciliation and arbitration " and " methods of collaboration between the public authorities, workers' organisations and employers' organisations " have been the subject of numerous studies by the Office and of extensive discussions in the Governing Body and at General Conferences of the International Labour Organisation.

The subject, then, is not a new one for the Conference and it will suffice, therefore, to give in the following pages a brief survey of the position prevailing at the present time in the various countries of the world.

Freedom of Association

Under the influence of the totalitarian Governments, the history of the right of association in the period between the two wars was marked, as is well known, by a progressive seizure of control of the employers' associations and of the trade unions by the State, not only in European countries but also in a number of Asiatic and Latin-American countries.

Thus, freedom of association was suppressed, first of all in those countries which were the earliest to adopt totalitarian régimes, and then in the countries which became dominated by their political influence. Finally, similar régimes were imposed on the numerous countries occupied during the war by the Axis powers.

Restoration of Freedom of Association throughout the World

The end of the Second World War involved the collapse of the totalitarian States and marked a decisive turning point in this evolution.

The first act on the part of the Governments of the liberated countries was to restore freedom of association and to re-establish the employers' associations and trade union movements. In France, the right of occupational association was re-established by an Ordinance of 27 July 1944.[1] Immediately after their liberation, Belgium and Luxembourg followed this example and restored the employers' and workers' organisations to their full rights. In the Netherlands, an Order of 8 September 1944[2] pronounced the dissolution of the Netherlands Labour Front and re-established the free trade associations of employers and workers. Similar measures were taken by Norway and Denmark as soon as those countries were liberated.

It should be stressed that the Governments were able to take such measures all the more easily and rapidly when agreements had been made regarding these matters, while the war was still raging, between the exiled Governments and the associations which had been re-established secretly and were engaged in the struggle against the occupying power.

A slightly different situation arose in those countries of Central and Eastern Europe in which trade associations had already lost their liberties before the war under the totalitarian régimes prevailing at the time.

After the liberation, therefore, it was necessary not only to re-establish the employers' and workers' associations with full rights, but also to create new organisations founded on a firmer basis than had been the case in the past.

Thus, in Czechoslovakia and in Poland, for example, the trade union movement was reconstituted on a single unified basis (following the example of the powerful single central organisations existing in the United Kingdom and in the Scandinavian countries). Experience gained before the war had revealed the weakness of a trade union movement divided into many rival organisations. The Governments of these countries, while fully recognising the

[1] Cf. I.L.O. : *Legislative Series*, 1944 — Fr. 5. (Later references to the Series are given as "L. S. ... "

[2] L.S. 1944 — Neth. 3.

representative character of these unified organisations, have refrained from interfering in their formation and from restricting in any way their purely voluntary character and autonomy.

In the ex-enemy countries, the Allied occupying authorities, or the national Governments in agreement with those authorities, have abolished the laws and institutions of the defunct totalitarian régimes and have restored freedom of association.

In Italy, the Fascist trade unions and corporations were abolished by a Decree of 23 November 1944. Similar measures were enacted in Austria, Hungary, Bulgaria, Rumania and Finland ; in these countries also, the free trade unions are grouped together in single central organisations, which include all workers without distinction as to their political and religious beliefs.

In Germany, the representatives of the occupying authorities (United States, United Kingdom and U.S.S.R.) took the decision, at the Berlin Conference, to dissolve the National Socialist organisations, associations and institutions and to authorise the establishment of free trade associations, subject only to the maintenance of military security. In accordance with this decision, measures were taken in the different zones of occupation to ensure the free formation of workers' and employers' organisations. Moreover, the new Constitutions adopted in certain parts of Germany, for instance, in Wurttemberg, Baden and Hesse, expressly guaranteed freedom of association as had been done by the Weimar Constitution.

In Japan, the Far East Commission, in December 1946, precisely defined the principles which should govern legislation and practice concerning trade associations. By the terms of these decisions, the right of association is to be guaranteed by law. Workers are to be encouraged to form trade unions and all legislation or regulations impeding the free development of trade unions is to be repealed. The police force must no longer be used for the purposes of supervising trade union demonstrations, breaking strikes or impeding lawful trade union activities. Finally, no organisation of a military or despotic character is to be authorised in the future and all non-democratic organisations will have to be dissolved.

In the Latin-American countries, Constitutions, Labour Codes, general labour legislation or special laws concerning occupational associations, promulgated either during the war or following the cessation of hostilities, all include provisions guaranteeing freedom of association. Thus, the evolution towards the emancipation of

trade associations, which had already begun in Mexico during the first World War, has finally extended to the whole continent.

Among recent legislation particularly characteristic of this tendency, reference may be made, for instance, to the new Constitutions of Cuba (1940)[1], Guatemala (1945)[2], Brazil (1946)[3], the Labour Codes of Costa Rica (1943)[4], Nicaragua (1945)[5], the Bolivian Decree of 7 February 1944[6] and Law VI of 1945 in Colombia.[7]

In Argentina, a Decree of 2 October 1945[8], respecting the legal status of industrial associations of employees, while according certain privileges to the most representative trade unions, is designed to ensure to all wage-earners the right to form occupational associations freely and without previous authorisation.

It should be remembered that in some cases earlier legislation, as for instance the Mexican Labour Code[9], the Constitution of Uruguay, the labour laws of Ecuador[10], Venezuela[11] and other countries, place the trade unions under the particular protection of the State and make it a duty on the part of the public authorities to encourage the development of the trade union movement.

Similar tendencies are also manifested in Asiatic countries. In India and China the development of the trade union movement has been particularly pronounced during the recent war and the new regulations which are at present in course of preparation are intended to give legal sanction to the *de facto* position acquired by the trade unions. It should further be noted that in India the Government has associated the representatives of employers' and workers' organisations in the preparation of the new legislation.

In the countries of the Near and Middle East, freedom of association has been formally recognised by several recent laws, as, for example, the Egyptian law concerning trade unions of 6 December 1942[12], the Labour Codes of Iraq[13] and Iran[14], the

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[1] L.S. 1940 — Cuba 1.
[2] Cf. *International Labour Review*, Vol. LII, No. 1, July 1945, p. 57.
[3] *Idem.*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947, p. 283.
[4] L.S. 1943 — C.R. 1.
[5] L.S. 1945 — Nic. 1.
[6] L.S. 1944 — Bol. 2.
[7] L.S. 1945 — Col. 1.
[8] Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 677.
[9] L.S. 1931 — Mex. 1.
[10] L.S. 1938 — Ecuad. 1.
[11] L.S. 1945 — Ven. 1.
[12] L.S. 1942 — Eg. 1.
[13] L.S. 1936 — Iraq 2.
[14] Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 81.

Palestine Ordinances on labour relations, the Labour Code of 1946 in the Lebanon and the Turkish law of 20 February 1947 concerning associations.

It is not necessary here to make more than a passing reference to the numerous enactments concerning the right of occupational association in non-autonomous territories, as they are analysed at length in the special studies devoted by the Office to such territories. It is also superfluous to dwell at length on the prevailing situation in the democratic countries which, during the war, have not only been able to preserve their free institutions, but have also, as will be observed subsequently, very closely associated the free organisations of employers and workers with the organisation of economic and social life.

It may be mentioned, however, that in the United Kingdom the Trade Disputes and Trade Unions Act of 1927[1] has been repealed by the Trade Disputes and Trade Unions Act of 22 May 1946.[2] The Act of 1927 made certain kinds of strikes and lock-outs illegal, prohibited certain forms of picketing considered not to be peaceful, required the explicit consent of the members of a trade union in respect of the payment of contributions allocated to a political fund and prohibited civil servants from belonging to any organisation " which is not confined to persons employed by or under the Crown ", and which has " political objectives " or is " associated directly or indirectly with any political party or organisation ". All these provisions were repealed by the Act of 22 May 1946.

In the United States, Congress is at present considering several draft laws designed to regulate certain aspects of industrial relations. At the time of drafting this report, it is not known whether and to what extent these drafts will become law.

But, without attempting to anticipate the new legal régime of trade unions which may finally be established, it is reasonable to observe, even at this juncture, that, though it may impose certain limitations on the freedom of action of trade union organisation, the proposed legislation will not prejudice the principle of freedom of association recognised by the Federal Constitution and the State Constitutions.

This brief description of the recent enactments concerning trade unions, incomplete as it may appear, seems to show clearly that, at the present time, the principle of freedom of association

[1] L.S. 1927 — G.B. 3.

[2] Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 85.

is almost universally recognised. There is no doubt that a prompt affirmation of this principle by the International Labour Conference would contribute greatly towards the prevention of any return to a restrictive régime.

The Legal Regulation of Freedom of Association

The guarantee of freedom of association may result either from the application of constitutional principles to employers' and workers' organisations or from a special régime.

Constitutional Guarantees of the Right of Occupational Association

In many democratic countries the political Constitution now guarantees to the individual certain fundamental rights, including the right of association. Such is the case, for instance, in the following countries : Argentina, Belgium, Brazil, Chile, China, Colombia, Cuba, Denmark, Ecuador, Greece, Guatemala, Honduras, Ireland, Japan, Luxembourg, Mexico, the Netherlands, Panama, Peru, Switzerland, Uruguay, Venezuela, etc.[1]

Moreover, an increasing number of Constitutions promulgated in recent years include clauses expressly guaranteeing freedom of association, *e.g.* the Constitutions of Mexico (1917), Brazil (1946), Cuba (1940), France (Preamble to the Constitution of 1946)[2], Italy (Draft Constitution), etc.

The formal constitutional recognition of freedom of association involves the following triple guarantee :

1. It affords in the first place a guarantee against any arbitrary act by the legislative authority ; in fact, in view of the authoritative precedence of different legal sources, the right of association, as a constitutional right, could not be questioned by the ordinary law. To make this guarantee fully effective, the Supreme Courts or tribunals instituted especially for that purpose have, in certain countries, been endowed with the power to decide whether laws are in conformity with constitutional principles and to declare void any law which does not so conform.

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[1] Cf. I.L.O. : *Constitutional Provisions concerning Social and Economic Policy* (Montreal, 1944).

[2] Cf. *International Labour Review*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1946, p. 364.

But even in those countries where there is no judicial control with regard to the conformity of laws with the Constitution, the legislature could not act in a manner contrary to the Constitution without thereby contravening the fundamental principles governing social relations.

2. The constitutional guarantee of the right of association also protects occupational organisations against arbitrary acts on the part of executive authority.

The ordinary courts or administrative tribunals, as the case may be, have the right to declare void any regulations, orders or administrative decisions which may be contrary to the fundamental law.

3. Finally, the constitutional guarantee of the right of association applies to all social categories without distinction, to workers as well as to employers, to persons carrying on a liberal profession as well as to civil servants, to women as well as to men, to foreigners as well as to nationals.

Special Régime Governing Trade Associations

In a number of countries it has been found necessary to pass special legislation to exempt trade associations from the application of the common law with regard to combinations or associations. Thus, for instance, in the United Kingdom, it was necessary to exempt trade associations from the application of the common law restrictions concerning combinations which were in restraint of trade or work. In France, the Act of 1884 concerning trade associations was enacted almost 20 years earlier than that on the general right of association, which dated only from 1901. Thus, freedom of association for trade purposes had been decreed in France before the general right of association was formally recognised by the law.

But, more generally, the purpose of any special legislation is to endow trade associations with a status which is more appropriate to the part which they have to play in the economic and social field. Special laws concerning trade associations have been enacted in the great majority of countries, for example, Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, France, India, Iran, Iraq, Mexico, New Zealand, Nicaragua, Peru, the Union of South Africa, the United Kingdom, the United States, Venezuela, etc.

The object of such special legislation concerning trade associations is to give precise definition to the rights of those associations, which the administrative and judicial authorities are thereby bound to respect.

In the following pages a brief description will be given of the scope of the provisions relating to the constitution, functioning and dissolution of trade associations and of federations and confederations of such associations.

Constitution of Trade Associations.

The provisions concerning the constitution of trade associations relate particularly to the objects which such associations may legally pursue, to the scope of application of the regulations concerning trade associations and to certain formalities which must be satisfied by trade associations at the time when they are established.

The objects of trade associations. The definition of the objects of trade associations varies considerably from one country to another and reflects, to a certain degree, the actual stage reached in the evolution of syndicalism.

In certain countries employers and workers have the right to form associations which have " exclusively " for their object " the study and defence of their economic and social interests ". In other countries, the law does not limit the objects of trade associations to the economic and social field, but provides in general terms that employers and workers may establish associations for the protection of their interests.

In the United States, the National Labor Relations Act (Wagner Act) 1935 [1], defines a labour organisation merely in the following general terms : " Any organisation of any kind, or any agency or employee, representation, committee or plan... which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, etc... "

In the United Kingdom, the law refers simply to its constitution when giving the trade union " power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its Constitution ".

In France, the object of industrial associations is limited to that of " studying and defending economic, industrial, commercial

[1] L.S. 1935 — U.S.A. 1.

and agricultural interests ", but the recognition of the right of the industrial association to represent the entire occupation or industry has become established jurisprudence.

This representative character of the trade association is particularly demonstrated by the Czechoslovak law concerning the single trade union organisation. Under that law, the single trade union organisation has the duty of collaborating in the construction of the popular democratic Republic to ensure the rights of the workers and to protect their social, economic and cultural interests.

But, as a general rule, it is left to the trade associations themselves, inasmuch as they are associations voluntarily formed, to define their objects in the constitutions and rules which they prescribe for themselves in full autonomy. Naturally, freedom of association — like any other freedom — must exist within the limits of the law and of public order. In other words, any association having the object of committing unlawful or immoral acts or seeking to endanger the integrity of the national territory or use illegal means to alter the constitutional forms of Government, would be unlawful and could not, therefore, invoke the principle of freedom of association. This limitation, implicit in any law guaranteeing a liberty, is, in general, expressly referred to in the laws governing trade associations. However, according to the new Brazilian Constitution, any association is prohibited which is contrary to the democratic régime established by the fundamental law.

In several countries the political activities of trade associations are subjected to certain restrictions (for instance, in Colombia, Cuba, Ecuador, Egypt and the Lebanon). In Argentina, trade associations are forbidden to accept subsidies from national political organisations, or from foreign or international organisations.

At the present time, a number of countries have repealed the restrictions concerning the political activity of trade associations. The evident reason for this is that it is impossible to draw distinctions between purely economic and social activities and activities of a political nature.

Persons within the scope of the regulation. The laws concerning trade associations sometimes define precisely the persons to whom such regulations shall apply. However, in those countries in which the principle of freedom of association is recognised by the Constitution, such definitions signify merely that only the

persons specified by the law may form trade associations, within the meaning of such regulations, whereas other persons, although not coming within the scope of application of the special advantages prescribed by the law governing trade associations, nevertheless remain free to form associations according to the ordinary law.

Certain legal systems exclude civil servants, for example, from the application of the right of association, as, for instance, those of Chile, Cuba, Egypt, etc. In declaring civil servants to be thus excluded, the legislature actually intended to debar them from the right to strike and not from the right of association. This is particularly well illustrated in the case of France, where, being unable, under trade union law, to form trade unions in the proper sense of the term, civil servants formed common law associations which have been recognised by the State, and which, moreover, became affiliated to the central trade union organisations. The Act of 19 October 1946 legalised this situation by according to civil servants the right of association in the same way as it was accorded to employers and other workers. During the parliamentary discussions which preceded the passing of this enactment, it was agreed that it was desirable to draw a distinction between the right of association, on the one hand, and the right to strike, on the other, these two questions not necessarily being related. It follows that the recognition of the right of association does not imply a recognition of the right to strike.

A similar problem arose in the case of certain other categories of workers, particularly agricultural workers. In their case again, it is not a question of deciding whether they should or should not enjoy the right of association but whether the general law on trade associations should also apply to them. In certain countries, as, for instance, Brazil, Venezuela, etc., special regulations have been decreed with regard to agricultural workers.

It may be recalled, in this connection, that the Right of Association (Agriculture) Convention provides that every States Member ratifying the Convention should undertake to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Measures regarding publicity. The majority of legal systems prescribe certain formalities which trade associations must satisfy before they are constituted, such as registration or the filing of

copies of their constitutions and rules. This is the case in Argentina, Australia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, France, India, Mexico, the Netherlands, New Zealand, Peru, Portugal, the Union of South Africa, the United Kingdom, certain States of the United States, Venezuela, etc.

In several countries, registration is purely optional (for example, in the United Kingdom and the Netherlands), but more generally it is compulsory.

By such regulations, the legislature seeks to give a certain amount of publicity to the actual establishment of the trade association in order to enable the authorities to verify its identity and its legality but does not make the establishment of the trade association subject to previous authorisation. This intention on the part of the legislature is reflected clearly in the texts of the majority of the laws which simply refer to the " filing " of copies of the constitutions and rules. Frequently, the law expressly declares that the persons concerned have the right to form associations without previous authorisation (for instance, in Argentina, Bolivia, Cuba, India, Iran, etc.).

It follows that if the filing of copies of the constitution and rules is compulsory, registration is a matter of right and, if the competent authority should refuse to accept registration, the trade association may apply to a tribunal whose decision shall be substituted for that of the defaulting authority (for instance, Egypt, Mexico, Venezuela, etc.).

In very rare cases, the existing legal system still provides that the trade association must obtain previous authorisation before it is formed. In China, the Trade Union Act of 1943[1] contains a provision to this effect.

The Lebanon Labour Code of 1946 also provides that a trade association may not be formed without the authorisation of the competent Minister. Finally, in Portugal, employers' associations are formed at the instance of the Government, while trade unions cannot be established without previous Governmental authorisation.[2]

Functioning of Trade Associations.

Under a régime according freedom of association, it is the constitution and rules of the trade association which govern, in

[1] L.S. 1943 — China 6.
[2] L.S. 1933 — Port. 6.

full autonomy, its internal structure, its organisation, the method of election of the officials, their competence and their administration ; the constitution and rules also define, in full freedom, the aims and policy of the association and the rights and obligations of the members.

To ensure their efficient functioning, legal systems generally provide that trade associations should provide themselves with a constitution and rules and establish certain machinery, etc. But such provisions are of a purely formal kind, as it is for the associations themselves, by virtue of their autonomy, to give full effect to them.

In several countries the laws concerning trade associations also impose upon them the obligation of furnishing certain information to the authorities with regard to the composition of the executive, the number of members, etc. These provisions have the same object as that already mentioned in connection with the registration of trade associations, *i.e.* that of publicity.

Under other legal systems and particularly those of some of the Latin-American countries, certain labour authorities, generally labour inspectors, have the function of exercising supervision over the activities of trade associations. The object of this supervision is to ascertain whether the trade associations conform effectively to constitutional or legal provisions, and whether they administer their funds in accordance with legal regulations. Such measures are frequently enacted as a result of the anxiety of the legislature to give practical assistance to inexperienced organisations. They are designed to prevent any bad administration which might cause irreparable harm to the trade association. If the measures are applied in this spirit, they may make a real contribution to the consolidation of a syndicalist movement in its early days. But if the contrary is true, there is ground for fearing that they may result in a limitation of the autonomy of trade associations.

Provisions of this kind are found among the laws in force in several of the Latin-American Republics, China, Egypt, Iran, Iraq, India and the Lebanon. In Portugal, both employers' associations and trade unions are placed under the control of the State.

In those countries in which syndicalism has been firmly established for many years, there is no provision allowing intervention of this kind on the part of administrative authority. In Australia and New Zealand, the laws concerning conciliation and arbitration

impose certain obligations on trade associations in return for the advantages offered to them by the law, but the associations remain entirely free to bring themselves within such regulations or otherwise.

Compulsory Dissolution of Trade Associations.

Where the law prescribes certain conditions of substance and of form which trade associations are bound to satisfy, it also makes provision with regard to the dissolution of trade associations which cease to fulfil such conditions (*e.g.*, in France). In other countries a trade association may be declared to be dissolved if it commits a breach of the provisions of the penal code (*e.g.*, in Egypt, Iran).

No provision is made for such an eventuality, either in the countries in which trade associations are governed by the ordinary law, as in the Scandinavian countries, or in Australia, Canada, Ecuador, the United States, Mexico, New Zealand, the United Kingdom, Poland, Czechoslovakia, the Union of South Africa, etc. The view taken in those countries is that a punishable or criminal act should be imputed only to the person who commits it.

In several countries the decision relating to the dissolution of a trade association is within the competence of the executive authority (for instance, Bolivia, Chile, China, the Lebanon). More frequently, however, the legislature accords to trade associations, in the same way as to other organisations, the guarantees of ordinary judicial procedure. In such cases the trade association which has been subjected to dissolution by administrative order has the right to apply to the courts to set aside the decision taken (for instance, Egypt, Venezuela, etc.). But, as a general rule, only the courts are competent to decree the dissolution of an association (*e.g.*, France).

Federations and Confederations of Trade Associations.

While recognising the right of workers and employers to establish trade associations in full freedom, the law has sometimes subjected the formation of federations and confederations of associations to certain supplementary conditions, and has prohibited the affiliation of trade associations with international organisations.

Up to the present, these restrictions have been repealed in the majority of countries. The guarantee of freedom of association

implicitly includes the right of employers and workers to choose the form of organisation which is most convenient to them. It implies, therefore, not only the right of employers and workers to form trade associations, but also the right of such associations to establish federations and confederations.

The majority of legal systems expressly guarantee this right by stipulating, for instance, that the provisions governing the constitution, functioning and dissolution of trade associations shall apply *mutatis mutandis* to federations and confederations of associations (for example, China, Cuba, Iran, Mexico, Nicaragua, etc.). The provisions restricting the freedom of trade associations to affiliate with international organisations have also been repealed in the majority of countries.

