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Awaits further reports on the subject to be transmitted by the International Labour Organisation and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the bill or declaration on human rights;

Notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organisation;

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation, and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Committee on Human Rights in the study of these problems.

Attend les autres rapports que l'Organisation internationale du Travail doit lui transmettre sur le même sujet, ainsi que le rapport qu'il doit recevoir en temps voulu de la Commission des droits de l'homme en ce qui concerne les aspects de la question qui méritent de figurer dans la Déclaration des droits de l'homme;

Note que les propositions tendant à la création d'un organisme international chargé de défendre la liberté d'association doivent être examinées par le Conseil d'administration de l'Organisation internationale du Travail;

Estime que la mise en vigueur des droits, qu'il s'agisse des individus ou des associations, pose des problèmes communs que l'Organisation des Nations Unies et l'Organisation internationale du Travail doivent examiner de concert, et

Invite le Secrétaire général à prendre des mesures pour permettre à l'Organisation internationale du Travail et à la Commission des droits de l'homme de collaborer dans l'étude de ces problèmes.

ANNEX 15f

Trade union rights (freedom of association)

DECISIONS ADOPTED UNANIMOUSLY BY THE INTERNATIONAL LABOUR CONFERENCE IN JULY 1947

Document E/485 21 July 1947

[*Original text: English*]

In accordance with resolution 52 (IV), adopted by the Council on 24 March 1947, the Secretary-General communicated with the International Labour Organisation, and has received the attached letter from the Director-General of that organisation transmitting the report[1] requested by the Council.

LETTER

From the Director-General of the International Labour Office to the Secretary-General of the United Nations communicating for the information of the Economic and Social Council the decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947

[*Original text: English*]

Geneva, 16 July 1947.

Sir,

1. I have the honour to refer further to your letter of 18 April 1947, by which you transmitted to me 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.

2. In order to give effect to the request made by the Council in its resolution, the Governing

[1] The letter and report are reproduced here as received without any further editing.

ANNEXE 15e

Droits syndicaux (liberté d'association)

DECISIONS ADOPTEES A L'UNANIMITE PAR LA CONFERENCE INTERNATIONALE DU TRAVAIL EN JUILLET 1947

Document E/485 21 juillet 1947

[*Texte original en anglais*]

Conformément à la résolution 52(IV), adoptée par le Conseil le 24 mars 1947, le Secrétaire général s'est mis en rapport avec l'Organisation internationale du Travail, et a reçu de son Directeur général la lettre ci-jointe transmettant le rapport[1] demandé par le Conseil.

LETTRE

Lettre adressée par le Directeur général du Bureau international du Travail au Secrétaire général des Nations Unies, communiquant, pour l'information du Conseil économique et social, les décisions concernant la liberté d'association adoptées à l'unanimité par la trentième session de la Conférence internationale du travail, le 11 juillet 1947

[*Texte original en anglais*]

Genève, le 16 juillet 1947

Monsieur le Secrétaire général,

1. J'ai l'honneur de me référer à nouveau à votre lettre en date du 18 avril 1947, par laquelle vous avez bien voulu me transmettre une résolution adoptée par le Conseil économique et social à sa quatrième session au sujet des garanties d'exercice et de développement du droit syndical et me demander de prendre les dispositions nécessaires pour que la question soit traitée par l'Organisation internationale du Travail à sa prochaine session.

2. Pour donner suite à la demande formulée par le Conseil dans sa résolution, le Conseil

[1] La lettre et le rapport sont reproduits ici tels qu'ils ont été reçus et n'ont subi aucune révision.

Body of the International Labour Office included the item "Freedom of Association and Industrial Relations" in the agenda of the thirtieth session of the International Labour Conference which met in Geneva from 19 June to 11 July 1947. The Conference had before it the documentation from the World Federation of Trade Unions and the American Federation of Labor transmitted with your letter on behalf of the Council, together with a report on the subject prepared by the International Labour Office. After full examination, the Conference arrived at a series of unanimous decisions in the matter.

3. I have the honour to transmit herewith for the information of the Council the text of the decisions unanimously arrived at by the Conference, including the programme of further action which the International Labour Organisation proposes to follow. I also venture to add for the information of the Council the following brief comments, which indicate the relationship between these various decisions.

4. It will be noted that the Conference unanimously adopted two resolutions, covering all the main items in the World Federation of Trade Unions and American Federation of Labor memoranda, and proceeded also to accept a list of points to be embodied in an international labour convention next year.

5. The first resolution relates to the fundamental principle on which freedom of association must be based. The Conference recognized the need for taking the speediest possible action to give effect to these principles by embodying them in an international instrument. It is therefore intended to embody them in an international labour convention to be adopted at the thirty-first session of the International Labour Conference, which has been convened to meet in San Francisco on 17 June 1948, and the necessary steps have been taken to make it possible for the Conference to take such action at that session.

6. The action being taken in respect of these fundamental principles is to be regarded as only the first stage of the programme of action in respect of the matter being undertaken by the International Labour Organisation. The Conference also agreed unanimously that a number of other important questions which the International Labour Organisation regards as forming an essential part of the whole general subject of freedom of association and industrial relations should be placed on the agenda of the 1948 session of the International Labour Conference for a first discussion with a view to the adoption of a convention or conventions at subsequent sessions.

7. These questions include (*a*) the detailed methods of applying the principle enunciated in article 9 of the resolution which relates to the exercise of the right of freedom of association without fear of intimidation, coercion, or restraint from any source, (*b*) collective agreements, (*c*) voluntary conciliation and arbitration, (*d*) co-operation between the public authorities and employers' and workers' organisations.

d'administration du Bureau international du Travail a inscrit la question «Liberté d'association et relations industrielles » à l'ordre de jour de la trentième session de la Conférence internationale du travail, qui s'est réunie à Genève du 19 juin au 11 juillet 1947. La Conférence a été saisie de la documentation fournie par la Fédération syndicale mondiale et la Fédération américaine du travail que vous m'aviez transmise de la part du Conseil, avec votre lettre précitée, ainsi que d'un rapport sur la question préparé par le Bureau international du Travail. Après son examen détaillé, la Conférence a abouti à une série de décisions unanimes en la matière.

3. J'ai l'honneur de vous transmettre ci-joint, pour l'information du Conseil économique et social, le texte des décisions adoptées unanimement par la Conférence, y compris le programme que l'Organisation internationale du Travail se propose de suivre pour son activité future dans ce domaine. Je me permets d'ajouter, pour l'information du Conseil, les brefs commentaires suivants qui indiquent la relation qui existe entre ces diverses décisions.

4. Il convient de noter que la Conférence a adopté à l'unanimité deux résolutions couvrant tous les points principaux des mémoires présentés par la Fédération syndicale mondiale et la Fédération américaine du travail et a également accepté une liste de points qui seraient compris l'année prochaine dans une convention internationale du travail.

5. La première résolution a pour objet les principes fondamentaux sur lesquels la liberté d'association doit être fondée. La Conférence a reconnu qu'il était nécessaire de prendre aussi rapidement que possible des mesures pour donner effet à ces principes en les incorporant dans un instrument international. En conséquence, on a l'intention de les inclure dans une convention internationale de travail qui serait adoptée par la Conférence internationale du travail à sa trente et unième session, convoquée à San-Francisco le 17 juin 1948, et les dispositions nécessaires ont été prises pour permettre à la Conférence de prendre de telles mesures à la session dont il s'agit.

6. Les mesures prises à l'égard de ces principes fondamentaux ne doivent être considérées que comme la première étape du programme d'action dans ce domaine que l'Organisation internationale du Travail est en voie d'entreprendre. La Conférence a été également unanime à décider que plusieurs autres questions importantes que l'Organisation internationale du Travail considère comme formant une partie essentielle du problème général de la liberté d'association et des relations industrielles seraient inscrites à l'ordre du jour de la session de 1948 de la Conférence internationale du travail pour une première discussion, en vue de l'adoption d'une ou plusieurs conventions à des sessions ultérieures de la Conférence.

7. Ces questions comprennent: *a*) les méthodes détaillées d'application du principe énoncé à l'article 9 de la résolution au sujet de l'exercice du droit d'association contre tous actes d'intimidation, de pression ou de contrainte quelle qu'en soit la provenance; *b*) les conventions collectives; *c*) la conciliation et l'arbitrage; *d*) la collaboration entre les pouvoirs publics et les organisations d'employeurs et de travailleurs.

The action to be taken on these questions, beginning at the 1948 session of the Conference, is to be regarded as the second stage in the treatment of the question.

8. The second resolution adopted by the Conference relates to the question of international machinery for safeguarding freedom of association on the lines of the proposals made by the World Federation of Trade Unions and the American Federation of Labor. These proposals were received with much sympathy, and there was general recognition that this is a matter of the highest importance calling for close and detailed examination. The Governing Body of the International Labour Office has accordingly been asked to arrange to do this and to report on all aspects of the matter to the next session of the International Labour Conference.