In Portugal, however, neither employers' associations nor trade unions may adhere to an international organisation or send representatives to international congresses without the express consent of the authorities.

Privileges of Trade Associations.

It has been observed that a large number of legal systems make the establishment of trade associations subject to certain formalities being satisfied, in particular, registration or filing of constitutions and rules. Having satisfied these formalities, trade associations are endowed with civil personality, which entitles them to acquire and hold property, to contract and to sue in civil actions, in the same way as an ordinary individual possessing full legal capacity.

The accordance of personality involves *per contra* civil responsibility, in other words, the trade association is bound, to the extent of its assets, by contracts entered into on its behalf.

The full and rigorous application to trade associations of the common law principles of civil liability might involve serious consequences affecting the very existence of such associations. Therefore, certain countries have endeavoured to mitigate these consequences. Laws enacted in the United Kingdom and in the greater part of the Dominions have conferred on trade associations complete civil immunity in respect of lawful labour disputes. French legislation and many legal systems which have followed its example have provided that execution may not be levied on certain essential portions of the assets of associations.

In the United States, a similar result was obtained by the Norris-La Guardia Act of 1932[1], restricting the use of injunctions in connection with labour disputes.

At the present time trade associations possess legal personality in the majority of countries, while the question as a whole has lost much of its interest. Indeed, by mere force of circumstances, those countries which made no provision for the attribution of moral personality to trade associations have been obliged to accord, in the field of social relations (and especially with regard to collective agreements, conciliation and arbitration), as a purely *de facto* measure, the same rights to trade associations as are conferred on recognised associations. Moreover, the conception of the most representative trade association is now beginning to replace that of the recognised association.

This conception results from the belief that the regulation of social and economic relations should be based on powerful trade associations which are truly representative of the interests concerned. Hence, the law endeavours to confer on the most representative trade associations — the best equipped associations — powers concerning the regulation of conditions not only in respect of their members but in respect of all persons belonging to the occupation or to the industry.

There will be occasion in the other portions of this report to make reference to the many applications of this conception, not only in the field of fixing wages and conditions of employment, but also with regard to the participation of trade associations in the preparation and application of social and economic legislation.[2]

Admittedly, the law, by endowing certain organisations in this way with a representative authority extending beyond the orbit of their members, has, perforce, made a choice between the trade associations concerned. But, inasmuch as the autonomy of trade associations in relation to the State is safeguarded, and as the employers and workers remain free to choose the trade association to which they wish to belong, this choice is in no way arbitrary, because it applies, as it were, the democratic principle of majority representation to the field of social relations.

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[1] L.S. 1932 — U.S.A. 2.

[2] See below, Collective Agreements, pp, 59 *et seq.*

Protection of the Right to Organise and to Bargain Collectively

One of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form associations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements. But this object would be frustrated if the parties themselves were able to question the exercise of the right of association or if they refused to enter in good faith into negotiations with a view to the conclusion of collective agreements.

Particular point has been given to this in the " findings and policy " clause in the United States National Labor Relations Act of 5 July 1935 [1]:

> The denial by employers of the right of employees to organise, and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce...
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organised in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry, and by preventing the stabilisation of competitive wage rates and working conditions within and between industries.

The recognition of freedom of association by the State should therefore involve as a corollary the recognition of trade unions by the employers. In certain countries, especially in the United Kingdom, this recognition has been more or less spontaneously acquired in view of the particularly strong position of the trade unions, on which the law confers immunity with regard to penal offences and civil immunity in connection with labour disputes, and which are given indirect support as a result of the establishment of minimum wages in " unorganised " industries and trades and in agriculture.

In other countries, this recognition is the result of agreements of national application concluded between the central organisations

[1] L.S. 1935 — U.S.A. 1.

of employers and workers : the September Agreement of 1899 in Denmark, the December Compromise of 1906 in Sweden, renewed and extended by the Agreement of 1938, the National Convention of 1935 in Norway. Reference may also be made to the 1936 agreements concluded in France (Matignon Agreement) and in Belgium. By virtue of these agreements the two parties undertake to respect freedom of association, to base their mutual relations on a system of collective bargaining, and to have recourse to conciliation and arbitration in the event of labour disputes.

In other countries, the law has intervened to prohibit both acts directed against workers who are members of trade unions (such as anti-trade union clauses, discriminatory acts and reprisals of any kind taken against members and officials of trade unions) and acts directed against the trade unions themselves (such as the refusal to recognise trade unions and the refusal to enter into negotiations with them, the creation of company unions under the domination of the employer, etc.).

In Australia, New Zealand and the Union of South Africa, this protection results from the laws concerning conciliation and arbitration. In a large number of Latin-American Republics, it is provided by clauses contained in the labour codes or in the laws governing trade associations (Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua and Venezuela).

Protection is afforded by laws concerning labour contracts or collective agreements in Finland, France, the Netherlands, etc.

Finally, in a large number of countries, for instance, the United States, Canada, Belgium, Luxembourg, Sweden, China, etc., freedom of association is guaranteed by special legislation.

This brief survey demonstrates that, in the majority of countries, either by general agreements concluded between organisations or by custom which has become firmly established as the result of collective agreement, or alternatively as the result of legislation, the protection of the right of association is now ensured, in respect both of the wage-earner and of the trade union itself, against any prejudicial act on the part of the employer.

In the following pages an analysis will be made of the measures taken to give effect to this protection and to ensure the respect of the right of association and the right of collective bargaining.

Protection of the Right of Association of Individual Workers

Certain legal systems seek, by the application of a very general formula, to make the protection of freedom of association as comprehensive as possible.

Thus the Belgian Act of 24 May 1921 [1] guarantees " freedom of association in all spheres ", enunciates expressly the validity of the trade union agreement, and represses by penal sanctions any attacks on freedom of association by means of illegal pressure or through the medium of the labour contract.

By the French Act of 23 December 1946 on collective agreements [2], national agreements — agreements with a more restricted field of application can be concluded only within the framework of an already existing national agreement — are bound to contain clauses concerning freedom of association and the freedom of opinion of the workers, as well as conditions of engagement and dismissal, without these provisions being considered as an interference with the free choice of their organisations by the workers.

Legislation or collective agreements generally expressly prohibit those acts which experience has shown to be particularly prejudicial to the workers. In particular, these acts comprise the following: refusal to engage a worker who is a member of a trade union ; agreements by which the worker is made to undertake not to belong to a trade union or to withdraw from membership; discriminatory measures taken or pressure exercised against the organised worker during his employment ; discharge of the worker because of his membership in a trade union or of his trade union activities. Such acts are prohibited, for instance, in the following countries : Argentina, Australia, Bolivia, Brazil, Canada, China, Costa Rica, Ecuador, Finland, Mexico, New Zealand, the Union of South Africa, the United States, Venezuela, etc.

Particular reference may be made in this connection to the Federal National Labor Act, promulgated in the United States on 5 July 1935, as it has served as a model, not only for a large number of the States of the Union, but also for other American countries. The Act designates as " unfair labor practices " any attempts on the part of the employer in order *inter alia* :

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[1] L.S. 1921 — Belg. 2-3.

[2] Cf. *International Labour Review*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947, p. 287.

1. To interfere with the exercise of the right by the workers to free self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of defending and protecting their mutual interests.

2. To encourage or discourage membership in any labor organization by exercising coercion or pressure against the worker at the time of his engagement or during the tenure of employment. This provision renders illegal the " anti-union clause " among others, and also any discriminatory acts. On the other hand, the law authorises the parties duly qualified to make collective agreements to include in them a clause making the membership of the worker in the contracting trade union a condition of his employment.

3. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act.

Protection of the Freedom of Association of Workers' Organisations

As already mentioned, in many countries the employers' and workers' organisations mutually recognise each other as the authorised representatives of all the employers and workers respectively and, by so doing, agree to determine wages and other conditions of employment through collective bargaining.

But in the absence of such mutual recognition the trade unions are obliged to resort to economic pressure to force the employer to enter into negotiations with them. Such disputes are particularly serious when they involve any question as to the principle of occupational solidarity and, for this reason, are liable to extend to industry as a whole. It should be recalled in this connection that the basic agreements concluded in the Scandinavian countries, France and Belgium were entered into for the particular purpose of avoiding disputes as to union recognition. It was the same consideration which led to the passing, in the United States, of the Wagner Act of 1935, which was effective in terminating a wave of strikes concerning the question of union recognition.

For the purpose of avoiding such disputes, the legal systems of many countries prohibit the employers from interfering in the constitution and internal life of the trade unions, or from refusing to recognise the trade unions or to negotiate with them.

Under the legislation in force in the United States and Canada

it is considered to be an unfair labour practice, and prohibited as such, for an employer to commit any act with a view :

1. To dominate or interfere with the formation or administration of any labour organisation or contribute financial or other support to it. This enactment amounts in practice to the outlawing of company unions created by the employer or operating under his control.

2. To refuse to bargain collectively with the representatives of his employees.

In Sweden, the machinery of collective bargaining has been dealt with by legislation in very great detail. The Act of 11 September 1936 [1] confers the right of negotiation on the employer or employers' association concerned, on the one hand, and on the workers' organisation of which the employees concerned are members, on the other. In other words, the right is granted to institute negotiations respecting the adjustment of conditions of employment and respecting the relations between employers and employees in general.

The possession by one party of the right of negotiation entails upon the other party the obligation to enter into negotiations, which obligation involves the duty : *(a)* of attendance in person or by an authorised representative at the meeting for negotiations ; and *(b)* of making, where necessary, proposals supported by reasons for the settlement of the question concerning which negotiations were instituted.

In Mexico, Colombia, Ecuador and Venezuela, any employer who employs wage-earners belonging to a trade union is bound, if the union so demands, to enter into negotiations with a view to the conclusion of collective agreements.

It should also be mentioned that many legal systems give particular protection to the officials and agents of a trade union against any discriminatory or punitive measure which the employer might take against them on the occasion of their engagement or during the period of their employment (Australia, Bolivia, Brazil, China, Colombia, Ecuador, Mexico, New Zealand, Union of South Africa, etc.).

Supervision and Sanctions

In order to make these guarantees effective, legal systems generally prescribe the establishment of certain authorities parti-

[1] L.S. 1936 — Swe. 8.

cularly competent to supervise the application of such legislation, to take cognizance of any breaches which may occur, and to impose penalties.

In cases where the right of association and of collective bargaining has been the object of a general Agreement or a collective agreement, the conciliation and arbitration machinery which the parties have agreed to establish is called upon to settle disputes resulting from the agreement, as, for instance, the Labour Market Board, set up in Sweden under the Agreement of 1938, and the councils and committees prescribed in collective agreements concluded in the United Kingdom and the United States, etc.

Admittedly, such agencies cannot intervene except where the individual rights of the workers are at issue. Where a dispute arises on the question of recognition of a trade union, only an official court has sufficient authority to impose its will.

In Australia, New Zealand and the Union of South Africa the arbitration courts or industrial councils are competent to carry out the necessary enquiries and to impose sanctions.

In those countries which possess labour courts or arbitration tribunals with judicial functions, as, for instance, the Scandinavian countries and many Latin-American Republics, such authorities have the duty of settling disputes.

The Swedish Act of 1936 prescribes, apart from recourse to the Labour Court, a special procedure of conciliation and arbitration. This procedure is to be invoked by the central organisation of employees which is not directly involved in the dispute. By submitting to the procedure of conciliation and arbitration the parties undertake to observe a " truce ", in other words, not to resort to strike, lockout or boycott for a certain period. This undertaking has a twofold effect : on the one hand, it binds the associations affiliated to the central organisation and, on the other hand, binds the employer in relation to the association concerned and its members.

In order to settle disputes, the competent authority appoints an independent chairman to preside over the negotiations, or sets up a committee of three persons if the question is particularly important or of an especially complicated character. In the event of the failure of conciliation, an arbitration board may be appointed. The parties are not obliged to accept the proposals made by the board, whose report is published. It is assumed that under the pressure of public opinion neither party will refuse to accept the recommendations made by the board.

In the United States [1], Canada [2] and Argentina [3], National Labour Relations Boards have been established and made exclusively competent to hear all alleged cases of unfair labour practices to which reference has already been made. These Boards are not bound by the formalities of normal procedure. They may make such investigations as are necessary, call witnesses, etc.

In the United States the decisions of the National Labor Relations Board are enforceable only after confirmation by a Federal Court. The latter, after examining the record of the proceedings filed with it by the Board or one of the parties, may modify or set aside the decision of the Board. The award of the Federal Court may be modified by the Supreme Court. In fact, the decisions of the Board, being based on conclusive evidence, are generally confirmed by the Federal Courts.

In Canada, the decisions of the Labour Relations Board cannot be assailed on factual grounds.

In Australia, New Zealand, Belgium, China and Mexico, as well as in various States of the United States of America and in several Canadian provinces, the authorities are competent to impose penalties on the guilty employer.

It should be observed in particular that in Australia and New Zealand the law modifies the ordinary legal rules as to onus of proof in favour of the worker whose freedom of association has been prejudiced. Under the rules of the ordinary law it is for the applicant — in this case the worker — to prove that the discriminatory act which has been committed against him is due exclusively to an anti-trade union motive. But it is clear that the worker could very rarely adduce such proof. Consequently the protection of the right of association might thereby become ineffective in the majority of cases. Australian legislation therefore provides that if, in proceedings brought in respect of an alleged breach of the right of association, all the facts and circumstances constituting such breach are proved with the exception of the motive for the act committed by the employer, the onus falls on the employer to prove that he was not actuated by the motive alleged in the complaint.

In Sweden the Labour Court may impose on the employer the obligation to compensate the wage-earner for any damage which he has suffered.

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[1] L.S. 1935 — U.S.A. 1.
[2] L.S. 1944 — Can. 1.
[3] Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 677.

In the United States, the worker who has been prejudiced by an unfair labour practice on the part of the employer has all his previous rights restored to him, in other words, he must be reinstated in his employment if he has been dismissed and may claim payment of the wages which have been lost. The National Labor Relations Board has been particularly effective in its interventions to prevent or punish offences committed against the right of association. According to the annual reports published by the National Labor Relations Board, the number of disputes of this kind is shown to be steadily diminishing, which clearly demonstrates that the employers, or the great majority of them, have accepted trade unionism as a fact and have admitted the principle of collective bargaining.

Collective Agreements

As a result of the protection of freedom of association, employers' and workers' organisations possess the autonomy necessary not only for administering their internal affairs but also for fixing wages and other conditions of employment by means of freely concluded collective agreements. In this way, the parties endeavour to replace the individual labour contract by collective provisions intended to govern the relations between employers and wage-earners bound by the collective agreement.

The practical problem which confronted the legislator was to discover a satisfactory method of ensuring the effective application of wages and other conditions of employment fixed by collective agreements, while at the same time preserving the full contractual freedom of the parties. In the following pages an analysis will be made of a few of the principal methods adopted for the purpose of ensuring that collective agreements shall take precedence over the individual labour contract.

Collective Bargaining Machinery

In several countries the State leaves it entirely to the employers' and workers' organisations to negotiate collective agreements. This is the case, for instance, in the United Kingdom and in the Scandinavian countries. It is a characteristic of the system prevailing in these countries that the trade unions and employers' associations have established by mutual agreement certain perma-

nent joint machinery in order to ensure continuity in their mutual relations.

In Sweden, for example, the Labour Market Board, set up in 1936, and given official status by the Basic Agreement concluded in 1938 by the central organisations of employers and workers, is intended to facilitate the application by the associations affiliated to the central organisations of the principles established by a mutual agreement for the purpose of guiding the parties in their negotiations.

In the United Kingdom, collective bargaining machinery, such as joint committees, conferences, neutral committees, etc., have been set up in several industries and now form an integrated network of local, regional and sometimes even national agencies. These agencies are competent to enter into collective bargaining and to settle all disputes which might arise either as to the conclusion, renewal and revision of collective agreements or in connection with their interpretation or application.

The success of these methods is largely due to the fact that the employers and workers, freed at an early date from all legal restrictions, have been able to organise themselves as strong unified associations whose representative character is not questioned.

In those countries, on the other hand, where the trade union movement is divided, disputes have often arisen between the rival unions, and the legislature has had to intervene in order to decide which of the unions concerned was sufficiently representative and, therefore, qualified to enter into collective bargaining.

In certain countries, especially in those in which the trade union movement is divided according to religious denomination (for instance, Belgium, France, Luxembourg), joint committees have been set up in which the most representative organisations are represented in proportion to their membership.

In Belgium, joint committees, given legal status in 1945[1], are industrial agencies of national or regional scope, established in each branch of the economy at the request of, or after consultation with, the employers' and workers' organisations concerned. Composed of equal numbers of representatives of workers and employers, under the chairmanship of a Government representative, the joint committees have the functions of considering wages and conditions of employment, encouraging the conclusion of collective agreements, and preventing or settling labour disputes, etc.

[1] L.S. 1945 — Bel. 5.

The representatives of the employers and workers are appointed by the Government, which chooses them from lists of candidates which the representative employers' and workers' organisations are invited to submit. Under the terms of an Order of 27 July 1946, those organisations affiliated to a national organisation including at least thirty thousand members are deemed to be representative workers' organisations. In view of the plurality of the existing organisations, the representation of the workers on the joint committees is arranged in proportion to their actual membership among workers belonging to the branch of activity concerned.

In France, the Act of 23 December 1946 on collective agreements provides for the establishment of joint committees on the plan of the industry and of a Higher Commission for Collective Agreements on the national plan.

These agencies possess, *inter alia*, the following functions:

When so requested by an employers' or workers' trade organisation, the Minister of Labour will convene a joint committee in order to conclude a collective agreement which, in principle, shall cover the whole of an industry throughout the territory; if the request does not emanate from one of the most representative organisations, the Minister may refuse to give effect to it.

If the joint committee is able to reach an understanding, a collective agreement will be signed. If, on the other hand, no agreement can be reached, the Minister, at the request of the parties, will intervene to help in the solution of the dispute. If no agreement has been reached after a period of one month, a Decree will be issued, after consultation with the employers' and workers' organisations, provisionally fixing conditions of employment in the branch of activity concerned.

The Higher Commission for Collective Agreements has the task of co-ordinating the work of the joint committees and of formulating general rules concerning the drawing up of collective agreements. At the request of the Minister or of the parties concerned, it is to give advice with regard to the solution of labour disputes which may arise in connection with the conclusion or application of a collective agreement. If the parties concerned so request, it may even arbitrate in such disputes.

Finally, the Commission has to consider the probable effects of collective agreements on prices, production and cost of living, and to advise the Minister of Labour regarding the conclusion, renewal and approval of collective agreements, and also regarding

the decrees fixing wages and other conditions of employment in the absence of collective agreements.

The Higher Commission for Collective Agreements is composed of fifteen members, five each representing the Government, the employers and the workers. The employers' and workers' members are appointed on the recommendation of the most representative central trade confederations.

Which are the most representative organisations ?

The Act does not define this term which, as is well known, was taken from the Constitution of the International Labour Organisation.

Various criteria of fact should be taken into consideration, for example, the number of members regularly paying contributions, the independence of the organisations in relation to the employers, the age and experience of the organisations, the patriotic attitude of the organisations during the war, and similar factors. According to the Ministerial Circular of 28 May 1945, " The General Confederation of Labour and the French Confederation of Christian Workers satisfy all these conditions. They and their federations and affiliated unions must still be considered representative unions. "[1]

By a decision taken on 13 March 1947, following the advice of the Higher Commission for Collective Agreements, the Government laid down the conditions to be satisfied, in addition to the general conditions previously mentioned, in order that organisations may be considered to be representative for the purpose of negotiating collective agreements.

By the terms of this decision, organisations whose membership includes 10 per cent. of all the organised persons in one of the occupational categories concerned may participate in the drawing up of the provisions of a collective agreement which are of concern to all the wage-earning categories. Organisations may participate in the negotiation of the provisions of national collective agreements which concern a particular category of wage-earners if their membership includes either 10 per cent. of all organised persons in the whole branch of industry concerned, and 25 per cent. of all the organised persons in the occupational category concerned ; or, 33 per cent. of all the organised persons in the occupational category concerned.

A Supervisory Commission set up within the framework of the Higher Commission for Collective Agreements is competent to assess the representative character of organisations.

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[1] Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 680.

In several other countries (for instance, Argentina, Australia, Canada, Mexico, New Zealand, the Union of South Africa and the United States) the law recognises only one organisation as being a representative organisation for the purpose of concluding a particular collective agreement.

According to the Australian and New Zealand Acts concerning conciliation and arbitration, a single organisation, on the basis of the industry and the region, is registered, and thereby obtains the exclusive right of appearing as a party before the arbitration courts. The competent authority is bound to refuse registration of an association if there already exists an organisation to which the members of the new association might conveniently adhere. But in order to become registered, the trade union must furnish satisfactory guarantees that it is ready to accomplish its mission in good faith and to conform with the provisions of the law. The arbitration court may cancel the registration of a trade union if its constitution and rules do not contain adequate provisions to facilitate the admission of new members, or if they impose onerous conditions on the workers, or if they are not observed in good faith, etc.

Similar regulations are in force in the Union of South Africa, where the employers, employers' associations and trade unions are called upon to form Industrial Councils. These Councils, agencies for negotiation and conciliation, are officially recognised provided only that they are sufficiently representative.

In Mexico, also, the registration of more than one trade union may be refused. According to the Argentine Decree of 2 October 1945, the recognised trade unions are exclusively competent to protect the collective interests of the members in relation to the State and the employers. A trade union is recognised only after it has operated for a period of more than six months and if the number of contributory members is sufficiently high. If another trade union can claim a higher number of members than that of the recognised union, the recognition will be transferred. However, account is taken of the energy displayed by the recognised trade union in defending occupational interests. The Secretariat of Labour, which is the competent authority for granting recognition of a trade union, shall, within a time limit of sixty days, issue a decision granting or withholding recognition. If recognition is refused, the trade union concerned may bring an appeal before the executive authority.

In the United States and Canada, the National Labor Relations Boards, in addition to their quasi-judicial functions with regard to

the prevention of unlawful acts directed against freedom of association, also have the power to make decisions concerning the representative character of a trade union.

Under the Labor Relations Acts, the representatives designated for the purposes of collective bargaining by the majority of the employees in the economic unit appropriate for such purposes (undertaking, group of undertakings, sections of the undertaking) are the exclusive representatives of all the employees and therefore competent to conclude collective agreements on behalf of all the employees.

Whenever there is a dispute concerning the representation of employees, the Board holds an investigation. If the investigation still leaves doubt as to the representative character of the trade union, the Board is to organise an election by secret ballot in which all the employees concerned have the right to take part. The trade union which is successful in the election will represent all the wage-earners in the bargaining unit for the purposes of collective bargaining, including those who are not organised or who belong to a rival association.

By thus applying the democratic political principle of majority representation to the field of industrial relations, the countries of North America, through the establishment of a special administration for collective bargaining, have succeeded in greatly reducing, if not in eliminating, the number of inter-union disputes which had in the past occasioned serious losses to the national economy. Moreover, they have created an important precedent which may exercise considerable influence over legislation in all countries confronted by similar problems.

Definition of the Collective Agreement

In the majority of countries the legal system leaves the associations entirely free to determine the contents of collective agreements, their form, their duration, and, generally, the rights and obligations which they involve (*e.g.*, Belgium, the United Kingdom, the United States, etc.).

However, in an increasing number of countries, the law has adopted the practice of defining those agreements which it will consider to be collective agreements. Legislation enacted before or immediately after the First World War frequently defined as a collective agreement any agreement relating to conditions of employment concluded between an employer, or a group of

employers, on the one hand, and any group of wage-earners, on the other hand (for example, France, Act of 1919). Such enactments have not generally exercised any considerable influence on the development of collective bargaining.

Experience has shown, indeed, that any agreements concluded *ad hoc* between an employer and a group of workers have only a temporary existence. They do not therefore fulfil the purposes of a collective agreement. Hence, the majority of laws which are at present in force, and which contain a definition of the collective agreement, provide that no agreement relating to conditions of employment shall be deemed to have the status of a collective agreement unless it has been concluded on the workers' side by an association (*e.g.*, Australia, Costa Rica, Finland, France (Act of 1946), Mexico, New Zealand, Nicaragua, Sweden, Switzerland, the Union of South Africa, etc.).

Compulsory Effects of Collective Agreements

In the view of the majority of legislators, the surest way to ensure the efficiency of a collective agreement is to endow it with certain compulsory effects. A short analysis follows of the legislation enacted for this purpose.

Non-Derogation from the Collective Agreement

All legal systems provide that individual labour contracts made between members of the contracting organisations shall conform with the stipulations contained in collective agreements. If they do not so conform, they are null and void and are automatically replaced by the corresponding clauses in the collective agreement (for instance, Chile, Colombia, Costa Rica, Cuba, Ecuador, Finland, France, Iran, Mexico, the Netherlands, Norway, Sweden, Switzerland, Venezuela, etc.).

However, as the collective agreement is intended to fix minimum conditions, as was formerly all protective labour legislation, clauses in an individual labour contract which are more favourable to the worker than the corresponding conditions in the collective agreement are allowed to remain in force.

Application of the Agreement to all the Workpeople in an Undertaking

If members of an organisation which is party to a collective agreement work in an undertaking in company with unorganised workers, the question arises as to whether the latter may be employed under different conditions from those affecting the former. Such a situation might prejudice the application of the collective agreement. Hence, the law endeavours to ensure identical conditions for the whole of the workpeople in an undertaking.

On the hypothesis that an employer bound by a collective agreement thereby assumes the obligation to apply the agreement in good faith in his undertaking, it is provided under several legal systems that the employer is bound to observe the terms of the agreement both with regard to his organised employees and with regard to those who are not members of the contracting association (Cuba, Finland, Mexico, Sweden, etc.).

The same result is attained in the United States and Canada by application of the principle that the organisation recognised as representing the bargaining unit concerned (undertaking or section of an undertaking under the control of the same employer) is competent to conclude a collective agreement on behalf of the workers employed in that unit whether they are organised or not. Consequently, the same conditions become applicable to all the workers employed in the same kind of work.

Extension to Third Parties

All the measures to which reference has so far been made have the object of guaranteeing the application of the collective agreement within the limits of contractual law. Consequently, the employer who has not signed the contract or does not belong to the contracting employers' association remains entirely free. By offering to his workpeople conditions of employment less advantageous than those provided by the collective agreement and thereby operating under more favourable conditions than do the competing undertakings bound by the agreement, these employers might jeopardise the very existence of the collective agreement. To prevent such a situation arising, an increasing number of legal systems make provision for the possible extension of the collective agreement to third parties, in other words, to

employers and workers who are not directly bound by it but who carry on their occupations or their business within the limits of its territorial and industrial field of application. This is the case, for instance, in Australia, Belgium, Brazil, Canada (Province of Quebec), Colombia, Costa Rica, Ecuador, France, Hungary, Ireland, Luxembourg, Mexico, the Netherlands, New Zealand, Poland, Portugal, Switzerland, the Union of South Africa, the United Kingdom, etc.

In the majority of countries the extension of collective agreements is made subject to a number of conditions intended to safeguard the legitimate interests of third parties. In the first place, an agreement cannot be extended to third parties except where it has acquired an outstandingly important status in the industry by reason of the fact that it was concluded by the majority of the employers and workers. Thus, in the United Kingdom, Part III of the Conditions of Employment and National Arbitration Order, 1940 [1] — a provision which remains in force by virtue of the Wages Councils Act, 1945 [2] — provides that employers' organisations and trade unions representing respectively an important proportion of the employers and workers engaged in a trade or industry in a particular district may settle by the procedure of negotiation or arbitration conditions of employment which are " recognised ", in other words, conditions which are generally binding.

Under the French Act on collective agreements of 23 December 1946, collective agreements concluded by the most representative organisations of employers and workers apply *ab initio* to a whole industry or trade throughout the national territory, and their provisions override the relationships created by individual contracts in every establishment included within its field of application. However, the collective agreement must first have obtained the approval of the Minister of Labour, who can only refuse such approval if he is so advised by the Higher Commission for Collective Agreements. The provisions of an approved agreement are, *ab initio*, compulsory for all the workers in the occupations and districts included within its field of application.

Legislation often specifies that a collective agreement which might be extended to third parties must cover the majority of the workers and the majority of the employers who themselves

[1] L.S. 1941 — G.B. 3B ; L.S. 1944 — G.B. 3B.
[2] L.S. 1945 — G.B. 1.

employ the majority of the workers (*e.g.*, Colombia, Mexico, Switzerland [1], etc.).

In the second place, the decision decreeing the extension of the collective agreement is very often taken only after an investigation. Accordingly, the agreement is published and an opportunity thus given to all concerned to submit observations and formulate objections (for instance : Australia, Belgium, Canada (Quebec), Colombia, Luxembourg, Mexico, New Zealand, Switzerland, the Union of South Africa, etc.).

If the objections appear to be well founded, the competent authority may refuse to give effect to the request for extension ; if they do not so appear, the authority declares the collective agreement generally binding and its decision is duly published.

Disputes as to Interpretation

The purpose of the collective agreement is attained only if its provisions are effectively translated into conditions of employment which are observed in good faith both by the employers and the workers. In the same way as any enactment, an agreement may be violated and the interpretation of its provisions may give rise to disputes. In either of these events, the parties are naturally concerned, above all, that effect shall be given to the agreement in accordance with their intentions. But if they cannot agree on this issue, higher authority frequently intervenes to settle the dispute.

In certain countries, for instance the United Kingdom and the United States, the application of the collective agreement is left entirely to the parties concerned. They supervise the application of agreements in the undertakings and make themselves responsible for the settlement of disputes. Thus, the joint agencies, which, as previously mentioned, have been established in the principal industries in the United Kingdom, have to endeavour to conciliate the parties and may, if necessary, refer the dispute to arbitration. It is only in this latter eventuality that the case may come before the official conciliation and arbitration machinery. In the United States, the majority of collective agreements prescribe special conciliation and arbitration procedure for the settlement of disputes as to interpretation as, for instance, the appointment of Grievances Committees.

[1] L.S. 1943 — Switz. 2.

In a large number of countries, disputes as to interpretation, which are considered to be legal disputes, are within the jurisdiction of the courts and, generally, of special courts, such as labour courts (Norway, Sweden), or arbitration courts (Australia, Denmark, New Zealand, various Latin-American countries, etc.). Nevertheless, the law generally allows conciliation procedure to be applied in the first instance and especially such procedure as has been agreed upon between the parties.

This is particularly true under Swedish legislation.[1] If the collective agreement provides that the parties shall undertake negotiations for the settlement of any dispute as to interpretation of the agreement, the Labour Court cannot intervene so long as those negotiations have not been held. Nor can it intervene if the parties have agreed that the dispute shall be referred to arbitration.

Supervision of Application

Legislation in an increasing number of countries (Australia, Belgium, Brazil, France, Mexico, New Zealand, the Union of South Africa, etc.) empowers certain authorities, such as labour inspectors or inspectors appointed *ad hoc*, to supervise the application of collective agreements. Such measures are prescribed especially in those cases in which the collective agreement has been declared generally binding. Indeed, trade associations, being in a sense private associations, cannot intervene in the case of employers and workers who are not affiliated to them.

It may also be mentioned that the staff representatives appointed in several countries, such as the works councils in Poland and Czechoslovakia, and the staff delegates in France, have the right to supervise the application of collective agreements in the undertakings and to inform the labour inspectors of any cases involving the breach of such agreements.

Conciliation and Arbitration

States generally make available to the parties two methods of settling labour disputes : (1) voluntary conciliation and arbitration procedure ; and (2) compulsory conciliation and arbitration

[1] L.S. 1928 — Swe. 3.

procedure. As these two systems are fundamentally different in character they will be considered separately.

Voluntary Conciliation and Arbitration

At the outset it should be observed that States generally give preference to the systems of conciliation and arbitration established by the parties by virtue of general agreement or under special clauses included in collective agreements.

But, in the absence of any contractual system of conciliation and arbitration, or in order to supplement any such system, Governments have made official systems of voluntary conciliation and arbitration available to the parties.

Voluntary Conciliation

By means of voluntary conciliation and arbitration the legislature aims to assist the parties in reaching agreement without infringing their freedom of decision. Accordingly, the machinery which it makes available to them should be such — by reason of its composition, procedure and the general facilities which it offers — as to inspire full confidence in the parties.

Conciliation Machinery.

In the majority of countries, the Ministry of Labour, the social administrative authorities subordinate to the Ministry, and especially the services competent with regard to labour relations, have the power, in the event of a labour dispute, of intervening directly between the parties or of calling on independent persons to conciliate the parties (for instance : United Kingdom, Act of 1896 ; France, Act of 1946 on collective agreements, etc.).

In other countries, such as Colombia, Venezuela, etc., *ad hoc* conciliation boards are appointed whose members include equal numbers of representatives of the respective parties, under the chairmanship of a Government representative, who presides over the proceedings and seeks to conciliate the parties, but cannot vote with regard to any decision.

Generally, however, while the *ad hoc* appointment of conciliation boards is permitted, preference is given to permanent institutions. Such institutions offer the advantage of being able to undertake their duties immediately a dispute arises or threatens to arise.

Moreover, they are composed of persons independent of the parties directly involved in the dispute and are, for this reason, particularly qualified to give an objective opinion regarding the matter in issue.

For this purpose legislation prescribes the appointment either of individual conciliators or mediators, or of joint agencies composed of equal numbers of representatives of employers and workers respectively, appointed, as a rule, on the proposal of the most representative organisations.

The first system is employed in the United States, the Scandinavian countries and the Netherlands ; the second has been adopted — frequently in conjunction with the first — in Canada, Mexico, the United Kingdom, Switzerland, the Union of South Africa, etc.

Thus, under one form or another, there now exists in the majority of countries permanent conciliation machinery competent to lend its assistance to the parties for the purpose of settling labour disputes.

Conciliation Procedure.

By means of voluntary conciliation efforts are made to persuade the parties to a dispute to resume negotiations under an appropriate procedure and to facilitate the conclusion of an agreement by an objective consideration of their demands.

Intervention of organisations. The trade associations being the parties to the negotiations which have preceded conciliation, it is natural that they should also be associated in the conciliation procedure. Normally, it is the employer, the employers' associations or the trade unions which, through their representatives, initiate the conciliation procedure, make themselves parties to it, and undertake discussions.

Admittedly, according to many legal systems, intervention in the conciliation procedure is not reserved only to the trade associations. The purpose of the legislator is to settle any labour dispute under whatever form it may arise. But if the association is involved in the dispute, it is the association which will appear before the conciliation agency and, in those countries where it is recognised as the qualified representative of the workers or of the employers, as the case may be, it will always have the right to intervene, a right which has been extended under several legal systems to individual labour disputes (for instance, France).

Formalities of procedure. Although conciliation procedure cannot entirely disregard certain formalities, in order to prevent any arbitrary action such formalities are generally reduced to a strict minimum.

In the first place, the legislator seeks to persuade the parties to resume their interrupted negotiations as rapidly as possible. In view of the voluntary nature of the procedure, it behoves the more diligent party to have recourse to conciliation and where, as is the case under certain legal systems (in the Scandinavian countries for example), the conciliator is empowered to intervene on his own initiative, the procedure is nevertheless instituted only with the consent of the parties.

However, in several Latin-American countries, once the procedure has been initiated by one of the parties, it cannot be frustrated by the other. The parties, and in particular the workers, have the obligation to submit to the conciliating authority as well as to the other party, within a brief period specified by the law, their statement of demands indicating precisely the reasons and circumstances underlying the dispute. The presentation of the statement of demands imposes on the other party an obligation to make reply. In order to expedite the procedure, the law frequently prescribes minimum periods for the summoning of the parties, the hearing of witnesses, the production of proofs, etc.

In the second place, in order that the conciliation agency may form an objective opinion as to the dispute, it is authorised by the law to summon witnesses, to make investigations on the spot, and, frequently, to call for production of the employers' records and of any other documents necessary for the consideration of the facts. According to many legal systems, that of Canada for instance [1], the investigation constitutes the essential part of the conciliation procedure. Generally, the parties are entirely exempt from any costs in respect of the procedure.

Agreements by conciliation. If the parties arrive at an understanding, the conciliation procedure is terminated by the conclusion of an agreement equivalent to a collective agreement.

If the contrary is true, the agency for conciliation submits to the parties concerned certain proposals for the settlement of the dispute, but it is a logical consequence of voluntary conciliation that the parties remain entirely free to accept or to reject such proposals.

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[1] L.S. 1925 — Can. 1 ; L.S. 1944 — Can. 1.

If the parties accept the proposals made by the agency of conciliation, they undertake thereby to give effect to them in the same way as to the clauses of freely concluded collective agreements. Many legal systems expressly provide that agreements reached through conciliation are to possess the status of collective agreements.

If the attempts at conciliation fail, the parties resume their full freedom of action, but it is frequently provided that the conciliation agency shall publish a report on the history of the dispute, indicating the proposals and objections put forward by the parties, the result of the enquiry and the recommendations made for the settlement of the dispute. In this way, the law seeks to keep the public objectively informed in order that it may itself form an opinion concerning the dispute and so persuade the parties, under the pressure of this public opinion, to settle the dispute amicably in spite of the failure of conciliation.

Prevention of Strikes or Lockouts.

By facilitating the conclusion of a collective agreement by means of voluntary conciliation, the law seeks to prevent, as far as possible, strikes and lock-outs.

In a number of countries (the United States, the United Kingdom, for instance) this question is generally left to the parties themselves, who often provide in their constitutions and rules that there should be no recourse to strike or lock-out so long as the procedure of conciliation is being followed or until the expiry of a certain period.

Several legal systems make it obligatory for the parties to give notice to the conciliation agency and to the other party of any intention to suspend work (Sweden for instance).

According to the Mexican Labour Code, and to several Latin-American systems which are modelled on it, strikes and lock-outs are subjected to legal provisions, in the sense that they are not considered lawful unless they are called for legitimate purposes, are supported by the majority of the persons concerned and have been notified to the other party beforehand. The conciliation agency adjudicates as to the legality of the strike or lock-out and, if it has been declared legal, the parties are free to resort to it.

In those countries which legislate in this way regarding strikes, particular protection is given to the workers.

In Mexico, if the strike has been declared lawful, the authorities are bound to ensure that the rights of the strikers are respected,

to protect them and to support them in their efforts to make the strike effective.

Moreover, the strike can only suspend and not terminate the labour contract. It follows therefore that when work is resumed, the workers are reinstated in their former employment and retain all the rights and privileges (seniority, pension rights, etc.) which they had acquired before the cessation of work.

The Labour Code of Ecuador expressly stipulates that workers who have been on strike cannot be dismissed in the year following the strike, except for certain legitimate reasons enumerated by the law and after authorisation by the labour inspectorate.

On the other hand, in order to ensure the effective functioning of conciliation machinery, other legal systems make the parties refrain from any economic pressure during the conciliation procedure or until after a certain period of time. This is the case, for instance, in the United States (railways), Canada, Union of South Africa and several Swiss cantons. Similar provisions have recently been adopted in the United States (in certain States), in order to prevent strikes and lock-outs in the public services or public utilities.

In all countries the parties are bound to resume work as soon as the conciliation procedure has ended in the conclusion of an agreement or in the adoption of conciliation proposals. In fact, the conciliation has attained its object : a new collective agreement now governs the relations between employers and workers.

Voluntary Arbitration

The laws which establish conciliation procedure generally offer to the parties, in addition, the opportunity of settling labour disputes by voluntary arbitration, either in lieu of or after the failure of conciliation.

The characteristic feature of voluntary arbitration is the fact that the parties make a reference to one or several independent persons, or arbitrators, asking them to settle the dispute by an award. The arbitration being voluntary, the parties remain free to have recourse or not to this procedure, but if they do so by mutual agreement, they thereby undertake, by virtue of the submission to arbitration, to accept in advance the arbitral award. In this way, the parties who cannot agree on the actual facts in the dispute mutually agree on the method to be followed for its settlement and may conduct their negotiations in the presence of another party without having recourse to direct action.

If arbitration is provided by agreement, it is for the parties to determine the methods of procedure and to appoint the arbitrator. Very frequently, however, the legal system makes permanent arbitrators available to them (the United Kingdom, Sweden, for instance), or provides for the appointment of permanent arbitration commissions or tribunals, including employers' and workers' representatives appointed on the proposal of the most representative organisations (*e.g.*, the Industrial Court in the United Kingdom, the conciliation and arbitration boards in Mexico and other Latin-American countries, the conciliation and arbitration offices in Switzerland, etc.).

The rules of arbitration procedure, where arbitration is instituted by law, resemble those of judicial procedure. However, in this case also, the arbitrator has to endeavour in the first instance to persuade the parties to conclude an agreement and it is only where this new attempt at conciliation meets with no success that he should make an award.

The arbitral award has no binding force if the procedure has been invoked at the request of one party only (United Kingdom), but, on the other hand, it binds parties who by previous agreement have referred the dispute to arbitration. However, under certain systems (for instance, Brazil, China, Mexico, Peru), the award is compulsorily binding even where the arbitration procedure has been invoked by one party only.

The restrictions on the freedom to declare a strike or lock-out imposed on the parties by several legal systems during the procedure of conciliation apply, even more strongly, in the case of arbitration procedure ; frequently, any reference to arbitration is made subject to an undertaking by the parties to refrain from any kind of direct action or to resume work which has been suspended.

Compulsory Conciliation and Arbitration

Under the systems of voluntary conciliation and arbitration the law merely offers to the parties concerned a procedure which enables them to reach agreement where their direct negotiations have failed.

Under the systems of compulsory conciliation and arbitration, on the other hand, strikes and lock-outs are prohibited.

A system of compulsory arbitration was introduced both in

Australia [1] and in New Zealand [2] in the early years of the present century. Such a system is based essentially on the idea that, in return for their associations abandoning methods of direct action (such as recourse to strike or lock-out), the workers shall enjoy a certain standard of living guaranteed by the law.

Under such a legal system the arbitration authorities fix a minimum wage calculated to guarantee a proper standard of living to every wage-earner and to his family. This minimum wage varies according to the index figure of the cost of living. Above the level of the indispensable minimum, rates of wages are established by means of collective agreements or, in the absence of agreement, by arbitral awards, which take into account not only the interests of the parties concerned but also the general conditions prevailing in the national economy.

Registered organisations have both the duty and the exclusive right of negotiating with regard to rates of wages, which cannot in any event be lower than the indispensable minimum, as well as with regard to other conditions of employment.