9. The Governing Body has decided to be represented at the next session of the Economic and Social Council by a delegation consisting of Mr. David A. Morse, Assistant Secretary of Labor of the United States of America and Representative of the Government of the United States on the Governing Body of the International Labour Office, who was the Chairman of the Committee on Freedom of Association of the thirtieth session of the Conference; Mr. Léon Jouhaux, Workers' Vice-Chairman of the Governing Body of the International Labour Office, who was the Reporter of the Committee on Freedom of Association of the thirtieth session of the Conference; and Mr. H. W. Macdonnell, Employers' Deputy Member of the Governing Body of the International Labour Office. Mr. Jef Rens, Assistant Director-General of the International Labour Office, will represent the Director-General. If Mr. Jouhaux or Mr. Macdonnell should be unable to attend they will be replaced by Mr. Paul Finet, Workers' Member of the Governing Body of the International Labour Office, and Mr. James David Zellerbach, Employers' Vice-Chairman of the Governing Body of the International Labour Office, respectively.

10. I am also enclosing for the information of the Council the speech made by Mr. Léon Jouhaux when presenting the conclusions of the Committee on Freedom of Association to the Conference as Reporter, together with the speech made by the Deputy Reporter, Mr. Louis E. Cornil, Belgian Employers' representative. It will be observed that Mr. Jouhaux suggested in his speech that the decision taken by the International Labour Conference on these questions might be drawn to the attention of the General Assembly of the United Nations by the Economic and Social Council.

11. I should add that it was the general opinion of the Conference that it had made rapid and substantial progress in dealing with the matter in the course of its recent session and that it had mapped out a practicable plan and programme of action which it is confident will result in the adoption of binding international instruments from 1948 onwards.

I have the honour . . .

Edward PHELAN,
Director-General

Les mesures qui seront prises sur ces questions, et qui auront comme point de départ la session de 1948 de la Conférence, doivent être considérées comme la deuxième étape de l'examen de la question.

8. La deuxième résolution adoptée par la Conférence concerne la question de la création d'un organisme international pour la sauvegarde de la liberté d'association, d'après les propositions présentées par la Fédération syndicale mondiale et la Fédération américaine du travail. Ces propositions ont été accueillies avec beaucoup de sympathie et la Conférence a reconnu en général qu'il s'agit d'une question de la plus haute importance, nécessitant un examen attentif et détaillé. Le Conseil d'administration a en conséquence été prié de prendre les dispositions nécessaires à cet effet et à faire rapport sur tous les aspects du problème à la prochaine session de la Conférence internationale du travail.

9. Le Conseil d'administration a décidé de se faire représenter à la prochaine session du Conseil économique et social par une délégation composée comme suit: M. David A. Morse, Sous-Secrétaire d'Etat au Département du travail des Etats-Unis d'Amérique, représentant du Gouvernement des Etats-Unis au Conseil d'administration du Bureau international du Travail et président de la Commission de la liberté d'association à la trentième session de la Conférence; M. Léon Jouhaux, vice-président travailleur du Conseil d'administration du Bureau international du Travail, rapporteur de la Commission de la liberté d'association à la trentième session de la Conférence; M. H. W. MacDonnell, membre adjoint employeur du Conseil d'administration du Bureau international du Travail. M. Jef Rens, sous-directeur général du Bureau international du Travail, représentera le Directeur général. Au cas où M. Jouhaux et M. MacDonnell ne pourraient assister à la réunion, ils seraient remplacés respectivement par M. Paul Finet, membre travailleur du Conseil d'administration du Bureau international du Travail, et M. James David Zellerbach, vice-président employeur du Conseil d'administration du Bureau international du Travail.

10. Je vous adresse également sous ce pli, pour l'information du Conseil, le texte du discours prononcé par M. Léon Jouhaux lorsque, en sa qualité de Rapporteur, il a présenté à la Conférence le rapport de la Commission de la liberté d'association, ainsi que le texte du discours prononcé par le Rapporteur adjoint, M. Louis E. Cornil, délégué des employeurs de Belgique. Il convient de remarquer que M. Jouhaux a suggéré dans son discours que les décisions prises en la matière par la Conférence internationale du travail pourraient être signalées à l'attention de l'Assemblée générale des Nations Unies par le Conseil économique et social.

11. J'ajoute que, d'une manière générale, la Conférence a été d'avis qu'elle avait progressé rapidement et substantiellement dans le traitement de la question au cours de sa récente session et qu'elle avait dressé un plan et un programme d'action réalisables, qui, elle en est sûre, conduiront à l'adoption, à partir de 1948, d'instruments internationaux de caractère obligatoire.

Veuillez agréer . . .

(*Signé*) Edward PHELAN
Directeur général

REPORT

Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947

RESOLUTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE 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 thirtieth session on 19 June 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,

adopts this eleventh day of July of the year one thousand nine hundred and forty-seven, the following Resolution:

RAPPORT

Décisions concernant la liberté d'association adoptées à l'unanimité par la trentième session de la Conférence internationale du travail le 11 juillet 1947

RÉSOLUTION CONCERNANT LA LIBERTÉ SYNDICALE ET LA PROTECTION 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 et s'y étant réunie le 19 juin 1947 en sa trentième session,

Considérant,

Que le préambule de la constitution de l'Organisation internationale du Travail énonce expressément, parmi les moyens susceptibles d'améliorer la condition des travailleurs et d'assurer la paix, "l'affirmation du principe de la liberté syndicale";

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", qu'elle a en outre reconnu 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, entre autres: "la reconnaissance effective du droit de négociation collective et la coopération des employeurs et de la main-d'œuvre pour l'amélioration continue de l'organisation de la production, ainsi que la collaboration des travailleurs et des employeurs à l'élaboration et à l'application de la politique sociale et économique";

Qu'elle a affirmé également que "les principes énoncés dans la présente Déclaration sont pleinement applicables à tous les peuples du monde et que si, dans les modalités de leur application, il doit être dûment tenu compte du degré de développement social et économique de chaque peuple, leur application progressive aux peuples qui sont encore dépendants, aussi bien qu'à ceux qui ont atteint le stade où ils se gouvernent eux-mêmes, intéresse l'ensemble du monde civilisé";

Que le niveau de vie, le fonctionnement normal de l'économie nationale et la stabilité sociale et économique dépendent dans une large mesure d'un système bien organisé des relations industrielles, fondé sur la reconnaissance de la liberté syndicale;

Que, de plus, de nombreux pays ont associé les organisations des employeurs et des travailleurs à l'élaboration et à l'application de la politique économique et sociale;

Que la Conférence internationale du travail, les conférences régionales des Etats d'Amérique membres de l'Organisation internationale du Travail, ainsi que les diverses commissions d'industrie ont, par de nombreuses résolutions, attiré l'attention des Etats membres de l'Organisation internationale du Travail sur la nécessité d'instituer un système approprié de relations industrielles fondé sur la garantie du principe de la liberté syndicale;

Pour ces motifs,

Adopte, ce onzième jour de juillet 1947, la résolution suivante:

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.

I. Liberté syndicale

1. Les employeurs et les travailleurs, sans distinction d'aucune sorte, devraient avoir le droit inviolable de constituer des organisations de leur choix et de s'y affilier sans autorisation préalable.

2. Les organisations d'employeurs et de travailleurs devraient avoir le droit d'élaborer leurs statuts et règlements administratifs, d'organiser leur gestion et leur activité, et de formuler leur programme d'action; il ne devrait y avoir aucune intervention de la part des autorités publiques qui serait de nature à limiter ce droit ou à en entraver l'exercice légal.

3. Les organisations d'employeurs et de travailleurs ne devraient pas être sujettes à dissolution ou à suspension par voie administrative.

4. Les organisations d'employeurs et de travailleurs devraient avoir le droit de constituer des fédérations et des confédérations, ainsi que celui de s'affilier à des organisations internationales d'employeurs et de travailleurs.

5. Les garanties définies par les paragraphes 1, 2 et 3 relatifs à la constitution, au fonctionnement, à la dissolution et à la suspension des organisations des employeurs et des travailleurs devraient s'appliquer aux fédérations et aux confédérations syndicales.

6. L'acquisition de la personnalité juridique par des organisations d'employeurs et de travailleurs ne devrait pas être subordonnée à des conditions de nature à porter atteinte à la liberté syndicale définie ci-dessus.

7. L'acquisition et l'exercice des droits prévus ci-dessus ne devraient pas avoir pour effet d'exempter les organisations d'employeurs et de travailleurs de leurs responsabilités et obligations respectives.

II. Protection du droit d'organisation et de négociation collective

8. Il devrait y avoir accord mutuel entre les employeurs et les travailleurs organisés quant à l'exercice du droit syndical.

9. 1) Lorsqu'une protection pleine et effective n'est pas déjà assurée, des mesures appropriées devraient être prises en vue de garantir:

a) L'exercice du droit syndical contre tous actes d'intimidation, de pression ou de contrainte quelle qu'en soit la provenance, visant à:

i) Subordonner l'emploi du travailleur à la condition qu'il ne s'affilie pas à un syndicat ou se retire d'un syndicat dont il fait partie;

ii) Porter préjudice à un travailleur en raison du fait qu'il est membre, agent ou dirigeant d'un syndicat;

iii) Congédier un travailleur en raison du fait qu'il est membre, agent ou dirigeant d'yn syndicat.