If the parties fail to conclude a collective agreement, the arbitration court fixes the wages and conditions of employment by an arbitral award binding upon the parties. The court may declare that the award shall constitute a common rule for the industry, in other words, that it is binding on all concerned. It may also give the authority of an award to the provisions of a collective agreement and so make them generally binding. Strikes and lock-outs are prohibited and the observance of awards and collective agreements is ensured by penal provisions.

Compulsory arbitration under one form or another was imposed also as a war-time measure in the United States, the United Kingdom and Canada. The reason for this was that wage control appeared to be a necessary corollary to price control. Both the United States and Canada have returned to the system of free collective bargaining while in the United Kingdom compulsory arbitration has been temporarily retained. But, in fact, it is the employers' and workers' organisations which themselves assume the responsibility for fixing wages and other conditions of employment by means of freely concluded agreements.

A similar problem has arisen, following the cessation of hostili-

[1] L.S. 1928 — Austral. 2 (Commonwealth); 1930 — Austral. 11; 1934 Austral. 15.

[2] L.S. 1925 — N.Z. 1; 1932 — N.Z. 1; 1936 — N.Z. 1 and 7; 1943 — N.Z. 3.

ties, in those countries which were devastated by the war. The difficulties of economic reconstruction make it indispensable to exercise a certain amount of control over the national economy as a whole, and in particular over prices and wages. This is the case, for the time being, in France, Belgium, Norway, Finland, the Netherlands, Poland, Czechoslovakia, China, etc. These measures are no doubt temporary ; but for the moment, all those countries are unable to return to a system of free collective bargaining without endangering the unstable equilibrium of their economies.

It will be observed, therefore, that in return for their abandonment of the methods of direct action, the employers' and workers' organisations have become associated very closely, in a great many countries, in the administration and control of their national economies.

Co-operation between the Public Authorities and Employers' and Workers' Organisations

The continued development of the organised movements of employers and workers, the extension of social and economic legislation and the establishment of very large social and economic administrative services gave rise, before the war, to a problem with regard to the rational organisation of co-operation between the public authorities and employers' and workers' organisations, the principle of which has already been given concrete form on the international plan by the creation of the International Labour Organisation.

During the war, particularly great opportunities for co-operation became apparent and, in fact, the majority of the countries involved in the conflict found it necessary to associate the organised movements of employers and workers very closely indeed with the administration of the war economy. When the war ended, a tremendous task of social and economic reconstruction confronted the Governments of those countries which had been devastated, a task which could not be successfully accomplished without the active assistance of the organised forces of production and labour.

Many European countries have found it necessary to establish, at least temporarily, a more or less general control over the whole of their national economies. The serious shortages of supplies, raw materials, means of production and exchange have necessitated an inventory of their resources and their requirements, and the

drawing up on the basis of such inventory a plan for reconstruction and development of the national economy. Certain countries have also nationalised their basic industries.

In order to accomplish these tasks, the Governments and parliaments have had to call on the workers' and employers' organisations because, in the last analysis, the realisation of the reconstruction programme depended, to a large extent, on their direct assistance. Accordingly, the very status of trade unionism within the State has been fundamentally transformed. The trade unions became convinced that the improvement of the standard of living and general conditions of existence of the workers was directly related to increase in production and in the output of labour. Consequently, they have voluntarily abstained, in several liberated countries, from regular recourse to direct trade union action for the purpose of enforcing a general rise in wages which, in view of the conditions of shortage prevailing in their countries, would have led inevitably to inflation and economic chaos. But, on the other hand, they have obtained the right, to an extent never realised in the past, to participate in the organisation and administration of economic and social life.

As a result of this participation in the responsibility for administering the national economy, the trade unions are able to ensure, on the one hand, that the utilisation of national resources is effective and complete and genuinely directed towards the satisfaction of reconstruction requirements and, on the other hand, that the improvement in the standard of living of the workers shall develop progressively in proportion to the increase in production and productivity of labour.

Admittedly, the problem of co-operation does not arise in quite the same way in those countries which have been spared devastation by the war and which have, therefore, been able to return, on the cessation of hostilities, to a régime of more or less complete economic liberty.

But if the nature of co-operation is directly related to the degree of responsibility which the State itself has to assume in the direction and control of the national economy, it remains none the less true that, under one form or another, the public authorities in the majority of countries at the present time have effectively enlisted the technical experience of employers' and workers' organisations in order to solve the problems with which they are confronted.

In the following pages a brief reference will be made to the more recent applications of the principle of co-operation, first on the plan

of the undertaking, then on the plan of the industry, and finally on the national plan.

Co-operation at the Level of the Undertaking

The principle of associating the wage-earners with production and of democratising the undertaking by the establishment of agencies representing the staff is as old as social policy itself. But its realisation was for a long time frustrated by opposition on the part of the employer, who feared encroachment by his staff on his powers of management, and on the part of the trade unions, which feared encroachment by the employer on the independence of the agencies representing the staff. Hence, it required the atmosphere of a war to give concrete form to the conception of labour-management co-operation.

During the first World War the experiment of co-operation in the undertakings was tried for the first time on a vast scale. In this connection, reference may be made to the works committees established during the war in Germany, and to the staff delegations appointed in the arms plants in France. In the United Kingdom, the Whitley Committee recommended the establishment of joint production committees, both on the plan of the undertaking and on that of the industry.

In the inter-war period, the recommendations of the Whitley Committee were put into force in the United Kingdom only to a very limited degree (for instance, in the pottery industry, electrical supply industry, municipal transport, the railways, and the public services). The chief reason for this was that the trade unions feared that the joint works committees might be utilised by the employer, as was the case in the United States, as a means of frustrating trade union activities.

Following the termination of the first war, laws concerning works committees were enacted in Germany, Austria, Luxembourg, Norway, Czechoslovakia. Elected by the staff, these agencies were intended to represent the workers in the undertaking in their relations with the employer and to intervene with regard to any questions of a social nature concerning the staff, with the exception, however, of questions regarding the fixing of wages and other conditions of employment, matters which were reserved to the trade unions. These institutions played an important part so long as the trade unions were in a position to support, them, but their importance declined under the influence of the

economic crisis of 1930 and they were finally suppressed or deprived of all their real functions in the countries with totalitarian régimes (Germany, Austria).

The Second World War gave new impetus to their development. The importance acquired by the joint production committees set up in the United States [1] and in the British Commonwealth [2] is well known. Supported by the trade unions, which themselves were associated very closely with the administration of the war economy, the committees were intended to supplement the efforts of the trade unions by making the staff directly interested in the increase of production and improvement of output in the undertakings.

It was the same motives of necessity which, after the war, led to the establishment of machinery for co-operation in all those countries which found themselves obliged to mobilise every effort for the purpose of increasing production.

Agencies representing the staff now exist, under one form or another, in, *inter alia*, Canada, Finland, France, Hungary, India, Iran, Italy, Luxembourg, Norway, Poland, Rumania, the United Kingdom, Sweden, Czechoslovakia, Yugoslavia, in numerous industries in the Netherlands, in certain industries in Denmark, in Switzerland, and the Union of South Africa. In Belgium, Parliament is considering a draft law concerning works committees. Similar committees have been re-introduced in Germany and Austria. Reference may also be made to the works unions or committees prescribed by the Chilean and Ecuadorean labour codes.

These agencies assume very different forms, from the point of view of structure, methods of organisation and functions. They appear as joint production committees, works councils or committees, staff delegations, etc. In order to assess clearly their real status, a brief analysis of their structure and functions is given in the following pages.

Methods of Co-operation Within the Undertaking

Effective co-operation between the employer and workers in the undertaking can be guaranteed only if it is based upon per-

[1] Cf. *International Labour Review*, Vol. LII, No. 4, Oct. 1945 : " Wartime Methods of Labour-Management Consultation in the United States and Great Britian ", p. 309.

[2] I.L.O. : *British Joint Production Machinery*, Studies and Reports, Series A (Industrial Relations), No. 43 (Montreal, 1944).

manent machinery. How is this machinery created ? What is its structure ? How is its operation guaranteed ?

Establishment of Works Committees.

In many countries machinery for co-operation has been established as the result of collective agreement. The joint production committees set up in the United Kingdom and the committees created during the war in the British Commonwealth and the United States all owe their existence to collective agreements concluded between the parties concerned.

In Italy, the management committees set up in 1944 were also the result of agreements concluded between employers and trade unions.

In Norway and Sweden, the system is based upon national agreements concluded between the central organisations of employers and workers. The Norwegian agreement dates from December 1945 [1] and the Swedish from August 1946. [2] These agreements provide that the affiliated associations shall establish, by means of collective agreements, joint works committees in the different branches of economic activity.

In the Netherlands, the Board of Government Conciliators, established under the Decree of 5 October 1945 [3], has decreed that in a number of collective agreements clauses relating to the establishment of joint committees shall be included, and that they shall have binding force. In Denmark, Switzerland and several other countries, some collective agreements contain similar provisions.

In another group of countries, the view has been taken that only the law could be sufficiently authoritative to ensure continuous and effective co-operation between the employer and workers. This was the case in France (Ordinance of 22 February 1945, amended by the Act of 16 May 1946 [4]) ; Finland (law of 21 June 1946 [5]) ; Hungary (Ordinance of 5 June 1945 [6]) ; the Netherlands (mining industry) ; Poland (Decree of 6 February 1945 [7]) ; Czechoslovakia (Decree of 24 October 1945 [8]).

[1] Cf. *International Labour Review*, Vol. LII, Nos. 3-4, Mar.-April 1946, p. 222.
[2] *Idem.*, Vol. LV, No. 5, May 1947, p. 425.
[3] L.S. 1945 — Neth. 1.
[4] L.S. 1945 — Fr. 8 ; 1946 — Fr. 8.
[5] L.S. 1946 — Fin. 1.
[6] Cf. *International Labour Review*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947 : " Industrial Relations in Hungary ", p. 247.
[7] L.S. 1945 — Pol. 2.
[8] L.S. 1945 — Cz. 1.

Where the collective agreement is used as a means of establishing agencies representing the staff, it offers the parties concerned greater freedom in choosing the type of organisation which is most appropriate to the particular conditions in the industry. Moreover, the field of application, structure, and functions of these agencies may be adapted to the requirements peculiar to each undertaking. Thus, considerable differences may be observed, not only as between one country and another, but as between one industry and another and even between different undertakings.

On the other hand, if the establishment of the agencies is decreed by law, all the undertakings included within the legislative field of application are placed in the same category. The same is true in the case of national agreements concluded by the central organisations of employers and workers, that is to say, where they are really representative of all the employers and workers concerned (as is the case, for instance, in Norway and Sweden).

Thus, these various regulations provide that in all undertakings of a certain size, employing, for instance, at least 20 wage-earners (Hungary, Poland, Czechoslovakia), 25 wage-earners (Netherlands, Sweden), 50 wage-earners (France), works committees shall be established. As will be seen later, they also prescribe identical rules for the establishment and functioning of the committees, and define precisely their powers and functions.

Composition of Works Committees.

The committees created by the laws or collective agreements adopted during recent years are, for the most part, joint committees, including, on the one hand, the employer or his representative or representatives and, on the other hand, representatives of the workers, the number of whom is determined in proportion to the number of wage-earners employed in the undertaking (for instance, Canada, Finland, France, the Netherlands, Norway, Sweden and the United Kingdom).

The Committee is deemed to be an agency for co-operation, which should enable the representatives of the staff to meet regularly with the employer and to discuss with him all questions of mutual concern.

In Hungary, Poland and Czechoslovakia, on the other hand, the works councils are composed exclusively of representatives of the staff. Although obligatory in undertakings of all kinds, whether public or private, the councils are intended to be an integral part of the national economic organisation. It is their

function, as, for instance, is specified in the Czechoslovak legislation — enacted at the same time as the decrees nationalising industry — to ensure that the economic activity of the undertaking is carried on in harmony with the public economic interest and with the needs of the workers, to co-operate in the management of the undertaking and to co-operate with the public authority.

The method of selecting the representatives of the staff varies according to the method by which the agencies representing the staff are established. If the committee is set up as the result of collective agreement, the parties determine in full freedom the method of selection. It is left to the trade unions concerned to select as representatives of the staff those of their members who are employed in the undertakings covered by the agreement or, in consultation with the employer, to organise an election in the undertaking.

Both legal enactments and national agreements, on the other hand, contain specific provisions regarding the choice of representatives. They are to be elected by secret and direct ballot under the conditions prescribed. It is characteristic of all such regulations that they ensure to the trade unions concerned a paramount influence over the constitution of the committees. Experience has shown, in fact, that works committees are unable to accomplish their mission unless they can count on the support of the trade unions.

Hence, the regulations generally provide that the representatives shall be elected from lists of candidates drawn up by the trade unions concerned or from among the workers in the undertaking who are members of the most representative trade unions. Under certain systems, the representatives of the staff in small undertakings are appointed directly by the trade union (for instance, Poland, Sweden, Czechoslovakia).

Functioning of Works Committees.

Whereas collective agreements leave it to the parties to ensure the functioning of the committees, regulations prescribed on the national scale generally contain certain compulsory provisions intended to ensure the effective functioning of the committees, as, for instance, provisions relating to the regularity of meetings, the procedure at meetings, the relations of the committee with the rest of the staff, its relations with the authorities, in particular, the labour inspectors, etc.

Moreover, these regulations impose certain obligations on the

employer. He is generally obliged to make appropriate premises available to the committee, to allow the members of the committee sufficient time for the carrying out of their duties, and to pay for that time as if it were normal working time. In short, the employer must not only refrain from any act which might impede the functioning of the committee, but must also give it every possible assistance in order that it may accomplish its task.

In a few countries (Czechoslovakia, Ecuador), the employer is obliged to pay over, for the purposes of the works committee, a certain percentage of the net profit of the undertaking.

Very generally, it is further provided that the workers' members of the committees are to be given special protection against any discriminatory acts on the part of the employer, and, in particular, against dismissal on the grounds of their activities as representatives of the staff (for instance, Finland, France, Hungary, Norway, Poland, Sweden, Czechoslovakia).

Finally, efforts are made, to a certain extent, to ensure trade union participation in the functioning of the committees. According to certain legal systems, representatives of the trade union may attend meetings of the committee if the staff representatives so request, or if questions of general interest are to be discussed (France). Any decisions of general concern must be taken by agreement with the trade union (Czechoslovakia). Any disputes arising as to the application of the regulations are referred to the trade associations concerned (Norway, Sweden, Finland, Hungary, for instance) or settled with their assistance (Poland, Czechoslovakia).

The Functions of Works Committees

The functions of works committees are most generally of a social and economic nature.

Functions of a Social Nature.

The committees generally deal with all questions concerning the work and welfare of the staff of the undertaking, always with the exception of wages and other conditions of employment. It has already been observed that the trade unions have hesitated to give their full support to the establishment of works committees because they feared that, on the plan of the undertaking, the agencies representing the staff might be called upon to deal with wages questions, which can be settled effectively only by means

of collective agreements on the plan of the industry. Hence, in order to prevent any such competition which might cause harm to the wage-earners, the regulations prohibit the works committees from interfering in collective bargaining. Where any exception to this rule is admitted, it is understood that the committee may intervene only within the limits provided by the collective agreements themselves (for instance, Poland, France, Czechoslovakia) ; on the other hand, they have the duty of supervising the application of collective agreements, adapting rates of wages to local conditions, and participating in the determination of piece-rates in the undertaking, etc.

Under several legal systems, the committees are not authorised to intervene in labour disputes (for instance, Canada, Czechoslovakia, France, Norway, Sweden. It is deemed that such a function would not be compatible with their co-operative mission. In France, under the Act of 16 April 1946, staff delegates, functioning at the same time as the works committees, have the duty of submitting individual and collective complaints to the employers, and are competent to lay before the labour inspectorate any complaint relating to the application of laws and regulations.

In the United States, the " Grievances Committees ", set up by collective agreement in many undertakings, are exclusively competent to settle labour disputes which may arise as to the interpretation of collective agreements.

In other countries, on the other hand, the view has been taken that committees appointed to promote good understanding between the employer and the staff should also have the function of co-operating in the settlement of labour disputes (for instance, Polish legislation, Netherlands and Swiss collective agreements). In Finland, India and Iran the works committees are actually the first stage in the conciliation procedure.

Certain questions such as safety and health, vocational training and apprenticeship, the creation and administration of social services in the undertaking (canteens, recreational facilities, libraries, day nurseries, sick bays, etc.) enter in all countries within the competence of the production or works committees.

The questions of engagement and dismissal are of close concern to every wage-earner and it is therefore natural that he expects to be consulted on these matters. In a large number of countries, these questions are governed by the laws concerning labour contracts ; in others, they are dealt with by collective agreement.

For instance, many collective agreements concluded in the United States formally recognise the right of the employer to engage, suspend, transfer or dismiss a worker, but also authorise the Grievances Committees to intervene on behalf of any worker who is dismissed and to determine, in consultation with the employer, conditions of advancement, dismissal and re-engagement of the different categories of staff.

Several systems provide that the works committees shall be consulted with reference to the engagement, allocation and dismissal of wage-earners (for instance, Czechoslovakia, Hungary, Poland, Sweden). In France, these questions are settled b y national collective agreements and, in the nationalised industries (for instance, gas and electricity), by joint committees, in accordance with the staff regulations prescribed by the lesiglation decreeing nationalisation.

Functions of an Economic Nature.

The need to increase the productivity of the undertakings and to improve the output of the workers was one of the determining factors in the establishment of works committees and production committees. Hence, their technical and economic functions are today considered as being of particular importance.

In the first instance, it should be observed that all regulations, laws, general agreements or collective agreements providing for the establishment of works committees, confer on them functions of an exclusively advisory kind in the technical or economic field. The actual management is reserved to the head of the undertaking (for instance, express provisions in the French and Czechoslovak legislation).

With regard to the technical side of production, the committees have the functions, *inter alia*, of studying production methods, the organisation and co-ordination of work, the satisfactory employment of manpower, the best utilisation of technical installations and raw materials, and of putting forward any suggestions which may improve conditions of production. The joint production committees in the United States, the United Kingdom and Canada are considered to have attained particular success during the war in their activities in this field.

In order that the committees shall efficiently accomplish their mission, the regulations provide that the employer shall keep the committee informed regarding current methods of production, the results which have been obtained, and new methods which he

is proposing to introduce. He is bound to give consideration to the opinions expressed by the committees and the suggestions which they put forward. If he does not do so, the committee even has the right, under certain systems (Czechoslovakia, Finland, France), to refer the question to the associations concerned, or to the competent authority.

In order to encourage the initiative of the workers, the committee may propose to the employer the payment of reasonable compensation to wage-earners whose suggestions have been effectively utilised (France, Sweden).

In the economic field, properly speaking, precise functions are conferred on the committees only by laws or national agreements (for instance, Czechoslovakia, Finland, France, Hungary, Norway and Poland). The Committees set up by collective agreement generally limit their activities to questions of a social and economic nature. The committees are normally authorised to study any suggestion put forward either by the employer or by the staff with the object of increasing the production of the undertaking and of improving its output. A committee may make recommendations regarding the application of suggestions which have been accepted. According to the French Act, the committee may also make recommendations regarding the utilisation of profits.

In countries such as Poland and Czechoslovakia, which have nationalised their larger industrial undertakings, the powers of the works councils are particularly extensive. They co-operate in the drawing up of the production plan and in its execution and ensure, in particular, that the plan shall be in harmony with the general economic programme of the State. They supervise the execution of the production plan, including the programme of investments of the undertaking. In short, they exercise a certain amount of supervision over the management of the establishment from the technical, administrative and economic points of view.

Similarly, in those countries which have adopted a national plan of economic reconstruction, in the application of which the trade associations participate (for example, in France), the works committees, in co-operation with the trade unions, have also the right to supervise the application of the plan in the different undertakings.

In order to carry out these tasks, the committees have to be given all necessary information by the employer. He must, for instance, keep them regularly informed as to the developments of the undertaking and market conditions. Under the Norwegian

and Swedish agreements, the employer is bound to give such information only on condition that it will not cause him prejudice. In France, the employer must submit to the works committee an annual report of the activities of the undertaking and the plans for the next trading year, and is obliged to keep it informed of the profits which are realised.

In order to be fully aware of the financial position of the undertaking, the committee has the right to see the accounts and balance sheet in all cases where these documents have to be made public, that is to say, in the case of limited liability companies or nationalised undertaking (Czechoslovakia, France, Norway, Sweden).

The French Act gives the committees the right to summon the auditors, to hear their explanations, and, when so doing, to have the services of an accounting expert at the expense of the undertaking. Finally, the French and Czechoslovak Acts confer on the committees the power to delegate one or several of their members to the Boards of nationalised undertakings. Representatives of the staff have the right to be present at all meetings in an advisory capacity.

Naturally, the members of the works committee are bound to secrecy regarding trade matters, but this has been limited by the French Act of 16 May 1946 to questions relating to methods of manufacture.

This brief survey reveals that, in an increasing number of countries, efforts are being made to find a satisfactory solution to the problem of labour-management co-operation within the undertaking. The list of countries which have established agencies representing the staff, either as joint production committees, works committees or works councils or, lastly, as staff delegates, is already an extensive one. Admittedly, the functions which have been conferred upon them differ considerably according to the different methods by which they have been established.

But all the countries which have tried the experiment of establishing agencies representing the staff have become convinced of the usefulness of this method of co-operation, not only for the purpose of improving the working and living conditions of the staff, but also for the purpose of improving productive efficiency.

Co-operation at the Level of the Industry

In the chapter concerning collective agreements, reference has been made to the part played by industrial committees in certain countries in the fixing of wages and conditions of employment.

Collaboration in the social, technical and economic fields on the part of the agencies for co-operation established at the level of the industry, either by way of agreement between the parties or on the initiative of the Governments, will be considered in the following pages.

Working Parties or Advisory Bodies

In several countries, the employers' and workers' organisations have agreed, either on their own initiative or under pressure from the Government, to give joint consideration to the problems affecting their industry. In the Netherlands, for instance, they created in May 1945 an agency to which they gave the name of " Foundation ", in order to emphasise its permanent nature and private character (Foundation of Labour). Under the auspices of this body, industrial councils have been set up in the various economic branches, each composed of equal numbers of employers' and workers' representatives nominated by the organisations concerned. The functions of these councils are essentially of a social character and aim at ensuring good relations between employers and workers ; but the Government also consults the councils on all questions concerning the industry and, in particular, on wages questions.

The working parties set up in several industries in the United Kingdom are due to Government initiative. [1] The President of the Board of Trade, in September 1945, explained the general purpose of working parties as follows. It is necessary for British industry to increase production of goods for the home market and for export. Even before the war, several industries were being outstripped by similar industries in other countries, and the situation became progressively worse during the six years of war. To remedy this position, the various industries would have to be organised and placed on a thoroughly efficient basis, so that the workers might be enabled, so far as possible, to produce a maximum quantity of goods in a minimum time and with a minimum of effort. Hence, the tripartite working parties have the primary function of drawing up a balance sheet of available resources and of formulating a programme.

Each working party consists of three equal groups representing employers, the trade unions and the interests of the general public. The members of the first two groups are chosen from lists drawn

[1] Cf. *International Labour Review*, Vol. LII, No. 5, Nov. 1945, p. 508.

up by the employers' associations and the trade unions respectively; the members of the third group, as well as the Chairman, are appointed by the Government.

Working parties of this kind have been established in 15 industries, among them the pottery, cotton, and boot and shoe industries.

It is interesting to observe that all those working parties which have already published their reports [1] have recommended to the Government that a permanent advisory council, of similar composition to the working parties themselves, should be established in each industry, for the purposes of carrying on research, informing the Government of the position of the industry, and of keeping the industry informed concerning Government policy ; in short, to serve as a liaison between the industry and the Government.

In pursuance of these recommendations, the Government has now drafted an Industrial Organisation Bill, intended to generalise the establishment of industrial councils. An advisory council for the engineering industry was formed in February 1947. It is intended to give advice to the competent Ministers on all questions concerning that industry, with the exception of questions concerning wages and conditions of employment, which belong to the field of collective bargaining. The council, under the chairmanship of the Minister, includes equal numbers of employers' and workers' representatives, nominated respectively by the organisations concerned.

In several countries, legislative measures have been passed establishing advisory bodies for all important industries. In France, joint committees have been set up attached to each branch of the Ministry for Industrial Production. They consist of equal numbers of employers, engineers, technicians and supervisory staff, and workers and salaried employees appointed on the recommendations of the most representative organisations. These committees have to be consulted on questions regarding production and distribution of products in the industry concerned. They are also to give advice with regard to price-fixing, quotas of raw materials, etc.

In Belgium, the Government has already laid before Parliament draft legislation concerning the establishment of industrial coun-

[1] *Idem.*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1946 : " Collaboration of Employers and Workers with Government Departments in Great Britain ", p. 321.

cils, intended to supplement, at the level of the industry, the draft already mentioned in connection with works committees.

It should be observed that the joint agencies already existing in various countries in connection with labour relations, as, for instance, the Belgian Joint Committees or the Industrial Councils in the Union of South Africa, may also be consulted by the Government with regard to the appropriation and application of laws relating to the industries concerned.

Supervisory Bodies

The number of countries which are suffering from a shortage of goods, capital and manpower have found themselves obliged to exercise direct supervision over the utilisation of their material and human resources. Such supervision can be thoroughly efficient only if both employers and workers take part in it. Hence, several Governments have established in certain branches of their economy, and sometimes for a whole industry, supervisory bodies which include representatives of the employers' and workers' organisations.

For instance, a council for the mining industry was set up in the Netherlands by an Order of 20 June 1945. The council, under the chairmanship of a Government representative and consisting of equal numbers of employers' and workers' representatives, supervises production and distribution of coal, the social and economic administration of the mining industry, and the social security of the workers in the industry. It exercises supervision, in particular, over the management of mining undertakings, industrial combines, methods of production, etc. ; it also has the duty of drawing up a miners' charter. In the exercise of its functions it is assisted within the undertakings by works committees and section committees composed of employers' and workers' representatives.

In the United Kingdom, the Iron and Steel Council, set up in the autumn of 1946, is responsible to the Minister of Supply for the supervision of the iron and steel industry. It has to examine equipment programmes and supervise their execution. So far as is found necessary, it may issue directives on matters of current importance, including supply of raw materials, and, within the limit of the powers delegated by the Minister, exercise supervision over manufacture, distribution and importing of iron and steel products.

The Council consists of an independent chairman and six members appointed by the Minister. The members are appointed

on the basis of their individual capacity and not as representatives of any particular interest. Several of them, however, are bound to be chosen from industrial and trade union circles.

In certain industries it is particularly urgent to ease the shortage of manpower. Accordingly, in France, for instance, departmental committees for accelerated vocational training of workers in the metal trades have been set up. These Committees are intended to promote the establishment of vocational training centres and to supervise their operation. In addition to the representative of the competent Departmental authority, they include three from the most representative trade unions concerned and three from the employers' organisations in the industry. A national committee, also tripartite, is the co-ordinating and supervisory body. It is consulted by the Minister of Labour in connection with the appropriation of laws and regulations concerning vocational training.

In Hungary, the Decree of 9 June 1946 is a measure of general application.[1] In order to increase production and permit a rational organisation of industrial output, the Decree requires the establishment of industrial production committees in each branch of industry and of a national Industrial Production Council.

The Committees consist of two workers' and two employers' representatives; the chairman is appointed by the Government. The two workers' representatives are appointed, one on the proposal of the Council of Trade Unions and the other on the proposal of the trade unions directly concerned. In private industry, the employers' members are appointed in a similar way; in the case of public undertakings, the authorities responsible for the administration and control of such undertakings appoint the employers' members.

These committees may propose to the undertakings and to the occupational organisations concerned the introduction of reforms relating to methods of work, manufacturing processes, standards of output and remuneration schemes. They may, in particular, decide that wages shall be determined according to output. They also have the power to supervise the application in the industry of all the measures adopted. The national Industrial Production Council supervises and co-ordinates the work of the production committees and acts as an appeals court from their decisions.

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[1] Cf. *International Labour Review*, Vol. LV, Nos. 3-4, March-April 1947: "Industrial Relations in Hungary", p. 247.

Nationalised Industries

In several countries, the legislature has taken the view that only the nationalisation of certain industries would permit of their recovery. But in taking such decisions, the law has endeavoured in the majority of these countries to associate the employers and workers — and, frequently, the representatives of the public and of the consumers — in the direction of the industry and in the management of nationalised undertakings.

Thus, for example, in Czechoslovakia, France and Poland, employers' and workers' organisations are represented in the agencies of administration, management or supervision, created by the Acts for nationalising industry.

In the United Kingdom, on the other hand, the legislation nationalising certain industries has been based on the theory that nationalised industry, if it is effectively and exclusively to serve the general interest, should be placed under the direction of independent persons who do not represent any particular interests. Hence, employers' and workers' organisations do not participate directly in the management of nationalised undertakings. However, some of the members of the administrative boards are chosen from among the employers and trade union leaders on condition that they abandon their organisational functions when taking up their new posts. Moreover, the representative organisations of employers and workers must be consulted by the administrative board on all questions concerning workers employed in the industry.

It is impossible, within the scope of this short report, to examine thoroughly the whole problem of co-operation between the State and employers' and workers' organisations in the nationalised industries. It must suffice, therefore, taking the coal mining industry as an example, to illustrate the application of the different methods of co-operation adopted in the United Kingdom, France, Czechoslovakia and Poland.

The Coal Industry Nationalisation Act of Great Britain[1] establishes a National Coal Board with the duties of working the coal in Great Britain and of making coal available to consumers in such qualities, quantities and sizes and at such prices as it considers to be in the public interest.

The Board consists of a Chairman and eight other members, who are to be men of recognised experience in public affairs, in

[1] Cf. *International Labour Review*, Vol. LIV, Nos. 3-4, Sept.-Oct. 1946, p. 198.

industrial, commercial or financial matters, applied science, administration or the organisation of workers.

In addition to the National Coal Board, two other agencies are set up for the purpose of safeguarding the interests of the public : the Industrial Coal Consumers' Council and the Domestic Coal Consumers' Council.

The National Coal Board is required to consult the representative organisations of employers and workers for the purpose of concluding agreements establishing and maintaining machinery for : (1) settlement by negotiation of terms and conditions of employment with provision for arbitration in default of such settlement ; (2) consultation on questions relating to the safety, health or welfare of persons employed by the Board, the organisation and conduct of the operations in which such persons are employed, and for matters of mutual interest to the Board and to its employees. The effective application of this co-operation was inaugurated by several conferences which took place under the auspices of the National Coal Board, the National Union of Mineworkers and the National Association of Colliery Managers. In November 1946, the same organisations established a joint body, the National Consultative Council, for the purpose of giving advice on all the questions referred to above.

In France, the Act of 17 May 1946 [1] to nationalise mineral fuel placed the administration of the mines in the first place under a central agency, the National Coal Board *(Charbonnages de France)*, and secondly, Regional Boards *(Houillères de bassin)* established in each coalfield.

The functions of the National Coal Board is to direct, supervise and co-ordinate the operation of the various mining agencies, to submit for Government approval a plan for coal production and re-equipment of the mines, to advise on import and export schemes, to make proposals concerning fuel prices, to encourage research and vocational training, etc.

The Regional Boards are responsible for the production, processing and sale of coal.

These different bodies are constituted as follows :

The National Coal Board is composed of eighteen persons : six representatives of the State appointed by the Ministers concerned ; six representatives of consumers (three representing industry and three representing domestic consumers, one of the

[1] *Ibid.*, p. 209.

latter representing family associations and two the trade unions), and six representatives of the staff (manual workers, salaried employees, foremen, supervisory staff) appointed on the recommendation of the most representative trade unions.

Each Regional Board consists of nineteen members : six representatives of the National Coal Board, two representatives of consuming industries appointed by the Chambers of Commerce concerned, two of domestic consumers appointed by local councils and two of consumers in general, submitted by the Minister of National Economy, and seven representatives of the different grades of personnel, appointed by the most representative regional trade unions.

The Director-General in each case is appointed by Ministerial Decree after proposal by the Board concerned.

The relationship between the staff and the administration of the mines is established by the Miners' Charter provided for by a Decree of 14 June 1946.[1] The Charter was drafted after consultation with a commission of delegates of the most representative recognised workers' unions ; it takes the place of a collective agreement and contains provisions on engagement and dismissal, wages, allowances in kind, hours of work, holidays with pays and social security. Joint committees established at local, regional and national levels see that the Charter is enforced and settle labour disputes.

In Poland and Czechoslovakia[2], the administration of nationalised undertakings is entrusted to central and regional agencies. A Director, or a Board of Directors, is placed in charge of each nationalised undertaking.

In Czechoslovakia, the Boards are composed in part of persons appointed by the Government after consultation with the Central Council of Trade Unions and other organisations concerned, and in part by persons elected by the workers in the undertaking. Each Board is presided over by a Director-General, who may, if necessary, veto its decisions and appeal to higher Government authority.

In Poland, the directors of nationalised undertakings are, to a fairly considerable degree, chosen from among the officials of the trade unions.

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[1] *Ibid.*, p. 211.
[2] *Idem*, Vol. LIII, Nos. 1-2, Jan.-Feb. 1946, p. 75.

Co-operation at the National Level

The extent of co-operation at the national level naturally depends upon the role which the State itself has to play in the organisation of economic and social life. As it would clearly be impossible to make a thorough consideration of such a problem in a few pages, all that can be done within the scope of this report is to call attention to the more recent developments and to describe very briefly the different forms of co-operation on the national plan at present existing in various countries.

Bipartite Co-operation

In several countries the greatest importance is attached to the efforts made by the principal central organisations of employers and workers to produce a direct solution for certain nation-wide problems.

In the United States [1] a conference of the representatives of the main employers' and workers' organisations was convened by the President in November 1945 to seek the most appropriate means for reducing the number and extent of labour disputes. Although the conference was unable to reach definite conclusions concerning all the questions submitted to it, it nevertheless contrived to reach agreement regarding the methods for settling disputes arising out of the interpretation of collective agreements. [2]

In Sweden, representatives of the Employers' Federation and of the Confederation of Trade Unions set up, in 1936, a Board for the purpose of joint consideration of certain problems affecting the labour market. The work of the Board led to the conclusion, in 1938, of a Basic Agreement which, as previously mentioned [3], lays down principles of guidance with regard to labour and management relations concerning collective bargaining, settlement of labour disputes, etc.

By the terms of this Basic Agreement the Labour Market Board was established for the purpose of ensuring permanent co-operation between the two central organisations. During its nine years of existence the Board has adopted a collective agreement concerning the safety of workers in undertakings (1942), an agreement concerning the promotion of vocational training

[1] Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 673.
[2] See above, p. 68.
[3] See above, p. 60.

(1944) and, lastly in 1946, the agreement concerning works councils which has been analysed in a previous chapter.

The Foundation of Labour, set up in 1945 in the Netherlands, to which reference has already been made, is intended to ensure, both on the national plan and on the plan of the industry, permanent co-operation between employers' and workers' organisations. It serves as an agency for promoting collective bargaining and also as an advisory body to the Government.

In 1946, the Government of the United Kingdom reconstituted the National Joint Advisory Council [1], first created in 1939 but replaced in 1940 by the Joint Committee attached to the Ministry of Labour. The Council includes 17 representatives of the British Employers' Confederation and 17 representatives of the Trades Union Congress. It has the function of studying problems of industrial relations as a whole and also in so far as they affect economic problems.

On the basis of the discussions held in the Council, the United Kingdom Government published a White Paper [2] on the economic considerations affecting relations between employers and workers. In this document, the Government urges, in particular, the need to increase production and output and recommends to this end the extension of the system of joint production committees set up during the war.

Tripartite Co-operation

Tripartite co-operation is carried on either by means of *ad hoc* consultation with employers' and workers' organisations, or through the medium of tripartite agencies, set up as permanent bodies, on which the Government, the employers and the workers are represented.

Ad hoc *Consultation of Employers' and Workers' Organisations.*

In the majority of countries, the Government or the Parliament invites employers' and workers' organisations to give advice concerning certain social and economic problems, and with regard to the preparation of economic and social legislation. In addition to this traditional method of consultation, several Governments in recent years have convened actual conferences, at which repre-

[1] Cf. *International Labour Review*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1945, p. 369.

[2] Statement on the Economic Considerations Affecting Relations between Employers and Workers — Presented by the Minister of Labour and National Service to Parliament by Command of His Majesty. London, January, 1947.

sentatives of the Government and representatives of the organisations hold joint discussions regarding certain questions of national importance.

Thus, in Belgium, the Government has on several occasions called a National Labour Conference [1], under the chairmanship of the Prime Minister, which has included, in addition to the Ministers concerned, representatives of the most representative organisations of employers and workers. The Conference has been called upon to give advice to the Government concerning the price and wages policy and other social problems of general importance. Among the recommendations which it has adopted, reference may be made to those concerning the extension of the system of holidays with pay, the institution of a workers' household re-equipment fund and the establishment of works committees, industrial councils and a national economic council.

In France, a National Prices and Wages Conference was held in July 1946 under the chairmanship of the President of the Council. In addition to the Ministers concerned, delegates from the most representatives employers' and workers' organisations took part. The Conference adopted several recommendations concerning the control of prices and wages. The principles formulated with regard to the Government wages policy were subsequently embodied in a Decree of 29 July 1946, concerning the readjustment of wages.

Labour Councils.

Advisory labour councils have existed for many years in several countries, either in the form of national councils with general jurisdiction, or of industrial councils created for certain branches of the economy, such as agriculture, the merchant marine, or, lastly, of specialised councils for particular sections of social legislation such as " safety and health ", " social insurance ", " placement and vocational training of workers ", etc.

Such agencies have recently been established in a large number of countries. Typical examples are, for instance, the councils set up in Belgium (Safety and Health Committees, Superior Safety and Health Committee); in Egypt (Advisory Labour Council); in Finland (Labour Council); in France (National Labour Council); in Iran (Superior Labour Council); in Venezuela (Technical Agricultural Council), etc.

[1] Cf. *International Labour Review*, Vol. LIII, Nos. 5-6, May-June 1946, p. 392.

To illustrate the part played by these councils, a brief description will be given of the methods of functioning of the French National Labour Council.[1] The function of the Council is to study all problems concerning labour and social policy, except social security questions, which fall within the competence of the Superior Social Security Council. It may request the Minister of Labour to have information collected on its behalf, either directly by the Minister of Labour or through the intermediary of other Ministers concerned. All draft labour laws and regulations and legislation with regard to social policy — with the exception of social security legislation — must be submitted to the National Labour Council for an opinion. Parliamentary committees may consult one or several members of the Council on any important questions or on questions with regard to which the Council has made recommendations.

The Minister of Labour is President of the Council, which consists of five Members of Parliament, 18 representatives of employers and 18 of workers, appointed on the nomination of the most representative organisations of employers and workers, six representatives of farmers and six of farm workers, appointed on the nomination of the most representative agricultural organisations, five representatives of independent workers' organisations and the co-operative movement, etc.

The machinery of the Council includes a general meeting, a permanent committee, technical sections and a Secretary-General.

Following the model of the International Labour Organisation, several countries have set up a Tripartite Labour Organisation or a National Labour Conference.

In India, the Tripartite Labour Organisation was set up in 1942.[2] It includes, in addition to Government representatives, equal numbers of delegates from the representative organisations of employers and workers; its principal machinery consists of a plenary conference and a permanent committee. The Organisation has the function of giving opinions on all industrial questions concerning the country as a whole and, in particular, on the unification and reform of labour legislation. Hence, it has co-operated in the preparation of the new legislation concerning labour disputes; and it is at present considering the reform of existing trade union and factory legislation.

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[1] Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 75.
[2] *Idem.*, Vol. XLVII, No. 1, Jan. 1943, p. 1.

In Luxembourg a tripartite National Labour Conference [1] was set up immediately after the liberation for the purpose of assisting the Government in its task of economic reconstruction and of co-ordinating all the work for national recovery; its duty is to study the economic and social development of the country and to give advice on proposed social legislation.

Economic Councils.

In a large number of countries the Governments have also set up economic councils to advise the authorities with regard to national economic problems. These councils have to undertake studies and investigations, to draw up a balance sheet of national needs and resources, and to give advice with regard to all proposed laws and regulations of economic importance.

In several countries these bodies are composed exclusively of experts. In the United States, for instance, the Council of Economic Advisers established by the Employment Act of 1946 [2] consists of three experts particularly qualified to assist the President in the preparation of the Economic Report which he is to submit annually to Congress under the provisions of this Act.

In order to fulfil its task, the Council may consult the representatives of industry, agriculture, labour, consumers, etc. A joint parliamentary committee, composed of seven members of the Senate and seven members of the House of Representatives, has the duty of studying the development of production and employment, of examining programmes of economic co-ordination and of guiding Congress when it is preparing related legislation.

The Economic and Social Council in Argentina, the Production Council of Costa Rica and the Chinese Economic Council are, similarly, purely technical agencies in which employers' and workers' organisations are not represented.

On the other hand, representatives of industrial organisations participate in the economic councils set up in Belgium (Economic Co-ordination Committee; a proposed law to establish a national economic council is before Parliament); in Czechoslovakia (Economic Council); in Finland (Economic Council); in France (National Economic Council); in the United Kingdom (National Production Advisory Council); in Greece (Economic Committees); in Norway (Economic Co-ordination Councils); in Rumania

[1] L.S. 1944 — Lux. 3.
[2] L.S. 1946 — U.S.A. 1.

(Superior National Economic Council); in Venezuela (National Economic Council), etc.

Under Article 25 of the Constitution, the French Economic Council is to examine, in an advisory capacity, proposed Acts and Bills within its competence which are submitted to it by the National Assembly before discussion by the latter; it may also be consulted by the Council of Ministers. It must be consulted on the setting up of a national economic plan for full employment and the rational utilisation of material resources. Of its 150 members, 45 are appointed by the most representative organisations of workers, 20 by the organisations of employers in industry, commerce and handicrafts, and 35 by agricultural organisations, etc.

One of the characteristic features of the development of economic organisations in recent years is that the national economic councils are looked upon as agencies for co-ordination and constitute, so to speak, the apex of a pyramid of agencies existing in the various economic branches and the different geographical regions of the country.

Reference has already been made to the fact that the Hungarian production committees are placed under the supervision of a National Council for Industrial Production. The French Economic Council has to co-ordinate the work of the many advisory committees which have been set up in late years and, in particular, of the advisory committees attached to the Ministry of Industrial Production. [1]

In the United Kingdom, also, the National Production Advisory Council is supplemented by Regional Boards and District Committees.

The National Council consists of representatives of the Trades Union Congress and of the British Employers' Confederation, together with the chairmen of the Regional Boards. It is consulted by the Government on general problems of industry.

The Regional Boards consist of a chairman, representatives of the employers and trade unions concerned and representatives of Government departments. They keep the Government advised with regard to industrial conditions within their regions and make suggestions respecting the fuller utilisation of each region's resources in capacity or labour. The District Committees, which

[1] See above, p. 90.

include equal numbers of employers and workers, have to advise the Regional Boards with regard to industrial problems of the districts.