(*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.

LIST OF POINTS TO SERVE AS A BASIS FOR THE ADOPTION OF ONE OR SEVERAL INTERNATIONAL LABOUR CONVENTIONS IN 1948

I. Freedom of association

1. Desirability of drawing up a proposed international convention concerning freedom of association.

2. Need to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

3. (1) 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.

(2) Need to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right.

4. Need to provide that employers' and workers' organisations may not be dissolved or suspended by administrative authority.

5. 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.

6. Need to provide that the guarantees defined in paragraphs 2, 3 and 4 with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

7. Need to provide that 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.

b) L'exercice du droit syndical des organisations de travailleurs de façon à prévenir, de la part de l'employeur ou des organisations d'employeurs ou de leurs agents, tous actes visant notamment à:

i) Favoriser la constitution de syndicats placés sous le contrôle d'employeurs;

ii) Intervenir dans la constitution ou la gestion d'un syndicat ou le soutenir par des moyens financiers ou autrement;

iii) Refuser de faire porter effet aux principes de la reconnaissance des syndicats et des négociations collectives.

2) Il devrait toutefois être entendu qu'une disposition d'une convention collective librement conclue, exigeant l'affiliation à un certain syndicat comme condition préalable à l'emploi ou comme condition de la continuation de l'emploi, n'est pas visée par la présente résolution.

10. Les organes appropriés devraient, si nécessaire, être institués pour assurer la protection de l'exercice du droit syndical défini par l'article 9 ci-dessus.

LISTE DES POINTS DESTINÉS À SERVIR DE BASE À L'ADOPTION D'UNE OU DE PLUSIEURS CONVENTIONS INTERNATIONALES DU TRAVAIL EN 1948

I. Liberté syndicale

1. Opportunité d'élaborer un projet de convention internationale concernant la liberté syndicale.

2. Nécessité de prévoir que les employeurs et les travailleurs, sans discrimination d'aucune sorte, doivent avoir le droit inviolable de constituer des organisations de leur choix et de s'y affilier, sans autorisation préalable.

3. 1) Nécessité de prévoir que les organisations d'employeurs et de travailleurs doivent avoir le droit d'élaborer leurs statuts et règlements administratifs, d'organiser leur gestion et leur activité, et de formuler leur programme d'action;

2) Nécessité de prévoir en outre que les autorités publiques doivent s'abstenir de toute intervention qui serait de nature à limiter ce droit ou à en entraver l'exercice légal.

4. Nécessité de prévoir que les organisations d'employeurs et de travailleurs ne peuvent être dissoutes ou suspendues par voie administrative.

5. Nécessité de reconnaître aux organisations d'employeurs et de travailleurs le droit de constituer des fédérations et des confédérations, ainsi que celui de s'affilier à des organisations internationales d'employeurs et de travailleurs.

6. Nécessité de prévoir que les garanties définies par les paragraphes 2, 3 et 4 relatifs à la constitution, au fonctionnement, à la dissolution et à la suspension des organisations des employeurs et des travailleurs doivent s'appliquer aux fédérations et aux confédérations syndicales.

7. Nécessité de prévoir que l'acquisition de la personnalité juridique par des organisations d'employeurs et de travailleurs ne doit pas être subordonnée à des conditions de nature à porter atteinte à la liberté syndicale définie ci-dessus.

8. Desirability of providing that the acquisition and exercise of the rights as outlined in this part should not exempt employers' and workers' organisations from their full share of responsibilities and obligations.

II. Protection of the right to organise

1. Desirability of drawing up a proposed convention, concerning the protection of the right to organise.

2. Need to provide that where full and effective protection is not already afforded, appropriate measures should be taken to enable guarantees to be provided for the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source.

3. Desirability of making such provision as may be necessary for the establishment of appropriate agencies for the purpose of ensuring the protection of the right of association.

8. Opportunité de prévoir que l'acquisition et l'exercice des droits prévus ci-dessus ne doivent pas avoir pour effet d'exempter les organisations d'employeurs et de travailleurs de leurs responsabilités et obligations respectives.

II. Protection du droit syndical

1. Opportunité d'élaborer un projet de convention sur la protection du droit syndical.

2. Nécessité de prévoir que, si une protection pleine et effective n'est pas déjà assurée, des mesures appropriées doivent être prises en vue de garantir l'exercice du droit syndical contre tous actes d'intimidation, de pression ou de contrainte, quelle qu'en soit la provenance.

3. Opportunité de prendre les mesures qui peuvent être nécessaires en vue de l'institution d'organes appropriés chargés d'assurer le respect du droit syndical.

Resolution concerning the agenda of the 1948 session of the International Labour Conference

The Conference,

Having approved the report of the Committee appointed to consider the seventh item on its agenda,

Decides:

(1) To place on the agenda of its next general session, the question of freedom of association and of the protection of the right to organise with a view to the adoption of one or several conventions at that session, and

(2) To place on the agenda of its next general session, as one item for first discussion: the application of the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration and co-operation between the public authorities and employers' and workers' organisations.

Résolution concernant l'ordre du jour de la session de 1948 de la Conférence internationale du Travail

La Conférence,

Après avoir approuvé le rapport de la commission nommée pour examiner la septième question à l'ordre du jour;

Décide:

1. D'inscrire à l'ordre du jour de sa prochaine session générale la question de la liberté syndicale et de la protection du droit syndical en vue de l'adoption d'une ou de plusieurs conventions à ladite session;

2. D'inscrire à l'ordre du jour de sa prochaine session générale, comme une question en vue d'une première discussion, l'application des principes du droit d'organisation et de négociation, les conventions collectives, la conciliation et l'arbitrage, et la collaboration entre les pouvoirs publics et les organisations professionnelles.

Resolution concerning international machinery for safeguarding freedom of association

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 unversally establish freedom of association both by reminding Governments of all States, whether members of the ILO or not, of their obligations in this respect under the

Résolution concernant un organisme international de sauvegarde de la liberté d'association

La Conférence,

1. Rappelant la mention qui a été faite de la liberté d'association dans la Déclaration de Philadelphie et dans la constitution de l'Organisation internationale du Travail, affirme à nouveau sa foi et son attachement à l'égard du principe de la liberté d'association dans tous les pays, élément essentiel des libertés personnelles sur lesquelles sont fondés la paix, la prospérité et le bonheur;

2. Exprime son appréhension au sujet des renseignements qui lui sont parvenus de plusieurs côtés, indiquant que des conditions préjudiciables à la liberté d'association existeraient dans de nombreux pays;

3. Estime que des mesures devraient être prises pour favoriser, développer et instituer de manière universelle la liberté d'association, d'une part, en attirant l'attention des Gouvernements de tous les Etats, membres ou non de

Constitution of the ILO and/or the Charter of the United Nations, and by other practicable means;

(4) In this connexion has noted with interest the proposals made by the WFTU and the AF 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 inquiry 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 thirty-first session in 1948.

l'OIT, sur les obligations qui découlent pour eux sous ce rapport de la constitution de l'OIT ou de la Charte des Nations Unies, d'autre part, en recourant à tout autre moyen utile;

4. A pris note avec intérêt, à cet égard, des propositions faites par la Fédération américaine du travail en vue de l'institution d'un organisme international de sauvegarde de la liberté d'association, et estime que ces propositions méritent un examen approfondi et attentif;

5. Reconnaît que ces propositions soulèvent des problèmes particulièrement complexes et difficiles, tels que, par exemple:

i) Des questions mettant en cause la souveraineté des Etats;

ii) Le rapport pouvant exister entre un tel organisme et les propositions actuellement examinées par les Nations Unies aux fins de faire porter effet à une déclaration des droits de l'homme et d'instituer un organisme de sauvegarde de l'exercice d'autres libertés fondamentales, notamment la liberté de parole, d'information et de la liberté de réunion pour toutes fins non contraires aux lois;

iii) La composition, le champ d'activité, les pouvoirs (y compris les pouvoirs d'enquête et d'investigation) et la procédure de l'organisme projeté;

iv) L'autorité en vertu de laquelle l'organisme projeté exercerait son action.

6. Considère qu'il est essentiel de vouer à ces questions, qui pourraient entraîner des changements dans les relations mutuelles des Etats, l'examen détaillé et la préparation attentive qu'elles méritent et sans lesquels toute action internationale serait condamnée à l'échec et risquerait de rendre la situation encore plus sérieuse qu'elle ne l'est à présent;

7. Reconnaît, toutefois, que l'établissement, en consultation avec les Nations Unies, d'un organisme international permanent paraît être une condition indispensable pour le respect intégral de la liberté d'association dans le monde entier, et que tout organisme de ce genre devrait, une fois établi, exercer une action sous les garanties offertes par la constitution tripartite de l'Organisation internationale du Travail;

8. En conséquence, invite le Conseil d'administration à examiner la question sous tous ses aspects et à faire rapport à la Conférence lors de sa trente et unième session en 1948.