Economic Plans

All this economic organisation naturally acquires increased importance in those countries which have put into effect plans for the reconstruction of their national economies.

Without entering into a detailed examination of this tremendous problem, it may be observed that all these plans seek to establish, on a priority basis according to urgency, certain objectives which the national economy must attain within a specific period (two, four, five years), and to indicate the measures which will enable the different branches of economy to produce a certain amount of goods or perform certain services within the periods prescribed.[1] Such plans have been adopted, for instance, in Argentina, China, Czechoslovakia, France, Poland and Yugoslavia. They are being studied in the United Kingdom and the Netherlands.

These plans vary in character according to " the economic circumstances of the country, its stage of political development, its social structure and its methods of Government ".[2]

Essentially a Government conception, the Argentine Five Years Plan, for instance, is primarily intended to ensure the economic independence of the country by systematic development of its resources and industry. The British plan aims at a certain equilibrium between supplies for home consumption and exports. The French, Polish and Czechoslovak plans have the primary purpose of raising the standard of production in basic industries, modernising their equipment and providing them with the necessary capital and manpower, etc.

In the majority of countries, employers' and workers' organisations are closely associated in the preparation and application of plans for economic reconstruction.

The White Paper referred to above, published by the United Kingdom Government, declares in this connection that " under democracy the execution of the economic plan must be much more a matter for co-operation between the Government, industry

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[1] See, for example, for France, *Rapport général sur le premier plan de modernisation et d'équipement* (Commissariat général du plan de modernisation et d'équipement, Paris. novembre 1946-janvier 1947).

[2] Economic Survey for 1947 — Presented by the Prime Minister to Parliament by Command of His Majesty, London, February 1947.

and the people, than of rigid application by the State of controls and compulsions ".

In Poland and Czechoslovakia, the preparation of the plan is the task of an inter-departmental agency, the Economic Council, in which the central trade union councils are represented.

In France, it is the task of an authority specially created for that purpose: the Planning Commissariat, assisted by a Planning Council. Similar agencies have been set up in Canada (Province of Saskatchewan: Economic Advisory and Planning Board); in Rumania (Superior Council of National Economy for the planning, co-ordination and execution of economic policy), etc.

The most representative organisations of employers and workers are generally represented on the central planning agencies and on the technical and occupational committees which have the task of preparing an inventory of the resources and needs of the different industries and of drawing up programmes for their re-equipment. The application of the plan, once it has been adopted by the Government and Parliament, comes within the competence of the agencies which have co-operated in its preparation, *e.g.* France, Decree of 15 January 1947.

As a result of their close association in the preparation and application of plans for economic reconstruction, employers' and workers' organisations thus participate directly in the actual administration of the national economy as a whole.

CHAPTER III

CONCLUSIONS AND OBSERVATIONS

Object of the Discussion

By giving the title of " Freedom of Association and Industrial Relations " to the question laid before the Conference by the Governing Body, on the invitation of the Economic and Social Council, the Governing Body intended to call the attention of the Conference not only to the problem of freedom of association in the strict meaning of the term, but to the whole tremendous problem of industrial relations. It thus wished to take into account, to the greatest degree possible, the proposals submitted to the Economic and Social Council both by the World Federation of Trade Unions and by the American Federation of Labor which, as indicated in the Introduction, have both referred in their memoranda to the part played at present by the organised movements of employers and workers in connection with the regulation of labour relations and also of social and economic relations.

A few suggestions are submitted to the Conference regarding the action which it might see fit to take on the request of the Economic and Social Council.

The very fact that the Economic and Social Council has asked the International Labour Organisation to place these questions on the agenda of its present session, and to send to the Council a report for consideration at its next session (July 1947), clearly demonstrates the importance of these matters at the present time.

Naturally, it will be for the Conference itself to consider in full freedom what course of action it will prescribe and to decide as to the manner in which it shall be implemented.

It will be recalled, in this connection, that Article 15 of the Constitution of the International Labour Organisation provides

that the agenda shall be transmitted so as to reach each Member four months before the opening of the session. It follows that the Conference will not be able to adopt any Convention or Recommendation at this session.

Subject to this, however, the Conference, as it may deem expedient, can adopt a Resolution expressing a number of fundamental principles with regard to the question and, as it were, outlining the programme which the Conference might propose to follow at future sessions. It might also consider, at this session, a list of points bearing on questions the regulation of which might appear particularly urgent, and which it might deem already opportune to settle by immediate international regulation.

The Office, in anticipation of these two possibilities, submits to the Conference :

1. *A proposed Resolution* concerning the various aspects of the problem of association, namely : (1) freedom of association ; (2) protection of the right to organise and to bargain collectively ; (3) collective agreements ; (4) voluntary conciliation and arbitration ; (5) co-operation between the public authorities and employers' and workers' organisations.

2. *A list of points* which refers only to the first four headings of the proposed Resolution, as cited above.

It will be clear from the survey of legislation and practice made in the previous chapter — as also from the numerous studies which the Office has devoted to the same matters in the past — that, with regard to freedom of association, the protection of the right to organise and to bargain collectively, and collective agreements, there exists, in spite of certain differences in the modalities of national regulations, a number of principles which are sufficiently defined and important and generally accepted and applied, to provide the Conference with the material for one or several Conventions, which would probably receive a large number of ratifications within a short time. The specific obligation which States would assume by ratifying those Conventions would then provide an effective guarantee of the strict and uniform application of the fundamentally important principles which are set forth in the Constitution and would form an appropriate basis for the regulation of industrial relations.

The problem of voluntary conciliation and arbitration appears to be appropriate, if not for international regulation by means of

a Convention, at least for regulation by means of a Recommendation.

On the other hand, the principles which are fundamental to the national regulation of the problems relating to co-operation between the public authorities and employers' and workers' organisations do not, at the present time, appear to be applied on a sufficiently general and uniform scale to be capable, at the outset, of being regulated internationally.

Finally, the Conference might wish to discuss the suggestion put forward in the proposed Resolution submitted to the Economic and Social Council by the World Federation of Trade Unions, for the establishment of a Committee on the Right of Association to keep a constant watch on the respect of the right of association. If the Governing Body were, for example, to appoint a Committee on Freedom of Association, to establish the facts of the case whenever the guarantee of freedom of association is in dispute, such a Committee might be able to render valuable services.

It should also be remembered, in this connection, that the Governing Body, at its 101st Session (March 1947), had already decided to instruct the Office to undertake an extensive international enquiry into methods of co-operation between the public authorities and employers' and workers' organisations, with the specific object of placing this question on the agenda of an early session of the Conference.

The decisions which the Conference might take in this connection will, therefore, simply expedite the implementation of a programme of work already decided upon by the Governing Body.

To facilitate the work of the Conference, the Office has endeavoured to define as concisely as possible, in the following pages, the scope of the provisions included in the list of points and the proposed Resolution.

Analysis of the Provisions of the Proposed Resolution and List of Points

Freedom of Association

Section I of the proposed Resolution and list of points concerns freedom of association considered as a guarantee accorded to employers and workers in relation to the State. Freedom of

association must, indeed, form part of the basis of the whole system of industrial relations and co-operation, as it would not be possible to speak of collective bargaining or co-operation in the true sense of those terms if the organisations participating in such bargaining and co-operation did not enjoy complete autonomy in relation to the State and were not accorded full freedom of expression and action.

The Office has endeavoured to define freedom of association in this sense under six separate heads, the scope of which will be explained very shortly in the following pages.

1. The intention of paragraph 1 is to guarantee to employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, the right to establish organisations of their own choosing without previous authorisation.

This formula involves three distinct elements which require a brief explanation.

Guarantee of Freedom of Association

The guarantee of freedom of association is a corollary to the provision: "The right to establish organisations... *without previous authorisation* ". The import of this provision could not be better defined than by stating that the right to establish organisations should no longer be considered as a concession gratuitously accorded by authority, but rather as a fundamental right belonging to employers and workers, which, accordingly, commands the respect even of the public authority.

It does not follow, however, that all regulations governing associations are necessarily contrary to the principle of freedom of association as thus defined.

In a number of countries, the establishment of associations is governed by detailed legal provisions which, according to the intention of the legislature, do not impede the formation of associations but are designed to give help to inexperienced workers in establishing their organisations.

It is with this intention, for instance, that under certain legal systems the formation of the association is made subject to the formality of registration. Such a formality cannot be deemed to be incompatible with freedom of association, because the State naturally has the right to require organisations (in the same way as individuals) to make known their existence. But if regis-

tration was made subject to conditions of substance or of form calculated to cause uncertainty regarding the right which employers and wage-earners should have of forming associations in full freedom, that would naturally be contrary to the principle of freedom of association because, by a similar expedient, the State would actually reserve the right to make the establishment of an employers' or workers' organisation subject to previous authorisation.

However this may be, the wording " without previous authorisation " is sufficiently specific to enable countries to distinguish between measures which are and those which would not be compatible with the principle of freedom of association.

Application of Regulations

It will be observed that in accordance with the terms of Article 41, paragraph 2, of the Constitution of the International Labour Organisation, the guarantee of freedom of association is applicable both to employers and workers, who are placed on a footing of complete equality. No doubt the authors of the Constitution were primarily concerned with the guarantee of the right of association of the workers (and the term " employers " did not appear in the wording of Article 41, paragraph 2, except as a term of reference), for the right of association of the workers continued to be disputed, while a more favourable attitude was adopted towards the right of association of the employers in the very great majority of countries.

But the experience which the world has had of totalitarian systems in the interval between the two wars has proved that the suppression or domestication of workers' organisations was followed very shortly by the suppression or domestication of employers' organisations.

By making use of the term " employers " and " workers ", the Office has wished to give point to the fact that the relevant question in this connection is that of guaranteeing the right of association for trade purposes — a problem which comes directly and unquestionably within the competence of the International Labour Organisation — and not the right of association in general, which falls within the competence of other international agencies such as the Human Rights Commission which, even now, is drawing up a Bill on Human Rights.

Secondly, the guarantee of the right of association should apply to all employers and workers, public or private, and, therefore, to public servants and officials and to workers in nationalised industries.

It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organised, even if those interests are not always of the same kind.

However, the recognition of the right of association of public servants in no way prejudges the question of the right of such officials to strike, which is something quite apart from the question under consideration.

Finally, paragraph 1 affirms with particular force the " principle of non-discrimination " on the grounds of sex, colour, race, creed or nationality.

In adopting this text, the Office has merely conformed to a principle of universal application, which is at the very basis of the Constitution of the International Labour Organisation and which has been solemnly reaffirmed in the Declaration of Philadelphia and the Charter of the United Nations.

Freedom to Choose Organisations

In specifying in paragraph 1 of Section I that the persons enjoying freedom of association should have the right to establish *organisations of their own choosing*, the Office in no way intended to assume a position favouring either the theory of the single organisation or that of plurality of organisations.

However, there appear to be no grounds for doubting that employers and workers in all the countries of the world are fully conscious of the advantages of a unified trade union movement. It is by no mere chance that in those countries (such as the United Kingdom, the Scandinavian countries, Australia, New Zealand, etc.) in which the trade union movement was organised from the beginning on a unified basis it has been able to achieve particularly outstanding success, both in the field of labour relations and in the field of social protection in general.

It is also well known that, following the liberation, powerful single trade union organisations were set up spontaneously in a large number of European countries (*e.g.*, Italy, Poland, Czechoslovakia, Yugoslavia, Bulgaria, Hungary, Rumania, etc.), because experience before the war had demonstrated to them the impotence of a trade union movement divided into many rival factions.

Nevertheless, in a number of countries there exist several organisations representative of employers and workers founded on distinctions as to religious or political denomination.

The Office has considered it desirable to take this fact into account and to ensure to employers and workers the right to choose the organisations to which they wish to belong in all those cases where there are several organisations between which they might choose.

2. While paragraph 1 of Section I is intended to define the freedom of association of employers and workers as individuals, paragraph 2 purports to define the freedom of association of employers' and workers' organisations. Under its provisions, employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.

This provision is intended to prevent any of those acts of interference on the part of the public authorities which, under totalitarian systems, were designed to impose on trade associations such conditions of substance and of form with regard to their constitutions, their activities and their objects as might please the authorities.

Such intervention manifested itself, among other ways, in the direct appointment of officials of associations, the control of the internal and external life of organisations, the surveillance of general meetings of associations, the annulment of decisions freely taken by a majority of the members and, in short, in a series of measures taken for the purpose of bringing the whole functioning of all such organisations under the permanent control of the administrative authorities.

Admittedly, in this connection, national legislation which, purely as a matter of guidance, includes provisions regarding the questions to which statutory regulation might usefully be made applicable (for instance, the organisation of trade associations, their financial management, the allocation of their funds, relations between the administrative officials of associations and their members, the conditions of admission and withdrawal of members, etc.) might be of considerable instructive value to inexperienced associations, provided always that it does not bring into question the administrative autonomy of the organisations.

3. Paragraph 3 completes the guarantees relating to the formation and working of organisations with a guarantee against arbitrary dissolution by administrative authority.

If the legislature reserved to the authorities the right to dissolve employers' and workers' organisations by mere administrative decision, the very existence of such associations would be more or less at their mercy. But this guarantee does not mean that trade associations are given an entirely free hand. In fact, associations of workers or employers are bound, like all other organised collectivities or individual citizens, to observe the ordinary laws for maintaining public order, which are imperative and, by their very terms, applicable to everyone. In other words, an organisation having as object the committing of criminal or immoral acts, or seeking to undermine the internal and external security of the State, would be unlawful and could not, therefore, invoke the guarantee of the principle of freedom of association.

Reservations regarding legality or public order are implicit in all laws guaranteeing a right or a freedom and, therefore, need not be expressly defined. It follows equally that it is unnecessary to define in legal terms (and such terms could never be sufficiently comprehensive in view of the manifold functions which trade associations are called upon to perform at the present day) the objects which trade associations might legally pursue, as their activities must be kept within the limits of the law and public order.

4. Paragraph 4 is intended to guarantee to employers' and workers' organisations the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

This provision merely gives expression to the fact that workers or employers are united by a solidarity of interests, a solidarity which is not limited either to one specific undertaking or even to a particular industry, or even to the national economy, but extends to the whole international economy.

The United Nations, like the International Labour Organisation, is founded on the recognition of this fact. Moreover, the international status of employers' and workers' organisations is formally recognised, at the present day, by their participation in the United Nations and the International Labour Organisation.

5. Paragraph 5 merely extends the guarantees provided in the preceding paragraphs to federations and confederations of trade associations. It follows that the establishment, functioning and dissolution of the latter should not be made subject to any formalities other than those prescribed in the case of employers' and workers' organisations.

6. Paragraph 6 is a saving clause with the object of preventing the attribution of special privileges (such as the attribution of legal personality) from serving as a pretext for reintroducing any prohibitive régime concerning associations.

Protection of the Right to Organise and to Bargain Collectively

Section II is intended to supplement the guarantee of freedom of association in relation to the State by the guarantee of the exercise of the right to organise in relation to the other party to the labour contract.

Indeed, freedom of association, even when guaranteed by the State, might be brought into question by the other party to the labour contract who, using his economic strength, is in a position to hinder, or even to paralyse, the exercise of a right formally recognised by the law.

The recognition of freedom of association by the other party to the labour contract should, therefore, be a necessary corollary to the recognition of freedom of association by the State. This recognition may result either from an express or a tacit agreement made between the central organisations of employers and workers or by a formal legal provision. The method of guarantee is less important than the actual effectiveness of the guarantee.

7. Paragraph 7 refers to the recognition of the right of association by agreements between organisations of employers and workers. It provides that the central organisations of employers and workers should agree to recognise each other as the authorised representatives of the interests of employers and workers and should undertake mutually to respect the exercise of the right of association.

It has been pointed out in the analysis of legislation and practice that in the United Kingdom this recognition is accorded by a tacit agreement between the central organisations of employers and workers, while it is the subject of express agreements of national application, concluded between the central organisations of employers and workers, in Denmark, Sweden, Norway, France (Matignon Agreement) and Belgium. It should be remembered that under these agreements both parties formally undertake to respect freedom of association and to found their mutual relations on a system of collective bargaining.

Thus, the mutual guarantee of freedom of association and, in a more general way, the establishment of collective relations may be achieved very effectively without the direct intervention of the legislature.

8. In those countries, on the other hand, in which these conditions do not exist, either because the organised movement of employers or workers is too divided, or because the parties do not adhere to an agreement of this kind, the legislature should intervene in order to guarantee the exercise of the right of association. This principle is affirmed in paragraph 8, which provides that, in the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee the observance of the right of association of the workers and of workers' organisations.

8. *(a)* Clause *(a)* is intended to guarantee the exercise of the right of association by the workers against any acts committed with the object of attacking the workers' trade union rights, in order to preserve an undertaking by this means from all trade union influence.

The paragraph places restraint only on the most characteristic and most prevalent of such acts which occur at the time of the engagement of the worker or during the period of employment.

In the first place the employer or his agents may be tempted to make the employment of the worker expressly conditional on his not joining a particular trade union or on his withdrawing from a trade union of which he is a member. It is well known that in the past the anti-trade union contract (" yellow-dog " contract) was the instrument used to further this policy.

During the period of employment numerous methods are available to the employer, such as, for instance, change of occupation, downward grading, reduction of wages, etc., whereby he might exercise unlawful discrimination against workers who are members, agents or officials of a trade union.

Finally, the employer is in a position to dismiss an employee for the sole reason that he is a member of a trade union or that he has performed lawful trade union activities.

It is precisely acts of this kind which are covered by paragraph 8 *(a)*.

However, in conformity with numerous laws concerning the protection of association, paragraph 8 *(a)* recognises the possibility of the parties to a collective agreement adopting a clause

providing that compulsory membership of a certain trade union shall be made a condition precedent to employment or a condition of continued employment. The legislature has taken the view that such a union security clause, provided that it is freely agreed upon between the parties, constitutes the soundest guarantee against discriminatory acts of an anti-trade union nature.

8. *(b)* Clause *(b)* supplements the guarantee of the free exercise of the right of association by individual workers by a guarantee of the free exercise of the right of association by workers' organisations. It is designed, among other things, to prohibit acts impairing the system of collective bargaining or causing it to deviate from its true object.

Thus, for instance, employers or employers' associations might be tempted to establish company unions which would be entirely under their domination and with which they might pretend to settle conditions of employment to the exclusion of the free trade unions. They might seek to attain the same ends by interfering in the formation or administration of trade unions, or by contributing financial or other support to them.

Finally, employers or employers' associations, while not directly interfering in the formation of trade unions, might refuse to recognise them as the authorised representatives of the wage-earners, or might refuse to enter into negotiations with them, in good faith, for the purpose of concluding a collective agreement.

Paragraph 8 refers only to acts on the part of the employer or employers' associations. The reason for this is that they alone, when the relationship of employer and employee is established, possess means of coercion which might frustrate the free will of the workers, while it is difficult to conceive that the freedom of association of the employers might be jeopardised by similar acts on the part of organised workers or of workers' organisations.

The Office has refrained from suggesting provisions concerning the possibility of trade associations attempting, by means of unlawful coercion, to violate the freedom of unorganised wage, earners or of wage-earners who are members of rival organisations for the particular reason that unlawful acts of this kind to which trade associations might have recourse, such as physical violence, threats, abuse or assaults, are, in all countries, punishable under the Penal Code. In other words, organised workers, as well as their organisations, come under common law and do not enjoy any privileges distinct from those of other individuals or other organisations.

9. Paragraph 9 recommends the establishment of appropriate agencies for the purpose of ensuring the protection of the exercise of the right of association as thus defined.

It is, in fact, in the interests of all parties, that disputes as to " union recognition " (which are the most serious of all labour disputes, as they involve a question of principle) should be settled as promptly as possible and should, therefore, not be subject to the long and onerous procedure of the ordinary courts.

It is for this reason that numerous countries have set up special agencies (*e.g.*, the labour relations boards in the United States and Canada, and the labour tribunals in numerous countries) to hear such disputes and to impose sanctions.

But, in view of the many differences between different national systems, it has not been considered opportune to draft more precise recommendations in this connection.

Collective Agreements

As a consequence of the guarantee of freedom of association in relation to the State, on the one hand, and of the protection of the right to organise and to bargain collectively, on the other, employers and workers may, in full freedom, establish genuinely independent organisations, which are, for that reason, capable of determining wages and other conditions of employment by means of freely concluded collective agreements.

Collective agreements can serve as valuable instruments for the determination of conditions of employment only if they are the result of voluntary negotiation, by means of which the parties decide as they please as to their contents, duration and field of application.

But while employers' and workers' organisations should themselves assume the responsibility of determining the relations which shall subsist between them, it is none the less true that in their own interest as well as in the interest of the whole national collectivity, measures should be taken to ensure the effective application of agreements and thus to prevent labour disputes which might arise during their period of validity.

Paragraphs 10 to 16 are specifically intended to strengthen the establishment of collective agreements, while fully safeguarding the contractual freedom of the parties.

10. Paragraph 10 recommends that employers' and workers' organisations should determine conditions of employment by

means of collective agreements, as that is the most appropriate method of determining the relations which shall subsist between them.

Previous reference has already been made to the scope of national agreements as to mutual recognition, concluded in certain countries between the central organisations of employers and workers, which specifically include, without reservation, the acceptance of the principle of collective bargaining.