Speeches delivered before the International Labour Conference on 11 July 1947 by Mr. Léon Jouhaux, Reporter and Mr. Louis E. Cornil, Deputy-Reporter, of the Committee on freedom of association

Mr. Jouhaux, workers' delegate, France; Reporter of the Committee on freedom of association (*Interpretation*): I should like briefly to submit the report on the question of freedom of association and industrial relations. In submitting the report and asking you to accept it

Discours prononcés le 11 juillet 1947 devant la Conférence internationale du travail par M. Léon Jouhaux et par M. Louis E. Cornil, respectivement Rapporteur et Rapporteur adjoint de la Commission de la liberté d'association

M. Jouhaux, délégué des travailleurs, France, Rapporteur de la Commission de la liberté d'association: Je voudrais présenter brièvement le rapport sur la question de la liberté d'association et des relations industrielles. En vous demandant de le voter unanimement, nous

unanimously we are not merely asking the Conference to confirm a principle which has been affirmed repeatedly and which is solemnly inscribed both in Part XIII of the Treaty of Versailles, in the various Declarations which the International Labour Organisation has subsequently made during more than twenty years, and in the Declaration of Philadelphia, a principle moreover which has been implicitly accepted in the Declarations of the United Nations at San Francisco and elsewhere.

If that were all it would be a purely formal matter which would have very little consequence. What is important, however, in the report which is submitted to you is not merely what is contained in the report but what it represents and the spirit which inspired the text that has been adopted.

There can be no doubt that the International Labour Organisation cannot be static. It must follow from day to day the development of human life, because the whole of its activity is based on daily life and is intended to alter the conditions of living. It would be of little use for us to declare that the International Labour Organisation is a democratic body and that it must serve democracy, if we do not mean to declare implicitly that if democracy is the best of the regimes it is because it is a regime which is constantly developing and that the necessities of human life force democracy to adapt itself to new conditions and to give effect to the principles of democracy in legislation which will ensure strict application and unity of interpretation.

The International Labour Organisation must obviously act in the same way. It is true that we must state today—as is mentioned in the report, and the resolutions take account of the fact—that unfortunately, in a certain number of countries the situation calls for criticism and for a demand that obligations should be observed. In a certain number of countries, to put it mildly, there is a certain fanciful interpretation of what freedom of association means. There are countries in which freedom of association is interpreted solely in the light of the political attitude of the country in question. That is not a correct or logical interpretation, nor is it a democratic interpretation. When a freedom has been recognised and is applied, it is no longer subject to any limits or restraints because of political reasons. Provided that that liberty does not interfere with the general interests of the collectivity in which it exists, then freedom of association, must, if I may use a pleonasm, be free.

There can be no doubt that at the present time there are still too many Governments which tend to consider that they should grant freedom of association only very parsimoniously and that when freedom of association seems to become dangerous for certain interests they have the right to stop it abruptly by suspending its application, or what is still more serious by throwing into jail the militant leaders of the workers who stand for that freedom.

That is a standpoint which the International Labour Organisation and the International Labour Conference cannot accept. Consequently,

n'entendons pas demander à la Conférence de faire un acte de confirmation de principes maintes fois affirmés, principes qui se trouvent solennellement inscrits à la fois dans la partie XIII du Traité de Versailles, dans les différentes déclarations que le Bureau international du Travail a eu l'occasion de faire depuis plus de vingt années, dans la Déclaration de Philadelphie et qui, enfin, ont été affirmés aussi — tout au moins implicitement — dans les déclarations des Nations Unies à San-Francisco et ailleurs.

S'il ne s'agissait que d'une affirmation, ce serait un acte purement formel, sans beaucoup de conséquences. Ce qui importe, dans le rapport qui vous est présenté, c'est non seulement ce qui s'y trouve inscrit, mais ce que représente l'esprit qui se dégage des formules adoptées.

Il est bien certain que le Bureau international du Travail ne saurait être une organisation statique et qu'il doit suivre, au jour le jour, le développement de la vie, puisque en réalité toute son activité est basée sur la vie et tend à améliorer, dans le sens d'une plus grande justice, les conditions mêmes de la vie. Il ne servirait à rien de déclarer que le Bureau international du Travail est une organisation démocratique, qu'elle doit servir la démocratie, si nous n'entendions pas déclarer implicitement que, si la démocratie est le meilleur des régimes, c'est parce que c'est un régime en perpétuel devenir, traduisant les nécessités de la vie par plus de mieux-être et de liberté, et les consacrant par des textes de loi qui leur donnent autorité d'application en même temps qu'une unité d'interprétation.

Le Bureau international du Travail, sur le plan international, doit évidemment agir de la même façon. Nous devons déclarer aujourd'hui — le rapport le constate et les résolutions votées en ont tenu compte — qu'il existe encore malheureusement, dans un certain nombre de pays, une situation qui appelle la réprobation, car elle méconnaît les engagements pris. Il y a dans certains pays une interprétation que j'appellerai, pour être respectueux, un peu fantaisiste, de ce que doit être la liberté syndicale. Il est encore des pays où l'on interprète la liberté syndicale à la lumière exclusive des positions politiques que l'on occupe. Ce n'est là, ni une interprétation exacte et logique, ni une interprétation démocratique. Une liberté, lorsqu'elle a été reconnue, lorsqu'elle se trouve appliquée, ne doit subir aucune contrainte en raison d'opinions politiques, pourvu qu'elle ne porte pas atteinte à l'intérêt général de la collectivité dans laquelle elle s'exprime. La liberté syndicale — si j'ose employer ce pléonasme — doit être libre.

Il est bien certain qu'à l'heure actuelle, trop de Gouvernements encore sont enclins à considérer qu'ils ne doivent accorder la liberté syndicale qu'avec parcimonie et qu'ils ont le droit, lorsque cette liberté devient dangereuse pour certains intérêts, d'y mettre fin brusquement, en suspendant son application, ou bien, ce qui est plus grave encore, en incarcérant les militants ouvriers qui parlent en son nom.

Ce n'est pas là une notion que le Bureau international du Travail et la Conférence internationale du travail peuvent accepter. Il

this Organisation must, by a decision of the Conference, point out that certain sanctions must exist to guarantee the enforcement of the liberty which has been granted. The resolutions which are to be voted on must serve as a basis for the institution of an international labour convention because we intend by that means to provide an international guarantee for the enforcement of this freedom.

Moreover, we want it to be clearly understood that the States members of this Organisation are the Governments which asked to become members of the Organisation and which undertake to respect the freedoms which are at the basis of this institution. They must not only apply those freedoms which are laid down in an international convention because of the obligations to which they have become a party but, if you will permit the expression, they must feel themselves obliged to respect them by that international compulsion which will exist for them.

It is essential to make some declaration to this effect when we find that since 1919 there have been several failures to carry out obligations which have been accepted. We have found that freedom of association has not been respected everywhere. We have been obliged to note that the interpretation of the obligations undertaken is sometimes of too political a nature and not sufficiently liberal. While it is necessary for men to be subject to certain restraints, it is also essential for Governments to feel that they are subject to certain restraints. It is for that reason that we decided there should be an international convention and at the same time ask that the possibility of setting up a supervisory body to safeguard the enforcement of that particular convention should be considered.

I should like here to submit an idea to you which some may think rather original or rather daring, but which to me seems to be something that is bound to come in the future. Men's actions must always anticipate the future, and I therefore feel myself bound to submit this idea to you.

The Economic and Social Council transmitted to us the request drawn up by the World Federation of Trade Unions. If was the Economic and Social Council which asked the Office and the Organisation to consider the question and to express an opinion. The question having come before it, the Organisation felt that it was desirable to go further than giving an opinion, and that it could solve the problem, within its competence, not only by doctrine but by legislation. It has indicated that it is prepared to draw up a convention on this question. In referring back the decision of the Conference and the report which you are about to adopt to the Economic and Social Council, the International Labour Organisation has not finished with the question. It will continue to study it next year. But would it not be possible in the meantime for the report and decisions of the Conference to be transmitted also, by the Economic and Social Council, to the Assembly of the United Nations, so that the Assembly can express its opinion on them? If that could be done, we should have

convient donc que le Bureau international du Travail, par une décision de la Conférence, indique que certaines sanctions doivent accompagner les engagements pris. C'est la raison pour laquelle nous avons demandé que les résolutions qui seront votées servent de base à l'établissement d'une convention internationale du travail. Par là, nous entendons apporter la caution internationale et la garantie internationale à l'application de cette liberté.

D'autre part, nous entendons également que les Gouvernements qui adhèrent au Bureau international du Travail et ceux qui demanderont leur adhésion prendront par conséquent l'engagement de respecter les libertés qui sont à la base de l'institution, demain consacrées par des conventions internationales du travail, devront non seulement appliquer ces libertés en raison même des engagements qu'ils auront souscrits mais, permettez-moi cette expression, se sentir obligés d'en respecter le libre exercice par la contrainte internationale qui pèsera sur eux.

Il est indispensable de faire aujourd'hui une déclaration car, depuis 1919, nous avons été obligés de prendre acte des manquements aux engagements pris, obligés de constater que la liberté syndicale n'a pas été respectée partout, obligés de constater que l'interprétation de ces engagements est quelquefois trop politique et insuffisamment libérale. Ainsi donc, s'il est nécessaire pour les hommes de sentir peser sur eux une certaine contrainte, cela est nécessaire pour les Gouvernements. C'est la raison pour laquelle nous avons opiné dans le sens d'une convention internationale et que nous avons demandé en même temps que soit examinée la possibilité de constituer un organe de contrôle en vue de l'application de cette convention.

J'ouvre ici une parenthèse pour vous faire part d'une idée que certains estimeront peut-être originale, que d'autres jugeront peut-être un peu trop osée, mais qui m'apparaît, à moi, comme une préfiguration d'un avenir proche. Et comme l'action des hommes doit toujours anticiper sur l'histoire écrite, je me crois tenu de vous communiquer cette idée.

C'est le Conseil économique et social qui a transmis au Bureau international du Travail la demande formulée par la Fédération syndicale mondiale. C'est le Conseil économique et social qui a demandé au Bureau international du Travail d'examiner cette question et de lui donner un avis. S'étant saisi de cette question, le Bureau international du Travail a estimé qu'il devait aller plus loin qu'un avis et qu'il devait apporter, selon sa compétence même, une solution à la question posée, non seulement de doctrine, mais de droit. Il a indiqué qu'il était prêt à élaborer une convention internationale du travail sur la question. En renvoyant la décision de la Conférence et le rapport que vous allez adopter au Conseil économique et social, le Bureau international du Travail ne se désiste pas de la question, puisqu'il continuera à l'étudier l'année prochaine sous la forme d'une convention. Mais il n'est pas impossible que, dans l'intervalle, le rapport et la décision de la Conférence soient transmis à l'Assemblée générale des Nations Unies et que celle-ci soit

combined action by the International Labour Organisation and by the United Nations, not through any intermediary bodies, but by the sovereign bodies of the two Organisations.

In that way the international convention on freedom of association could be established on principles discussed and accepted by this Conference, and also accepted by the General Assembly of the United Nations. Therefore, quite apart from the incomplete constitution of this Organisation and that of the United Nations, there would be universal obligations accepted by the States which would grant us much greater security than exists at present.

I consider that such a procedure is perfectly possible and that it could be carried out without in any way infringing the independence of this Organisation and the sovereignty of the International Labour Conference. When we speak of co-operation, we must think of establishing a groundwork for such co-operation, and I would point out that co-operation means joint action. We can co-operate fully between this Organisation and the United Nations, and I think the procedure I have suggested should be considered and can be applied. I am all the more of this opinion from the point of view of the future of freedom of association, which already has been laid down in the constitution of certain countries, and which is gradually evolving and being generally applied. This evolution depends on economic factors which are largely a matter for the United Nations.

It is essential that on these points the United Nations should also be invited to co-operate with this Organisation. If that were done we would arrive at a unity of views, and consequently a unity of action, the influence of which would be the best possible guarantee of freedom of association, and would ensure not only the further development of the rights and responsibilities of trade unions and their members, but would be a great step forward towards the establishment of peace.

What we are doing today is merely a beginning. I would not say that we on the workers' side are completely satisfied. There can be no doubt that the wording included in this report falls short of what exists in many of our countries. It is equally certain that in some countries the situation falls short of what is included in the text before you. It cannot, however, be said that the International Labour Conference has repeated the old adage and that the mountain has given birth to a mouse. It has given birth to an incomplete text, which is not entirely in harmony with itself because of the hesitations and reservations, much too timid, that have been expressed within the Committee and because of the fact that we cannot see the distant future. We must remember that in the near future there must be far greater expansion of the ideas to which were are giving expression today.

appelée à émettre son opinion quant au rapport et aux résolutions. S'il pouvait en être ainsi, nous aurions en quelque sorte une conjugaison de l'action du Bureau international du Travail et de celle des Nations Unies, et cela non pas par des organes interposés, mais par les deux assemblées souveraines elles-mêmes.

Il serait acquis, de cette façon, que la convention internationale que nous voterions, l'année prochaine, sur la liberté syndicale repose sur des principes approuvés par la Conférence internationale du travail et par l'Assemblée générale des Nations Unies. Il y aurait ainsi internationalement, en dehors du caractère universel incomplet de notre organisation et de celle des Nations Unies, des engagements qui donneraient à la convention une autorité beaucoup plus grande et, par cela même, des garanties supplémentaires.

Je pense qu'une telle procédure n'est pas exclue et qu'il peut être possible de la réaliser sans attenter à l'indépendance du Bureau international du Travail et à la souveraineté de la Conférence internationale et de celle des Nations Unies. Quand nous parlons de collaboration, il faut bien penser à établir les bases mêmes de cette coopération qui, permettez-moi de le dire, s'établit effectivement et efficacement dans l'action. Pour une action déterminée, nous pouvons, Bureau international du Travail et Nations Unies, collaborer pleinement. Je pense que ce sont là des idées qui doivent être retenues pour être réalisées. D'autant plus qu'en ce qui concerne la liberté syndicale, c'est-à-dire l'action syndicale, l'évolution déjà inscrite dans la constitution de certains pays et qui devient de plus en plus générale repose sur des facteurs économiques relevant en grande partie des Nations Unies.

Il est indispensable que, dans ces domaines, Nations Unies et Bureau international du Travail soient appelés à collaborer. S'il en était ainsi, nous arriverions à une unité de but et, par voie de conséquence, à une unité d'action dont l'influence serait prépondérante, à la fois en ce qui concerne la garantie des libertés syndicales et le développement même des droits et des responsabilités nouvelles, dans la gestion économique des organisations syndicales et de leurs membres et — je l'affirme avec non moins de netteté — en ce qui concerne la construction de la paix.

Ce que nous allons faire aujourd'hui n'est qu'un commencement. Certes, je ne dirai pas que ce commencement nous donne, à nous travailleurs, complète satisfaction. Il est certain que les formules qui figurent dans ce rapport sont dépassées de bien loin dans beaucoup de nos pays. Il n'est pas moins certain que, pour un certain nombre de pays, elles sont encore au delà de la situation existante. On peut toutefois déclarer que la Conférence internationale du travail a fait mentir l'adage du poète: la montagne n'a pas accouché d'une souris. Elle a accouché d'un texte qui n'est pas complet, qui ne s'harmonise pas de façon totale, en raison des réticences et des réserves qui ont été exprimées au sein de la Commission et qui résultent de ce que l'on ne sait pas voir l'avenir à longue échéance, qu'on ne le regarde qu'auprès de soi, dans son ombre même, sans penser que demain doit être fait d'une audace beaucoup plus grande.

Nevertheless the report as it stands gives us a certain satisfaction. It establishes once again the principle of freedom of association, but I think it also adds the idea of a certain sanction to guarantee its application and protect us against those who in the future give a false interpretation to the principles to which they are at present giving their support. I hope in the text of the Convention we may get further progress and that we will get a greater unity of view within this Organisation. If according to the procedure I have suggested we can get agreement by the United Nations to the principles in question, then we will have made a great step forward, and we can look to the future with much more assurance. Might I venture to ask you to have rather bolder ideas than those which have so far guided us?

Freedom of association began to be acquired in the middle of the nineteenth century. Since that time the trade union organisations have struggled to secure respect for their freedom and to obtain its respect by Governments and by employers. That freedom of association now spreads over a wider field and is concerned not only with the defence of the interests of the workers but with the defence of the general interests of the community and the general interest of peace because of the responsibilities it imposes on the trade unions in the part they play in economic life and in the historical development of every country.

We are advancing towards a new world. The new world cannot be born and grow unless freedom of association is the keystone.

Mr. CORNIL, employers' delegate, Belgium; Deputy Reporter of the Committee on freedom of association (*Interpretation*): After the brilliant speech you have just heard, I do not wish to take up too much of your time. As Assistant Reporter, however, I have the privilege of making one or two further comments, and I am too conscious of the importance of our conclusions to wish to give up this privilege.

The problem of freedom of association is absolutely fundamental for this Organisation. It there were not freedom of association, it could not survive. This is proved by the fact that it is those nations which are farthest from respecting such liberty which are not associated with this Organisation, or doubt the value of being members of it.

We need not be surprised, therefore, but should be very gratified, to find that from the outset our Committee was unanimous in recognising the principle of freedom of association.