11. In the absence of agreements of this kind, States should, according to the recommendation contained in paragraph 11, make available to the persons concerned appropriate agencies to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.

In a fairly large number of countries, collective agreements are concluded under the auspices of national or regional joint committees, composed of nominees of the most representative organisations of employers and workers. By reason of the representative character of these committees, collective agreements thus concluded may be made applicable, at the outset, to a whole industry, either on the national or regional plan.

In other countries, including the United States and Canada, labour relations boards, while not directly intervening in negotiations, have the important function of certifying which trade union, for the purposes of collective bargaining, is representative of the majority of workers within the limits prescribed for the scope of the collective agreement, or to proceed, if necessary, to the holding of an election by secret ballot, in order to determine which trade union shall represent all the workers concerned for the purpose of collective bargaining.

12. Paragraph 12 stipulates that the provisions of a collective agreement should override the terms contained in individual contracts or gang contracts concluded between employers and workers bound by the collective agreement, except where the terms of those contracts are more favourable to the workers than the provisions in the collective agreements.

The fundamental purpose of collective agreements is to determine the conditions of employment of the workers bound by such an agreement, instead of leaving these conditions to be determined by individual labour contracts. The logical development of such a system would be for individual contracts to be gradually superseded completely by collective agreements. However, in

the absence of legal regulation, the undertakings entered into by the parties to a collective agreement are of a purely moral kind. In other words, employers and workers, even when bound by a collective agreement, may derogate from it without thereby committing an offence or becoming liable to penalty.

Admittedly, powerful organisations are able to ensure the observance of an agreement, by recourse to strike or lockout if necessary, but it is evidently in the interests of all to ensure that legal sanction should be substituted for *de facto* sanction.

The very great majority of national legal systems today accord legal recognition to collective agreements. By virtue of this recognition, the provisions of individual contracts concluded between employers and wage-earners bound by the collective agreement become completely null and void, and are automatically replaced by the corresponding provisions in the collective agreements.

Only clauses in individual contracts which are more favourable to the wage-earners than the provisions in the collective agreement remain unaffected by this annulment.

In short, as a result of legal recognition, conditions of employment prescribed in collective agreements acquire validity — in accordance, moreover, with the intention of the parties — as minimum labour standards, from which the parties cannot depart unless the departure is in favour of the wage-earners.

Finally, as a result of legal recognition, the parties bound by the agreement are legally entitled to maintain their rights before the competent legal authority whenever necessary.

13. Paragraph 13 states that the provisions of a collective agreement should apply to all the workers in the service of the employer or employers bound by the collective agreement, even though such workers may not be members of the workers' organisation which has concluded the collective agreement.

According to a strict interpretation of the common law principles of contract, only the employer or employers parties to such contracts, on the one hand, and the wage-earners who are members of the contracting trade union, on the other, would be bound by the agreement. It follows that the employers, even though bound by the agreement, are free to establish with those wage-earners who are not members of the contracting organisation conditions of employment less favourable than those prescribed by the collective agreement.

This would result in a paradoxical situation in which, in one and the same undertaking, conditions of employment varied according to whether the workers were members or not of the trade union. Hence, all national legal systems at the present day provide for the automatic extension of a collective agreement to all the wage-earners, whether organised or not, who are employed in the undertakings falling within the scope of the agreement.

14. Paragraph 14 provides for those cases in which the application of the provisions of a collective agreement concluded between an employers' organisation and a workers' organisation may, subject to certain safeguards, be extended to a minority of employers and workers who, while not being members of the contracting organisations, nevertheless carry on their activities within the industrial and territorial scope of the collective agreement.

The principal reason which has induced the legislature in a great many countries to prescribe the extension of collective agreements to certain third parties is that the employers and workers who accept in good faith the principle of collective bargaining should not become prejudiced by any unfair competition, as regards the settlement of conditions of employment, in which employers and workers not bound by the agreement might engage by stipulating conditions of employment inferior to those provided by the collective agreement.

Moreover, the very existence of a régime of employment inferior to that prescribed by collective agreements may tend to endanger the stability of the collective agreement itself.

Lastly, national enactments, like international Conventions, frequently prescribe that certain of their provisions may be applied by means of collective agreements. Clearly, it would be impossible to adopt such a procedure if the collective agreements did not apply to all the employers and all the wage-earners carrying on their activities within the industrial or territorial scope of the collective agreements.

But, as the extension of collective agreements results in employers and wage-earners who have not taken any part in their preparation becoming subject to agreements, paragraph 14, following the example of many national legal systems, provides a number of guarantees designed to safeguard their interests.

In the first place, the collective agreement whose scope might, in due course, be extended must have acquired a paramount

importance in the industry and region to which it applies. Among other things, not only must it bind the majority of the employers and wage-earners, but the employers bound by it must employ the majority of the wage-earners.

Secondly, the employers and workers to whom the terms of a collective agreement would apply in this way are entitled to submit their observations and objections beforehand to the competent authorities.

The way is thus left open for third parties to present their case, and the authorities who are responsible for decreeing the extension may do so in full knowledge of all the circumstances.

It is important to emphasise that, in the intention of the law, the extension of collective agreements to certain minorities is not calculated to coerce them, but rather to prevent them from taking advantage of a privileged position. In other words, such a measure is as favourable to the employers' organisations as to the workers' organisations, who co-operate in good faith in the determination of conditions of employment by means of collective bargaining.

15. Paragraph 15 provides that disputes which arise in regard to the interpretation or application of an existing collective agreement should be settled by a conciliation and arbitration procedure mutually agreed upon by the parties to the collective agreement.

Disputes as to the interpretation of a collective agreement are entirely distinct from disputes arising in connection with the conclusion or renewal of a collective agreement. The former, indeed, are disputes of a juridical kind, which in no way differ from those which may arise regarding the interpretation or application of any other kind of contract and which should, accordingly, be capable of amicable settlement without recourse to strike or lockout.

In short, it is a question of the application to collective agreements of the general principle of inviolability of contracts, which is recognised as being fundamental to all social relationships, either national or international.

16. Lastly, paragraph 16, following the example of the majority of national legal systems, provides that the labour inspectorate should be competent to supervise the application of collective agreements. The determination of conditions of employment by means of collective agreements has acquired such importance

in a number of countries that the legislature has deemed it necessary to guarantee its application in the same manner as the application of social legislation.

Voluntary Conciliation and Arbitration

For the purpose of settling labour disputes, States have set up two types of procedure, fundamentally different in character :

(1) Voluntary conciliation and arbitration procedures, which are nothing more than subsidiary procedures for the conclusion of collective agreements, as only the free acceptance by the parties concerned of the recommendations of the conciliation and arbitration bodies confers any real validity upon them.

(2) Compulsory conciliation and arbitration procedures, which are, in the final analysis, methods for fixing wages and other conditions of employment by the State, since the will of the State replaces, through the intermediary of arbitration courts, the will of the partie concerned.

In the proposals which the Office submits to the Conference, it has purposely refrained from taking account of compulsory systems. The analysis of legislation and practice has demonstrated that there would be little prospect of the Conference reaching agreement even as to the principle of compulsory conciliation and arbitration.

On the other hand, the system of voluntary conciliation and arbitration is universally accepted, even by those countries which make provision for recourse to compulsory arbitration as a last resort.

Voluntary Conciliation

17. It should be observed, in the first place, that all countries quite properly give preference to conciliation procedures established by the parties concerned, either in the form of national agreements concluded between the central organisations of employers and workers, or in the form of special clauses relating to conciliation included in collective agreements. But, in the absence of, or in addition to, contractual systems of conciliation, Governments have deemed it necessary to make available to the parties official agencies which, by their composition and their procedure and the other facilities which they offer, are such as to inspire the complete confidence of the parties.

It is in accordance with this principle that paragraph 17 provides that regional and national conciliation bodies should be established to lend their assistance to the parties for the purpose of preventing or settling labour disputes.

18. Paragraph 18 affirms a principle of general application, namely, that the organisations of employers and workers concerned in such disputes should be associated in each stage of the procedure. The direct participation of employers' and workers' organisations in the procedure for settling disputes appears to be indispensable, as the recommendations of the conciliation agencies are effective only if they are voluntarily accepted by the parties to the disputes.

19. The intervention of agencies for conciliation should not only be free of cost, but should also be as expeditious as possible, as the parties will have recourse to conciliation procedure only where a dispute threatens to arise or has already arisen. Hence, the times allowed for the appearance of the parties, the hearing of witnesses and the production of proofs should be prescribed in advance and reduced to a minimum.

Many national enactments further expressly stipulate that the conciliation agencies are not bound by rules of procedure applicable under ordinary law.

20. It is inherent in voluntary conciliation that it should be optional. But if the parties have recourse by mutual agreement to an agency for conciliation they should be obliged to refrain from strikes or lockouts during the procedure of conciliation.

21. In the same way as the recourse to conciliation, the acceptance of the recommendations of agencies for conciliation should, by the very definition, be optional. But once a recommendation has been accepted by the parties concerned, it should become binding on the parties.

Paragraphs 20 and 21, which have just been summarised, do no more than apply to the procedure of voluntary conciliation the principles of good faith which should govern industrial relations.

22. Paragraph 22 provides that agreements reached by the parties during the procedure, as well as such recommendations by the conciliation bodies as may be accepted by the parties,

should have the same legal validity as collective agreements concluded without the intervention of a conciliator.

In short, this paragraph merely draws the logical conclusion from the eminently contractual nature of the procedure of voluntary conciliation.

Voluntary Arbitration

23. In the event of the failure of conciliation, and as a second stage in the voluntary settlement of disputes, States also make voluntary arbitration procedures available to the parties.

However, as is provided by paragraph 23, nothing should prevent the parties from having recourse to voluntary arbitration at the outset if they so desire.

24. Voluntary arbitration is fundamentally completely different from voluntary conciliation. Whereas, in the case of voluntary conciliation, proposals for settlement have no validity unless they are freely accepted by the parties, in the case of voluntary arbitration, on the other hand, the parties leave it to the decision of a third party (arbitrator or board of arbitration) to decide between them.

In other words, the mere fact of having recourse to arbitration, by the consent of all the parties concerned, implies in advance the acceptance of the decision which will finally be made.

Co-operation between the Public Authorities and Employers' and Workers' Organisations

The first four sections analysed above relate more particularly to freedom of association and to the organisation of labour relations, whereas this section is concerned with the far wider problem of the organisation of co-operation between the public authorities and employers' and workers' organisations.

As has already been explained in the analysis of law and practice, in an increasing number of countries the responsibility of employers' and workers' associations is no longer limited to the field of organising labour relations, but also extends to the organisation of social and economic life. Moreover, it has also been observed that a very large number of States have closely and effectively associated employers' and workers' organisations in the preparation and application of economic and social measures, not only at the

level of the undertaking, but also at the level of the industry and at the national level.

This association between the public authorities and employers' and workers' organisations had to be adopted by a number of States, as the prevailing circumstances made it indispensable ; the States realised indeed that the vast programmes of reconstruction, industrialisation and modernisation of their national economies demanded the unconditional co-operation of all the vital forces in the nation and, above all, of the organised forces of production and labour. On their side, the trade unions had to be satisfied that the improvement of living conditions was directly related to the increase in the economic potential and in the productivity of labour. They took the view that they should be enabled, by participation in the control and direction of economic life, to ensure that the improvement of their standard of living would be effectively achieved at the same time as the increase in production and output.

It should be remembered that the nature and extent of the post-war problems with which the various States have had to contend vary considerably as between countries devastated and exhausted by the war and countries which have been more or less spared by the conflict and whose economic structure has remained intact, although it may not have been very greatly strengthened.

It is therefore natural that the methods adopted by the various countries for organising co-operation between the public authorities and employers' and workers' organisations should differ considerably. Thus, for instance, in certain countries the machinery for co-operation is established by purely voluntary agreement, whereas in others the status of that machinery is defined by law.

The Office has, of course, been obliged to pay heed to these fundamental differences in conception and has had, therefore, to refrain from submitting too detailed proposals to the Conference, which would have been satisfactory to a certain number of countries, but unacceptable to others and, for that very reason, would have had no chance of gaining unanimous approval.

In the three recommendations grouped under the section " Co-operation between the public authorities and employers' and workers' organisations ", an attempt has been made to define the object of co-operation, firstly at the level of the undertaking, then at the level of the industry, and finally at the national level.

25. Paragraph 25 provides that in all public or private establishments where a specific number of persons are employed, agencies representing the staff (as, for instance, works committees, production committees, staff delegates, etc.) should be set up, either by agreement between the parties or by legislation, for the purpose of co-operating with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency.

Following the example of legislation in the majority of countries, the scope of this provision includes both public and private establishments, as the usefulness of an agency representing the staff is the same in both cases.

No definite figure has been suggested for the minimum number of wage-earners who must be employed in an undertaking in order to make it advisable to set up agencies representing the staff. It seemed reasonable to conclude that the various countries themselves were in the best position to assess in which establishments such agencies could be usefully set up.

Nor does paragraph 25 make any proposal as to the form which the representation of the staff should take, whether production committees, works committees or staff delegates. It will be remembered that, during the war, the majority of the Allied countries, such as the United Kingdom, the United States, Canada, New Zealand, etc., set up joint production committees. On the other hand, most of the liberated European countries have preferred works committees, which are sometimes under the chairmanship of the head of the undertaking, as in France, but are more frequently composed exclusively of representatives of the staff, as, for instance, in Central and Eastern European countries.

Moreover, in the English-speaking countries, the agencies representing the staff have been set up as the result of agreements concluded between the employers' and workers' organisations concerned, whereas in the majority of countries on the European Continent they owe their existence to legislation.

The Office has not considered it desirable to exclude either of these two possibilities, and has considered, therefore, that it would be preferable to leave it to the countries to make their own choice as to the way in which agencies representing the staff should be established.

Finally, the functions of the agencies representing the staff vary considerably from one country to another, as they range

from mere supervision of social legislation to effective participation in productive efficiency.

The formula " co-operation with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency " appears sufficiently comprehensive to cover every form of co-operation.

26. Paragraph 26, which defines co-operation at the level of the industry, proposes that, in all branches of industry and commerce, joint committees of employers and workers should be established, either by agreement between the employers' and workers' organisations concerned, or by legislation, for the purpose of co-operation in the solution of social, technical or economic problems affecting such industry or commerce.

Here again, in conformity with existing circumstances, the Office has left it open for joint committees to be established by agreement between the employers' and workers' organisations, or by legislative enactment.

The powers of these bodies vary considerably according to the legal status of the industries concerned ; in some countries they are purely advisory, whereas in others they are called upon to participate directly in the control and administration of nationalised industries.

The formula " for the purpose of co-operating in the solution of social, technical or economic problems affecting such industry or commerce " in this case, also, covers all these possibilities.

It should be remembered that the establishment of national industrial committees would provide a firm support for the activities of the international industrial committees.

27. Paragraph 27 invites the States Members of the International Labour Organisation to consider the desirability of establishing machinery for co-operation at the national level (as, for instance, national economic councils or national labour councils, etc.) for the purpose of giving advice to the competent authorities with regard to the preparation and application of economic and social measures.

The establishment of machinery for co-operation at the national level cannot result (as in the two examples previously examined) from agreements voluntarily concluded between employers' and workers' organisations, but rather from action taken by the public authorities. It is for this reason that paragraph 27 refers directly

to the States Members of the International Labour Organisation.

It has already been observed that the extent of co-operation at the national level will probably vary according to the degree of responsibility which the State feels that it must assume in the direction and control of national economy.

However, the necessity for increasingly closer co-operation between the public authorities and employers' and workers' organisations in the preparation and application of economic and social measures is generally recognised at the present day, and Governments and Parliaments in many countries have taken effective steps to avail themselves of the advice of specialised agencies in which employers' and workers' organisations are directly represented.

CHAPTER IV

TEXTS SUBMITTED TO THE CONFERENCE

Proposed Resolution concerning Freedom of Association and Industrial Relations

Whereas the Preamble to the Constitution of the International Labour Organisation expressly declares " recognition of the principle of freedom of association " to be a means of improving conditions of labour and of establishing peace ; and

Whereas the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress " and recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve, among other things : " the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures " ; and

Whereas standards of living, normal functioning of national economy and social and economic stability depend to a considerable degree on a properly organised system of industrial relations founded on the recognition of freedom of association ; and

Whereas, moreover, in many countries, employers' and workers' organisations have been associated with the preparation and application of economic and social measures ; and

Whereas the General Labour Conference, the Regional Conferences of the American States Members of the International Labour Organisation and the various Industrial Committees have, in numerous Resolutions, called the attention of the States Members of the International Labour Organisation to the need for establishing an appropriate

system of industrial relations founded on the guarantee of the principle of freedom of association,

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947,

adopts, this day of of the year one thousand nine hundred and forty-seven, the following Resolution :

I. Freedom of Association

1. Employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, should have the inviolable right to establish organisations of their own choosing without previous authorisation.

2. Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.

3. Employers' and workers' organisations should not be liable to be dissolved by administrative authority.

4. Employers' and workers' organisations should have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

5. The guarantees defined in paragraphs 1, 2 and 3 herein with regard to the establishment, functioning and dissolution of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. The acquisition of special privileges by employers' and wage-earners' organisations (as, for example, the acquisition of legal personality) should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

II. Protection of the Right to Organise and to Bargain Collectively

7. The central organisations of employers and workers should agree to recognise each other as the authorised representatives of the interests of employers and workers, and should undertake mutually to respect the exercise of the right of association.

8. (1) In the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee :

(a) the exercise of the right of association by the workers by measures designed to prevent any acts on the part of the employer or of his agents with the object of :

(i) making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member ;

(ii) prejudicing a worker because he is a member or agent or official of a trade union ;

(iii) dismissing a worker because he is a member or agent or official of a trade union.

(b) the exercise of the right of association by workers' organisations should be guaranteed by measures designed to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

(i) furthering the establishment of trade unions under the domination of the employer ;

(ii) interfering with the formation or administration of a trade union or contributing financial or other support to it ;

(iii) refusing to recognise trade unions or to bargain collectively with them for the purpose of concluding collective agreements.

(2) It should be understood, however, that a provision in a freely concluded collective agreement making compulsory membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

9. Appropriate agencies should be established for the purpose of ensuring the protection of the right of association as defined in paragraph 8 herein.

III. Collective Agreements

10. Employers' and workers' organisations, appreciating the great value of voluntary negotiation, should undertake to determine wages and other conditions of employment by collective agreements.

11. Appropriate agencies (as, for example, joint committees or labour relations boards) should be established, where necessary, to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.

12. The provisions of a collective agreement should override the terms contained in individual contracts concluded between employers and workers bound by the collective agreement, except in so far as the said terms are more favourable to the workers than the provisions of the collective agreement.

13. The provisions of a collective agreement should apply to all the workers in the service of the employer or employers bound by the collective agreement, even though such workers may not be members of the workers' organisation party to such collective agreement.

14. (1) Where voluntarily concluded collective agreements bind the majority of the workers and the majority of the employers (who should also employ the majority of the workers) coming within their scope, appropriate measures should be taken to extend the application of such collective agreements to all the employers and workers whose activities are carried on within the industrial and territorial scope of the collective agreements.

(2) The employers and workers to whom the terms of a collective agreement are so made applicable should be authorised to submit their observations and objections beforehand to the competent authorities.

15. Disputes arising as to the interpretation or application of an existing collective agreement should be settled by a conciliation and arbitration procedure mutually agreed upon by the parties to the collective agreement.

16. Labour inspectors should be competent to supervise the application of collective agreements in all establishments included within the scope of such agreements.

IV. Voluntary Conciliation and Arbitration

Voluntary Conciliation

17. Regional and national conciliation bodies should be established to lend their assistance to the parties for the purpose of preventing or settling labour disputes.

18. The employers' and workers' organisations concerned in the disputes should be associated with each stage in the procedure.

19. The conciliation procedure should be free and expeditious; the time allowed for the appearance of the parties, the hearing of witnesses and production of proofs should be prescribed in advance and reduced to a minimum.

20. Recourse to conciliation procedure should be voluntary, but once a dispute has been referred to conciliation by the consent of all the parties concerned, the parties should be obliged to refrain from strike or lockout during the procedure of conciliation.

21. The parties should retain the right to accept or to reject the recommendations of conciliation bodies, but, once a recommendation has been accepted, it should become binding on the parties.

22. Agreements reached by the parties during the procedure, as well as such recommendations by the conciliation bodies as

may be accepted by the parties, should have the same legal validity as voluntarily concluded collective agreements.

Voluntary Arbitration

23. Voluntary arbitration machinery should be established to which the parties may have recourse, either at the outset or after conciliation procedure has failed.

24. Recourse to arbitration should be voluntary, but, once a dispute has been referred to arbitration by the consent of all the parties concerned, the parties should be obliged to accept the award.

V. Co-operation between the Public Authorities and Employers' and Workers' Organisations

25. In all public or private establishments where a given number of persons are employed, agencies representing the staff (as, for instance, works committees, production committees, staff delegates, etc.) should be set up, either by agreement between the parties or by legislation, for the purpose of co-operating with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency.

26. In all branches of industry and commerce, joint committees of employers and workers should be established, either by agreement between the employers' and workers' organisations concerned or by legislation, for the purpose of co-operating in the solution of social, technical or economic problems affecting such industry or commerce.

27. The States Members of the International Labour Organisation should consider the desirability of establishing machinery for co-operation at the national level (such as national economic councils or national labour councils, etc.) for the purpose of giving advice to the competent authorities with regard to the preparation and application of economic and social measures.