Unfortunately freedom has no value unless it is opposed to constraint. In order to see it and appreciate its meaning, it must be placed in a frame; in the absence of certain conditions, it vanishes away like the air from a pricked balloon. Our task would be simple if it were merely

Il est certain, cependant, que le rapport, tel qu'il est, nous apporte une certaine satisfaction. Il consacre une fois de plus la liberté syndicale; mais il comporte aussi, je pense, l'idée d'une sanction pour ceux qui considéreraient pouvoir, demain, interpréter, avec autant de fantaisie qu'ils l'ont fait hier, les engagements pris. Le rapport exprime un certain nombre de vues d'avenir qui, j'espère, pourront être insérées dans un texte de convention et donneront ainsi, aux décisions de l'Organisation internationale du Travail, une unité d'action qu'elles ne lui donnent pas à l'heure actuelle. Et si, selon la procédure que j'indique, elles peuvent s'inscrire en accord avec une décision de principe des Nations Unies, nous aurons alors atteint un grand but, réalisé un grand progrès. Oserais-je vous demander, Messieurs, d'avoir pour ce moment, des idées un peu plus audacieuses ?

Je veux encore ajouter un mot. La conquête de la liberté syndicale a commencé depuis le milieu du XIXème siècle. Dès cette époque, les organisations syndicales ouvrières ont lutté pour faire respecter leur liberté, pour l'imposer à leurs Gouvernements, pour obtenir que les employeurs s'inclinent devant l'exercice de cette liberté. Aujourd'hui, cette liberté syndicale s'étend sur un champ plus vaste; elle ne vise plus seulement à la défense des intérêts spécifiquement ouvriers; elle vise à la défense des intérêts généraux des collectivités et de l'intérêt général de la paix, par l'engagement de la responsabilité des organisations syndicales dans la gestion économique nationale et internationale, c'est-à-dire dans la construction de l'histoire.

Nous allons vers un monde nouveau. Le monde nouveau ne peut naître, ne peut se développer sans que la liberté syndicale, dans son sens le plus large, en soit la clef de voûte.

M. CORNIL, délégué des employeurs, Belgique, Rapporteur adjoint de la Commission de la liberté d'association: Je m'en voudrais, après le brillant exposé que vous venez d'entendre, d'abuser de votre patience. Ma qualité de Rapporteur adjoint me confère cependant le privilège de formuler ici encore quelques commentaires, et je suis trop conscient de l'importance des conclusions de nos débats pour songer à renoncer à user de ce privilège.

Le problème de la liberté d'association est absolument fondamental pour l'Organisation internationale du Travail. Sans liberté d'association, l'Organisation internationale du Travail ne pourrait survivre. On en trouve la preuve dans le fait que ce sont précisément les nations les moins respectueuses de cette liberté qui ne font pas partie de notre organisation ou qui mettent le plus en doute l'utilité d'en faire partie.

On peut donc se réjouir, mais nullement s'étonner, en constatant que notre Commission a, dès l'ouverture de ses débats, été unanime à reconnaître le principe de la liberté d'association.

Malheureusement, la liberté n'a de valeur que si on l'oppose à la contrainte. Pour qu'elle soit perceptible, pour qu'elle ait une signification, cette liberté doit être contenue dans un cadre; elle doit s'appuyer sur certains impératifs sans lesquels elle s'évanouirait, tel le gaz d'un ballon

to draw up texts which would guarantee complete freedom of association irrespective of any restraints. It would be simple, but it would be pointless, since the exercise of complete freedom of association can be justified only if there is respect for other equally essential freedoms.

In asking the International Labour Organisation to place this question on the Agenda of the Conference, the Economic and Social Council of the United Nations fully understood that by its composition and the scope of its activities this Organisation was really the most qualified body to deal successfully with such a complex problem. It is therefore for us to define the framework within which freedom of association can be exercised without prejudicing the other essential liberties. In my opinion the best definition of democracy would be to say that it is the form of government which establishes the best balance between individual and collective freedoms.

It is of course possible to have very different opinions as to the relative value of these different freedoms. In this connexion there were differences of views not only between the three groups in the Committee, but between the different countries. These divergences did not reflect any insoluble incompatibility, though they meant that we in some cases had to take what were inevitably compromise decisions. That, however, only means the establishment of that balance which is characteristic of any economic arrangement.

The resolution and the report which you have before you represent an important step forward in clearing the ground, so that we may next year proceed to adopt a convention which will contain the essential principles.

Some of us are, perhaps, unduly dominated by the idea of class struggle or with the desire to protect our traditional privileges. Such a spirit can only interfere with the effectiveness of our work. It is gratifying that there is an increasing body of opinion here which realises that we are all working for a common end and that we can have confidence in each other. Our duty is to reconcile the three different points of view, political, economic and human. it is perfectly possible to reconcile the three and each of us is right in defending what it is our duty to defend, while respecting the just opinions of others.

I should not like to leave this rostrum without paying a tribute to the staff of the Office, which achieved a remarkable feat in letting us have all the necessary documents in a very short space of time. And if we can rejoice in the spirit which reigned in our Committee, that was due, as every one of us will agree, to the exceptional ability of our Chairman, the Hon. David A. Morse.

dont on aurait crevé la paroi. Notre tâche serait simple si elle devait consister à rédiger des textes qui garantissent la liberté d'association intégrale en dehors de toute contrainte. Notre tâche serait simple, dis-je, mais elle serait stérile, car l'exercice du droit de libre association ne peut se justifier que par le respect d'autres libertés tout aussi essentielles.

En demandant à l'Organisation internationale du Travail de mettre cette question à l'ordre du jour de sa Conférence, le Conseil économique et social des Nations Unies a parfaitement compris que, par sa composition, et par le domaine de ses préoccupations, l'Organisation internationale du Travail était vraiment l'organisme le plus qualifié pour mener à bien l'examen d'un problème aussi complexe. Il nous appartient ainsi de définir le cadre dans lequel la liberté d'association peut s'exercer sans compromettre l'équilibre des libertés essentielles. A mes yeux, la meilleure définition de la démocratie consisterait à dire que c'est la forme de gouvernement qui réalise le meilleur équilibre des libertés individuelles et collectives.

On peut évidemment avoir des opinions fort différentes au sujet de la valeur relative de ces différentes libertés. Des divergences assez nettes son apparues à cet égard, non seulement entre nos trois groupes, mais également entre les pays. Loin d'être le reflet d'incompatibilités irrémédiables, ces divergences nous permettront d'arriver à des conclusions qui seront inévitablement des compromis mais qui, par le fait même, assureront cet équilibre qui définit toute saine démocratie.

La résolution et le rapport qui vous sont soumis constituent déjà un pas fort important dans cette voie. Le problème est clairement défini, des jalons sont plantés, le terrain est prêt pour que, dès l'an prochain, une convention internationale puisse déjà concrétiser l'essentiel.

Certains d'entre nous sont cependant encore trop imprégnés par l'esprit de lutte de classe ou par le souci de sauvegarder des privilèges traditionnels. Un tel état d'esprit ne peut qu'entretenir la méfiance et compromettrait, s'il était général, toute l'efficacité de nos travaux. Il est réconfortant de constater que nous sommes de plus en plus nombreux ici à penser que nous poursuivons tous un but commun et que celui-ci peut être approché en pleine confiance réciproque. Notre devoir est de concilier les trois points de vue, politique, économique et humain. Ces points de vue sont parfaitement conciliables et nous pouvons, chacun, défendre celui qu'il nous appartient de défendre, tout en accordant aux autres toute la considération qu'ils méritent.

Je ne veux pas quitter cette tribune sans rendre hommage au personnel du BIT, qui a réalisé un tour de force en nous fournissant dans des délais extrêmement courts tous les documents qui nous étaient nécessaires. Au surplus, si nous pouvons nous réjouir de l'état d'esprit qui a régné dans notre Commission, nous le devons, vous en conviendrez tous, aux qualités exceptionnelles dont a fait preuve notre Président, l'Honorable David A. Morse.

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INTERNATIONAL LABOUR CONFERENCE

THIRTIETH SESSION
GENEVA, 1947

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1948

09616

NINETEENTH SITTING

Friday, 11 July 1947, 9.45 a.m.

President : Mr. Hambro

Report of the Committee on Freedom of Association [1]

Interpretation : The PRESIDENT — The meeting is called to order. The first item on the agenda this morning is the report of the Committee on freedom of association.

Interpretation : Mr. JOUHAUX *(Workers delegate, France ; Reporter of the Committee on freedom of association)* — I should like briefly to submit the report on the question of freedom of association and industrial relations. In asking you to accept it unanimously, we are not merely asking the Conference to confirm a principle which has been affirmed repeatedly and which is solemnly inscribed in Part XIII of the Treaty of Versailles, in the various Declarations which the International Labour Organisation has subsequently made during more than twenty years, and in the Declaration of Philadelphia, a principle moreover which has been more or less implicitly accepted in the Declarations of the United Nations at San Francisco and elsewhere ; if that were all, it would be a purely formal matter which would have very little result. What is important, however, in the report which is submitted to you is not merely what it contains but what is represented by the spirit which emerges from the text that has been adopted.

There can be no doubt that the International Labour Organisation cannot be static. It must follow from day to day the development of human life, because the whole of its activity is based on daily life and is intended to alter the conditions of living. It would be of little use for us to declare that the International Labour Organisation is a democratic body and that it must serve democracy, if we do not mean to declare implicitly that if democracy is the best of the régimes it is because it is a régime which is constantly developing, expressing the necessities of human life in increased welfare and freedom, and giving effect to them in legislation which will ensure strict application and unity of interpretation.