List of Points which might Form a Basis for Discussion by the Conference

DESIRABILITY OF INTERNATIONAL REGULATION AND FORMS OF SUCH REGULATION

1. *Desirability of adopting international regulation concerning :*

A. Freedom of association ;
B. Protection of the right to organise and to bargain collectively ;
C. Collective agreements ;

in the form of a proposed Convention.

2. *Desirability of drawing up proposed separate Conventions concerning :*

A. Freedom of association ;
B. Protection of the right to organise and to bargain collectively ;
C. Collective agreements.

3. *Desirability of drawing up, in addition, one or several Recommendations concerning voluntary conciliation and arbitration.*

A. Freedom of Association

4. *Need to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, should have the right to establish organisations of their own choosing without previous authorisation.*

5. *Need to provide that employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.*

6. *Need to stipulate that employers' and workers' organisations should not be liable to be dissolved by administrative authority.*

7. *Need to recognise the right of employers' and workers' organisations to establish federations and confederations of such organisations and to affiliate with international organisations of employers and workers.*

8. *Need to stipulate that the guarantees defined by paragraphs 4, 5 and 6 with regard to the establishment, functioning and dissolution of employers' and workers' organisations should apply to federations and confederations of such organisations.*

9. *Need to stipulate that the acquisition of special privileges by employers' and workers' organisations (as, for example, the acquisition of legal personality) may not be made subject to conditions of such character as to restrict freedom of association as hereinbefore defined.*

B. Protection of the Right to Organise and to Bargain Collectively

10. *Need to provide that the exercise of the right of association of the workers and of workers' organisations should be guaranteed, either by means of agreements between the central organisations of employers and workers or by appropriate legislation.*

11. *Need to provide that in the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee :*

(a) the exercise of the right of association by the workers by measures designed to prevent any acts on the part of the employer or of his agents with the object of :

1. making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member ;
2. prejudicing a worker because he is a member or agent or official of a trade union ;
3. dismissing a worker because he is a member or agent or official of a trade union ;

(b) the exercise of the right of association by workers' organisations by measures designed to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

1. furthering the establishment of trade unions under the domination of the employer ;
2. interfering with the formation or administration of a trade union or contributing financial or other support to it ;
3. refusing to recognise trade unions or to bargain collectively with them for the purpose of concluding collective agreements.

12. *Desirability of providing that any provision in a collective agreement freely concluded between representative organisations of employers and workers making compulsory membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of paragraph 11 above.*

13. *Desirability of providing that appropriate agencies should be established for the purpose of ensuring the protection of the right of association as defined above.*

C. Collective Agreements

14. *Desirability of providing that appropriate agencies (as, for example, joint committees or labour relations boards) should be established to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.*

15. *Need to define the collective agreement as being an agreement relating to conditions of employment concluded between one or several workers' organisations on the one hand, one or several employers' associations, or any other group of employers, or one or several employers individually, on the other hand.*

16. *Need to stipulate that the provisions of a collective agreement should override the terms contained in individual contracts concluded between employers and workers bound by the collective agreement, except in so far as the said terms are more favourable to the workers than the provisions of the collective agreement.*

17. *Need to stipulate that the provisions of a collective agreement should apply to all the workers in the service of the employer or employ-*

ers bound by the collective agreement, even though such workers may not be members of the workers' organisation, party to such collective agreement.

18. *Desirability of providing that voluntarily concluded collective agreements, binding the majority of the workers and the majority of the employers (who should also employ the majority of the workers) may be extended to apply to all the employers and workers whose activities are carried on within the industrial and territorial scope of the collective agreement as determined by the contracting parties.*

19. *Desirability of providing that the employers and workers to whom the terms of a collective agreement are so made applicable should be authorised to submit their observations and objections beforehand to the competent authorities.*

20. *Desirability of providing that disputes arising as to the interpretation or application of a collective agreement should be referred to a procedure for settlement mutually agreed upon by the parties to the collective agreement and, in the event of the failure of this procedure, should be referred to a system of compulsory arbitration or to an appropriate judicial procedure.*

21. *Desirability of providing that labour inspectors should be competent to supervise the application of collective agreements in all establisments included within the field of application of such agreements.*

D. Conciliation and Arbitration

Voluntary Conciliation

22. *Desirability of recommending the establishment of regional and national conciliation bodies to lend their assistance to the parties for the purpose of preventing or settling labour disputes.*

23. *Desirability of providing that employers' and workers' organisations concerned in the disputes should be associated with each stage in the procedure.*

24. *Desirability of providing that the conciliation procedure should be free and expeditious and that, accordingly, the time allowed for the appearance of the parties, the hearing of witnesses and the production of proofs should be prescribed in advance and reduced to a minimum.*

25. *Desirability of providing that recourse to conciliation procedure should be voluntary; but that once a dispute has been referred to conciliation by the consent of all the parties concerned, the parties should be obliged to refrain from strike or lockout during the procedure of conciliation.*

26. *Desirability of providing that the parties should retain the right to accept or to reject the recommendations of conciliation*

bodies ; but that, once a recommendation has been accepted, it should become binding on the parties.

27. *Desirability of providing that agreements reached by the parties during the procedure, as well as the recommendations of the conciliation bodies which are accepted by the parties, should have the same legal validity as voluntarily concluded collective agreements.*

Voluntary Arbitration

28. *Desirability of recommending the establishment of a system of voluntary arbitration to which the parties might have recourse, either at the outset or after conciliation procedure has failed.*

29. *Desirability of providing that recourse to arbitration should be voluntary, but that, once a dispute has been referred to arbitration by the consent of all the parties concerned, the parties should be obliged to accept the award.*

E. Federal States

30. *Desirability of including in the Conventions concerning freedom of association, protection of the right to organise and to bargain collectively, and collective agreements, appropriate provisions to facilitate the adherence to such Conventions of federal States.*

APPENDICES

APPENDIX A

I. Draft Resolution submitted by the World Federation of Trade Unions to the Economic and Social Council on Guarantees for the Exercise and Development of Trade Union Rights.

1. Ever since the end of the Second World War, one notes that certain interventions tend, in various countries, to destroy the very foundations of trade union rights. The means employed to hinder the progress of the trade union movement are principally as follows: the large-scale dismissal of trade unionist workers, the arrest of active trade unionist and trade union leaders, the occupation of trade union premises, the revocation by the Government of bodies democratically chosen by the trade unions, the nomination of trade union leaders by the Government, the prohibition of all coloured or native workers against forming occupational organizations, the prohibition on occupational organizations against forming any federal occupational or inter-occupational organizations, whether locally, nationally or internationally, etc.

2. Such attacks on trade union rights can demonstrate the persistence in certain countries of nefarious ideologies which have placed the world in deadly peril. The respect for trade union rights as an element of peace and co-operation between the peoples should be assured on the international level.

3. Trade unionism when unhampered in its evolution tends to go further than the particular interests of its members and becomes, in an ever-increasing measure, the spokesman of the general interests. This aspect of the evolution is also clearly illustrated by the programmes of economic reorganization formulated in most countries by the workers' trade unions. Basing itself on the generally accepted idea that the exercise of the right of ownership is a social function, trade unionism, representing the producers, insists on the necessity of bringing the community into still greater participation in the general direction of economic policy.

4. In the social domain, the role of the trade unions is still more important. They conclude collective agreements which can be extended to embrace all workers in a profession or in a nation, that is to say, even those who are not members of these organizations. In certain cases therefore, the trade unions are given the power to make regulations.

In many countries also, they share in the control and direction of industrial undertakings and even in the activities of the State ; in this way, they take part in the preparation of social legislation through their advisory councils, labour councils and economic councils, and share in the application of social legislation by administering social security institutions, by collaborating with inspecting bodies and also on conciliation and arbitration boards and on labour tribunals by supervising employment, apprenticeships, occupational training, and control of prices, etc.

5. Thus, in war, as in peace, the States call on the aid of trade union organizations in order to introduce a higher degree of justice into their social system. In this way alone can there be the guarantee of a peaceful evolution in conformity with the facts and with the democratic development. If, for example, it is rendered impossible for workers to make collective agreements, they have no other means of redressing the wrongs inflicted on them than by the collective stoppage of work and by agitation.

6. This evolution, which must be guaranteed and made general, is merely the expression of the democratic principle, according to which those concerned, namely the producers, should have a say in determining economic and social policy. The value of this principle has been increased by the fact that the war for the triumph of democracy and liberty has been brought to a successful issue with the active help of the working class and as a result of its sacrifices. Already the victory of the United Nations has inspired the development of trade unionism in all quarters in close relationship with social progress and the development of popular liberties.

7. Within the State, the role of modern trade unionism is of ever-increasing importance. This role, however, can be effective and can be of value for the community only on condition that the trade union movement preserve its independence, its autonomy and its spontaneous character. It is therefore fitting that the State should not obtain a hold over the trade unions and over the workers' movement by means such as : the nomination of administrative bodies and leaders by the public authorities, or the interference of the latter on any other score in the running of trade unions.

8. Furthermore, any attempt to hinder the federation of trade union organizations on the occupational and inter-occupational level, locally, nationally and internationally, constitutes a very serious infringement of trade union liberty. In fact, the idea of organization is at the very basis of trade union movement which, by its very nature, tends to integrate into ever-widening entities. Trade union practice in every country is decisive in this direction and any effort to the contrary could only tend to restore a corporate system condemned by experience.

Moreover, the evolution of trade unionism extends beyond national frontiers and is manifested with equal intensity on the international level.

9. Even at the end of the First World War, the Peace Conference insisted on the necessity of organizing the working class. Through its representatives, the working class took part in a series of conferences and in a number of international organizations and in this way the international personality of the workers' organizations became an indisputable reality.

10. Attention should be drawn to the work undertaken by the W.F.T.U. after the Second World War, in order to assist trade union organization in liberated or defeated countries, an action which constitutes one of the most important factors in the spread of democracy in the political, social and economic domain, and of which the beneficial effect has been recognized by all the Governments concerned.

11. After the Second World War, the evolution which we have demonstrated, both on the national and international level, became more pronounced. Already relations of confidence have been established between the Economic and Social Council and the World Federation of Trade Unions.

12. Besides, according to Article 1 (3) of their Charter, the United Nations propose as one of their aims, the realization of international co-operation in solving international problems of an economic, social, intellectual or humanitarian nature, by developing and encouraging respect for the rights of man and the fundamental liberties for all without distinction of race, sex, language or religion. The same idea is to be found in Articles 55 *c.* and 62 of the Charter. The attainment of this objective presupposes the general expansion and consolidation of trade unionism on the national and international level.

13. Effective co-operation in economic and social matters is only feasible with the help of the masses of the peoples, who must be assured of an ever-increasing standard of comfort, and whose most responsible elements are organized within trade unions.

The recognition of trade union rights and the unrestricted and uncontested use of those rights should allow the full development of the trade union activities. These activities may lead the trade union organizations in each country to co-operation in establishing and implementing social legislation. The outcome of this progressive social legislation, setting out the constructive possibilities of trade unionism, can be a new right enabling the trade unions to determine the economic and social policies in each country.

14. Unorganized, spontaneous anarchic movements can be a danger to the internal peace of every country. If effective international co-operation is to be established, there must be pacification and consolidation of the democratic régime within each State.

15. Effective respect for trade union rights, apart from guarantees proper to every country, demands a safeguard of an international character whenever the use of these rights results in developments which might affect the international life. From national and international practice there can be established, for trade union rights, a real common international law, for which respect in all States should be assured by the Economic and Social Council.

* * *

On the basis of the preceding considerations, the W.F.T.U. submits to the Economic and Social Council, the following Resolutions :

1. Trade union rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.
2. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within

their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.

3. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally or internationally.
4. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.
5. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted.

II. Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights.

1. On 28 February 1947, a document E/C.2/28 was circulated to the members of the Economic and Social Council on behalf of the World Federation of Trade Unions. This document contains a draft of the proposed Resolution regarding the guarantees for the exercise and development of trade unions' rights.

2. In the document E/CT.2/2 circulated to members of the Council as of 20 August 1946, the American Federation of Labor, in its draft of a proposed " International Bill of Rights " covered, among other questions, the basic points raised by the World Federation of Trade Unions.

Specifically, the American Federation of Labor draft urged the adoption of the following provisions as a part of the " International Bill of Rights " :

IV

Basic Human Rights

Without freedom from fear of tyranny by absolutist bureaucrats or dictators and without freedom from want, there can be no political or industrial democracy within nations or just relations and enduring peace between nations.

Only by removing the political, economic and social ills and maladjustments afflicting humanity will mankind be able to reach that long hoped-for stage of civilization in which peace and plenty shall truly prevail.

In this spirit, the American Federation of Labor proposes to the Economic and Social Council of the United Nations that it draft an

International Bill of Rights which shall be part of the general Peace Treaty and be binding on all its signatories. We propose that this International Bill of Rights shall include the following provisions :

1. Every human being — irrespective of race, colour, creed, sex or national origin — has the right to pursue his or her work and spiritual development in conditions of freedom and dignity.

2. Freedom of expression and association is vital to the preservation of the basic liberties and the enhancement of the spiritual and material progress of the human race. These rights must be inviolate for those who oppose, no less than for those who support, a ruling party or a régime at any specific moment.

Genuine freedom means the right of association and organization into various — into differing — educational, religious, economic, political and trade union organizations, without fear of direct or indirect control and compulsion by governmental or any other agencies.

3. The right to organize and work for a constantly more equitable distribution of the national income and wealth and the right to strive for the enhancement of the moral and material well-being of the people — for better health and security against the ravages of unemployment, accidents, sickness and old age — are to be considered inalienable. The conditions of work under modern large scale industry make it especially necessary for the working people to have an effective system of social legislation which will provide minimum wages and maximum working hours ; guarantee against the employment of child labour ; set up adequate medical care ; provide accident, unemployment and old-age insurance and other such vital measures making for effective social security of the population.

4. Raise labour standards throughout the world. There is no more effective way of stimulating the revival of production and the international expansion of markets than by increasing the purchasing power of the great mass of people in every country.

5. Freedom of religion and right to religious worship are indispensable to a truly democratic society.

6. The right of asylum is to be guaranteed by all nations. No human being who is a refugee from any political régime he disapproves of is to be forced to return to a territory under the sovereignty of that régime.

7. The right to migrate or leave temporarily or permanently a country in which a citizen does not want to remain must be assured, limited only by the laws of immigration of the country which he may wish to visit.

8. There must be freedom of opinion and expression and full access to the opinions of others.

9. The more full and complete knowledge of the world is extended and realized by the peoples of all nations, the less will be the distance and misunderstandings between nations and peoples. Therefore, the right of free access to and exchange of information — scientific, economic, social, religious and political — the promotion of knowledge and of cultural relations, the full and free dissemination of news by radio and press must be assured.

10. Involuntary servitude in any shape, manner or form or under any guise shall be outlawed and discontinued by all nations and all peoples.

11. Freedom from arbitrary arrest, detention, search and seizure; proper judicial determination of arrest and charges; a fair public trial by jury or competent and unprejudiced court constituted in accordance with normal judicial procedure; right of habeas corpus and freedom from arbitrary imposition of penalties.

12. The key to the entire approach of human rights must be the placing of respect for human personality and welfare above all else. In this spirit, the foregoing rights can have tangible meaning and practical application only if:

(a) All human beings have real security and are free from discrimination on account of race, colour, creed or difference of political belief from the Government in control or the party in power.

(b) There is to be no peacetime conscription or militarization of workers protesting or striking against conditions of labour which they consider unfair or unsatisfactory.

(c) All economic or political discrimination and punishment for differences of political opinion or religious belief and practices are to be eliminated. The threat of being sent to concentration or labour camps as a punishment for difference of opinion with any government authority or dominant political party must be completely removed.

(d) Freedom from censorship of books, press, radio and art, having due regard to the requirements of morals and decency.

(e) Freedom from the terror of secret police surveillance, arrest or torture. This can be assured only through the abolition of all political police and concentration camps in every country.

3. Basically, the protection of rights of trade union members and of their organizations is encompassed by the above proposals of the American Federation of Labor. These proposals were referred to the Human Rights Commission of the Economic and Social Council, were considered by that Commission and were referred by it to the Drafting Committee empowered to draft an International Bill of Rights.

4. There is no doubt that numerous problems which affect workers generally, or labour and trade union organizations more specifically, are outside the framework of reference set forth for the Human Rights Commission. The United Nations, under the terms of its Agreement with the International Labour Organization (document A/72), Article I, recognized the latter organization as " a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein ". The terms of reference of the International Labour Organization are indicated in its Constitution, Article 10 and Articles 19, 20, 21, 35 (Constitution and Rules, Montreal, 1946).

5. It is therefore quite proper for the Economic and Social Council to request the International Labour Organization to make a survey of labour conditions in the various countries, Members of the United Nations, in order to secure information on the treatment received by the individual workers in the exercise of their rights to form, join or belong

to trade union organizations without interference or coercion by the governmental authorities ; on the extent, if any, of government domination or interference with trade union organizations ; and regarding any coercive acts directed against individual workers insofar as their relations to their trade union organizations are concerned. On the basis of such inquiries, the International Labour Organization should be requested to undertake the necessary steps for the elimination of such practices which deny basic individual rights to workers or collective rights to their organizations.

6. The American Federation of Labor, after examining in detail the proposals submitted to the Economic and Social Council by the World Federation of Trade Unions, suggests that these proposals be amended to read as follows :

Draft Resolution

I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the International Labour Organization, that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows :

(A) To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the Government ?

(B) To what extent are trade unions free to operate in accordance with the decisions of their own members, whether on a local, regional or national basis, without interference by governmental authorities ?

(C) To what extent are workers free to select, elect or appoint officers of their own trade unions ?

(D) To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations, without governmental interference ?

(E) To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country ?

(F) To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference ?

(G) To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation ?

(H) To what extent is the right of workers and of their organizations to resort to strikes recognized and protected ?

(I) To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers ?

(J) To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf ?

(K) To what extent are workers free to move from one part of the country to another, within the confines of the national borders, and to what extent are they free to migrate outside the national boundaries ?

(L) To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference ?

(M) To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language or religion, protected against compulsory, or forced, labour ?

(N) To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection ?

II. The Economic and Social Council further recommends to the International Labour Organization that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various states, proposals for :

(a) incorporating the rights universally recognized ;

(b) protecting the workers and their organizations against the violation of basic labour or trade unions' rights ; and

(c) providing proper measures for the enforcement of such rights.

APPENDIX B

Principal International Labour Office Publications concerning Freedom of Association, Industrial Relations, and Co-operation between the Public Authorities and Employers' and Workers' Organisations.

STUDIES AND REPORTS

Series A (Industrial Relations) :

No. 27. *Industrial Relations in the United States*, by H. B. BUTLER (1927).

Nos. 28-32. *Freedom of Association* (1927-1930), 5 vols.

Vol. I. Comparative Analysis.

Vol. II. Great Britain, Irish Free State, France, Belgium, Luxemburg, Netherlands, Switzerland.

Vol. III. Germany, Austria, Hungary, Czechoslovakia, Poland, Baltic States, Denmark, Norway, Sweden, Finland.

Vol. IV. Italy, Spain, Portugal, Greece, Yugoslavia, Bulgaria, Rumania.

Vol. V. United States, Canada, Latin America, South Africa, Australia and New Zealand, India, China, Japan.

Nos. 33, 35, 38. *Studies on Industrial Relations* (1930, 1932, 1935), 3 vols.

No. 34. *Conciliation and Arbitration in Industrial Disputes* (1933).

Part. I. General Problems of Conciliation and Arbitration.

Part. II. Conciliation and Arbitration in Selected Countries.

No. 36. *Industrial Relations in Great Britain*, by J. H. RICHARDSON (1933).

No. 39. *Collective Agreements* (1936).

No. 40. *Labour Courts* (1938).

No. 43. *British Joint Production Machinery* (1934).

REPORTS

Trade Union Conditions in Hungary (Documents presented by the Mission of Enquiry of the International Labour Office, 1921.)

Methods of Collaboration between the Public Authorities, Workers' Organisations and Employers' Organisations (International Labour Conference, 26th Session, Geneva, 1940.)

Wartime Developments in Government-Employer-Worker Collaboration. (International Labour Conference, New York, 1941.)

Industrial Relations (Third Conference of the American States Members of the International Labour Organisation, Mexico City, 1946.)

Industrial Relations in Inland Transport (Inland Transport Committee, Second Session, Geneva, 1947.)

In Preparation or in the Press

Methods of Co-operation between the Public Authorities and Employers' and Workers' Organisations.

Studies on Industrial Relations and Joint Production Machinery in Selected Countries : Czechoslovakia, France and Poland.

Reports on Industrial Relations and Joint Production Machinery in Selected Industries : Iron and Steel ; Metal Trades ; Textiles ; Building, Civil Engineering and Public Works ; Petroleum.

Report of the Director-General to the New Delhi Conference (Chapter Dealing with Industrial Relations).

Joint Production Machinery in the United States of America During the War.

General Documentation

The *International Labour Review* contains regular analyses of legislation and practice concerning freedom of association, industrial relations and social and economic organisation.

The *Legislative Series* has been publishing since 1920 the principal legislative texts on these subjects.

The *International Survey of Legal Decisions on Labour Law* published, from 1925 to 1938, in respect of certain countries (United States, Germany, France, United Kingdom, Italy), the principal legal decisions concerning the application of labour legislation (freedom of association, collective agreements, conciliation and arbitration, labour courts, social and economic organisation, etc.).