The International Labour Organisation, at the international level, must obviously act in the same way. It is true that we must state today—as is mentioned in the report, and the Resolutions take account of the fact—that unfortunately in a certain number of countries the situation calls for criticism and for a demand that obligations should be observed. In a certain number of countries, to put it mildly, there is a slightly fanciful interpretation of what freedom of association means. There are countries in which freedom of association is interpreted solely in the light of the political attitude of the country in question. That is not a correct or logical interpretation, nor is it a democratic interpretation. When a freedom has been recognised and is applied, it should not be subject to any restraint because of political reasons. Provided that that liberty does not interfere with the general interests of the collectivity in which it exists, then freedom of association must—if I may be redundant—be free.

There can be no doubt that at the present time there are still too many Governments which tend to consider that they should grant freedom of association only very parsimoniously, and that, when freedom of association becomes dangerous

[1] See *Third Part : Appendix X.*

to certain interests, they have the right to stop it abruptly by suspending its application, or, what is still more serious, by throwing into jail the militant leaders of the workers who stand for that freedom.

That is a standpoint which the International Labour Organisation and the International Labour Conference cannot accept. Consequently, this Organisation must, by a decision of the Conference, point out that certain sanctions should exist to guarantee the enforcement of the liberty which has been granted. The Resolutions which are to be voted on must serve as a basis for the institution of an international labour Convention because we intend by that means to provide an international guarantee for the enforcement of this freedom. Moreover, we want it to be clearly understood that the States Members of this Organisation and the Governments which are applying for membership, undertake to respect the freedoms which are at the basis of this institution. They must not only apply those freedoms which are laid down in an international Convention because of the obligations to which they have become a party but, if you will permit the expression, they must feel themselves obliged to respect them by that international compulsion which will weigh upon their consciences.

It is essential to make some declaration to this effect now, when we find that since 1919 there have been several failures to carry out obligations which have been accepted. We have found that freedom of association has not been respected everywhere. We have been obliged to note that the interpretation of the obligations undertaken is sometimes of too political a nature and not sufficiently liberal. While it is necessary for men to be subject to certain restraints, it is also essential for Governments to feel that they are subject to certain restraints. It is for that reason that we decided there should be an international Convention and at the same time ask that the possibility of setting up a supervisory body to safeguard the enforcement of that particular Convention should be considered.

I should like here to submit an idea to you which some may think rather original or rather daring, but which to me seems to be something that is bound to come in the future. Men's actions must always anticipate the future, and I therefore feel myself bound to submit this idea to you.

It was the Economic and Social Council which transmitted to us the request made by the World Federation of Trade Unions. It was the Economic and Social Council which asked the Organisation to consider the question and to express an opinion. The question having come before it, the Organisation felt that it was desirable to go further than giving an opinion, and that it should provide a solution of the question, not only of principle, but by the adoption of a text. It has indicated that it is prepared to draw up a Convention on this question. In referring back to the Economic and Social Council the decision of the Conference and the report which you are about to adopt, the International Labour Organisation has not finished with the question. It will continue to study it next year. But it is not impossible that in the meantime the report and decision of the Conference may be transmitted to the Assembly of the United Nations, which body will be called upon to give its opinion on the report and the Resolutions. If that could be done, we should have combined action by the International Labour Organisation and by the United Nations, not through any intermediary bodies, but by the sovereign bodies of the two Organisations. In that way the international Convention on freedom of association could be established on principles discussed and accepted by this Conference, and also accepted by the General Assembly of the United Nations. Therefore, quite apart from the incomplete universality of this Organisation and of the United Nations, there would be international obligations which would give the Convention much greater authority, and in consequence, additional safeguards.

I consider that such a procedure is perfectly possible and that it could be carried out without in any way infringing the independence of this Organisation and the sovereignty of the International Labour Conference and of the United Nations. When we speak of co-operation, we must think of establishing a groundwork for such co-operation, and I would point out that co-operation means joint action. For a determinate action, full co-operation between this Organisation and the United Nations can be achieved, and I think the procedure I have suggested should be considered and can be applied. I am all the more of this opinion from the point of view of the future of freedom of association, which already has been laid down in the Constitution of certain countries, and which is gradually evolving and being generally applied. This evolution depends on economic factors which are largely a matter for the United Nations. It is essential that on these points the United Nations should also be invited to co-operate with this Organisation. If that were done we should arrive at a unity of aims, and consequently a unity of action, the influence of which would be preponderant in guaranteeing freedom of association, the further development of the rights and responsibilities of trade unions and their members, and in the establishment of peace.

What we are doing today is merely a beginning. I would not say that we, the workers side are completely satisfied. It is certain that the wording included in this

report falls short of what exists in many of our countries. It is equally certain that in some countries the situation falls short of what is included in the text before you. It can not, however, be said that the International Labour Conference has repeated the old adage and that the mountain has given birth to a mouse. It has given birth to an incomplete text, which is not entirely in harmony with itself, because of the hesitations and reservations that were expressed within the Committee which were caused by the fact that we do not know how to see into the distant future, but only see our near surroundings, forgetting the distant future. We must remember that in the near future there must be a far greater and bolder expansion of the ideas to which we are giving expression today.

Nevertheless, the report as it stands gives us a certain satisfaction. It establishes once again the principle of freedom of association, but I think it also adds the idea of a certain penalty for those who in the future may consider themselves free to interpret their obligations as fancifully as they have in the past.

I hope in the text of the Convention we may get further progress and that we will get a greater unity of view within this Organisation. If, according to the procedure I have outlined, we can get agreement by the United Nations to the principles in question, then we shall have taken a great step forward. Might I venture to ask you to have rather bolder ideas than those which have so far guided us ?

Freedom of association began to be acquired in the middle of the nineteenth century. Since that time the trade union organisations have struggled to secure respect for their freedom and to obtain its respect by Governments and by employers. That freedom of association now spreads over a wider field and is concerned not only with the defence of the interests of the workers, but with the defence of the general interests of the community and the general interest of peace, because of the responsibilities it imposes on the trade unions in the part they play in national and international economic life, that is, in the making of history.

We are advancing towards a new world. The new world cannot be born and grow unless freedom of association is its keystone.

Interpretation: Mr. CORNIL *(Employers' delegate, Belgium; Deputy Reporter of the Committee on freedom of association)* — After the brilliant speech you have just heard, I do not wish to take up too much of your time. As Deputy Reporter, however, I have the privilege of making one or two further comments, and I am too conscious of the importance of our conclusions to wish to give up this privilege.

The problem of freedom of association is absolutely fundamental for this Organisation. If there were not freedom of association, it could not survive. This is proved by the fact that it is precisely those nations which are farthest from respecting such liberty which are not associated with this Organisation, or doubt the value of being members of it. We need not be surprised, therefore, but should be gratified, to find that from the outset our Committee was unanimous in recognising the principle of freedom of association.

Unfortunately, freedom has no value unless it is opposed to constraint. In order to see it and appreciate its meaning, it must be placed in a frame ; in the absence of certain conditions, it vanishes away like the air from a pricked balloon. Our task would be simple if it were merely to draw up texts which would guarantee complete freedom of association irrespective of any restraints. It would be simple, but it would be pointless, since the exercise of complete freedom of association can be justified only if there is respect for other equally essential freedoms.

In asking the International Labour Organisation to place this question on the agenda of the Conference, the Economic and Social Council of the United Nations fully understood that by its composition and the scope of its activities this Organisation was really the most qualified body to deal successfully with such a complex problem. It is therefore for us to define the framework within which freedom of association can be exercised without prejudicing the other essential liberties.

In my opinion the best definition of democracy would be to say that it is the form of government which establishes the best balance between individual and collective freedoms. It is of course possible to have very different opinions as to the relative value of these different freedoms. In this connection there were differences of views not only between the three groups in the Committee, but between the different countries. These divergences did not reflect any insoluble incompatibility, though they meant that in some cases we had to take what were inevitably compromise decisions. That, however, only means the establishment of that balance which is characteristic of any healthy democracy.

The Resolution and the report which you have before you represent an important step forward in clearing the ground, so that next year we may proceed to adopt a Convention which will contain the essential principles. Some of us are, however, still unduly dominated by the idea of class struggle or by the desire to protect our traditional privileges. Such a spirit can only interfere with the effectiveness of our work. It is gratifying that there is an increasing body of

opinion here which realises that we are all working for a common end and that we can have confidence in each other. Our duty is to reconcile the three different points of view, political, economic and human. It is perfectly possible to reconcile the three, and each of us is right in defending what it is our duty to defend, while respecting the just opinions of others.

I should not like to leave this rostrum without paying a tribute to the staff of the Office, who achieved a remarkable feat in letting us have all the necessary documents in a very short space of time. And if we can rejoice in the spirit which reigned in our Committee, that was due, as every one of us will agree, to the exceptional ability of our Chairman, the Hon. David A. Morse.

Mr. FUYKSCHOT *(Workers' adviser, Netherlands)* — There are probably but few countries in the world which during the years of the German oppression suffered more from lack of freedom of association than those of the West European Continent. My country, the Netherlands, was one of those countries. The German civil authorities meddled with the trade unions in such a way as to throttle them to death. A specialised office with a big staff under the auspices of the German Labour Front was set up to supervise the trade unions. At the start a number of the trade union officials were dismissed without any further remuneration and during the years of occupation numerous trade union officials were put into jail, shot, and placed in concentration or hostage camps, from which a number never returned. We actually know what it means not to possess freedom from arbitrary arrest, detention, search and seizure.

The initiative of the World Federation of Trade Unions and of the American Federation of Labor, resulting in the Report of the I.L.O. which is now before us, is therefore warmly applauded by the trade unions of my country and by myself. As is generally known, in my country there is a variety of organisations, differing according to religious belief, and as I am a representative of the Protestant Christian Labour movement of the Netherlands, you will doubtless understand that the draft resolution of the American Federation of Labor struck me particularly by its clear and appropriate wording:

" Genuine freedom means the right of association and organisation into various —into differing—educational, religious, economic, political and trade union organisations, without fear of direct or indirect control and compulsion by governmental or any other agencies."

In this spirit I studied the Office Report and the text of the proposed Resolution and I may say that I sincerely hope that the Conference will adopt the report of the Committee. However, the inviolable right to establish and join organisations of our own choosing, and that genuine freedom as described in the draft resolution of the American Federation of Labor, is in my opinion incompatible with the provision contained in paragraph (2) of Article 9 of the proposed text. Whereas the first section of the Resolution, as well as the different points of the second section, give full security to the workers as to their right of choosing their own organisation, paragraph (2) of Article 9 excludes, under the conditions mentioned therein, a number of workers from this right. Under these conditions a minority may be forced into a union not of their own choosing. I do not refer to those workers who even now do not see their duty to join a trade union, but to those who honestly and in full conviction did choose an organisation which, for some reason or other, is not the first to conclude a collective agreement with an employer or with employers in a branch of industry, and who therefore do not receive the benefit of this freedom or organisation.

I know and I regret that I am the only one on the Workers' side in the Committee who has taken this stand. This may not surprise you, as hundreds of thousands of Christian workers in my country and elsewhere have joined a union which, though being in a minority, in their opinion is the only one acceptable for them, as it has been based on Christian principles. It may not surprise you to know that during the German occupation the vindication of this same right to join, establish and promote organisations of our own choosing—wholly and fully—brought us into German camps and prisons.

This year there is no Convention before us to decide upon. I hope this will be the case next year. I reserve the right to return to this matter at that time, as I deem it of the utmost importance for a genuine freedom of organisation.

With this reservation I am in complete accord with the report of the Committee.

Interpretation: Mr. TESSIER *(Workers' adviser, France)* — The Christian trade unionists, who have always held the opinion that freedom of association furnishes the best means of organising occupational relations in an equitable and peaceable way, in particular by collective labour agreements, are happy to see this great idea, the application of which constitutes for workers the exercise of an essential right, receive the guarantee provided by regulation on an international plane.

Nevertheless, we feel it incumbent upon us to affirm our categorical opposition to the clause which figures in paragraph (2) of Article 9 of the proposed Resolution. We feel indeed that this " closed shop "

formula is by its very nature absolutely contrary to freedom of association. It would therefore be utterly contrary to good sense to give it any kind of consecration on the international plane. Our efforts indeed should tend towards facilitating the full and effective achievement of free trade union organisation within the framework of organised occupations.

Mr. JOSHI *(Workers' delegate, India)* — The working classes can achieve their cherished goal only by their organisation, and therefore the right of freedom of association is of fundamental importance to them. If the International Labour Organisation succeeds in establishing this right on a clear and firm basis all over the world, it will have accomplished a great task. Its previous efforts in this direction were not crowned with success, but I hope this time they will succeed.

The practical need for an international regulation on the question of personal freedom of association is felt in varying degrees in different parts of the world. In those countries in which the working classes have secured adequate political influence, as in the United Kingdom, its practical need is not keenly felt, but in those regions where the workers are not sufficiently educated and organised, and where their political influence on the national Governments and national legislatures is weak, the establishment of an international law on the subject is of great practical usefulness.

In some of the national constitutions freedom of association is recognised as a fundamental right, though in some cases it is laid down in a qualified form, as being subject to national laws. I feel that a fundamental right, to be of practical value, should be laid down in unqualified terms. If it is qualified it becomes subject to varying practical usefulness. Even if a fundamental right is laid down in the Constitution in an unqualified form, the courts which are to interpret the Constitution, always see, as in the United States of America, that the right is not abused so as to become a danger to the community. But if a fundamental right is laid down as being subject to national laws, experience has shown that its value depends upon the strength of public opinion.

The Resolution before the Conference defines the principles involved in the practical use of the right of freedom of association, generally speaking, in an agreed form, but I would like to offer a few comments on one vital point. Article 2 in Part I, reads thus—" 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."

Instead of this draft, I would have preferred that proposed by the Office, where there is no reference to " lawful exercise ". I feel that the terms of the Resolution, by unnecessarily laying emphasis on the " lawful " nature of the exercise of the right of freedom of association, has weakened its value to those regions where laws are made without the working classes having sufficient influence on the national Governments and national legislatures, so that the laws which generally affect the right of freedom of association do not always remain within reasonable limits, and consequently the fundamental right itself is endangered. In saying this, I have no desire to suggest that the workers' organisations should be privileged and placed beyond the scope of the national laws, unreasonable though they may be. But I feel that the insertion of the adjective " lawful " in the terms of the Resolution unnecessarily lays one-sided emphasis on the possibility of unlawful exercise of the right of freedom of association by the workers and their organisations, and ignores the possibility of the laws themselves going beyond reasonable limits and thus endangering the practical exercise of the right of freedom of association given by an international regulation.

I maintain that this defect of the Resolution reduces its practical usefulness to the workers in regions where they have not attained adequate political influence on their national Governments, and on their national legislators. In my country, there are several laws which can hinder the exercise of the right of freedom of association. Some of these laws are old, and were passed to restrain the movements for the political freedom of the country but they were also used to restrain the right of freedom of association of the workers. Some of these laws were passed recently, the justification given for their enactment being that they are necessary to deal with what we call communal disturbances. But even these recent laws are wider in their practical application and constitute a hindrance to the exercise of the right of freedom of association.

Under these laws, citizens can be jailed and their movements can be otherwise restricted, without trial. Previous permission can be required for the holding of meetings and processions. Newspapers and public speakers can be restrained, without recourse to judicial courts, from writing and speaking, as a preventive measure. While such laws exist on the statute book of a country, there is at least as much possibility of freedom of association being hindered by public authorities as there is of the workers' organisations making an unlawful use of the right of freedom of association.

I therefore feel that the unnecessary and one-sided emphasis caused in the Resolution by the insertion of the word "lawful" has reduced its practical usefulness and should have been avoided. I hope that when a Convention on the subject of freedom of association is considered in the next session of the Conference, this defect will be removed.

Sir GUILDHAUME MYRDDIN-EVANS *(Government delegate, United Kingdom)* — The Conference will have heard with very great interest the suggestion made by Mr. Jouhaux that our work here should in some way be brought to the notice of the General Assembly of the United Nations, and not merely to the Economic and Social Council. I think—I believe I am right in thinking—that in fact this Organisation, like the other specialised agencies, has direct access to the General Assembly, and that there should be no difficulty in doing what Mr. Jouhaux has suggested. This Organisation has always shown by its words and by its actions the greatest possible desire to co-operate with all other organisations. We have always felt that the greater, the wider and the more universal adherence there is to the principles laid down by this Organisation, the better for the world at large.

I would only add one word of caution ; although we have gone more than half way in our desire to co-operate with all other organisations, it must be remembered that this is still a sovereign body. Until agreements are reached to the contrary, or until the States which are Members of this Organisation take away that sovereignty, the Organisation retains that sovereignty ; and I would only say that the acts and deeds of this Organisation do not require the concurrence of any other organisation whatsoever.

I think that this Organisation has done a fine piece of work in the past three weeks. We have made more progress in that short space of time than I believe would be possible to any other organisation in the world. Do not let us ignore the difficulties. They are many and they are great. But I believe that this Organisation this year has laid the foundations of an edifice of international legislation relating to freedom of association which will be a blessing to mankind.

I would just like to add one word relating to the proposal put forward by the Australian Government for the inclusion of an article in the Convention about freedom of association in non-metropolitan territories. I would repeat that there is no divergence of opinion on the part of anybody in this hall on the desirability of the principle embodied in that proposed addition. The only reason why the Conference, as I understand it, did not feel able to agree to the inclusion of that particular article in the Convention in question was that in its terms as drawn it appeared to some of us to be unworkable and to give rise to all those difficulties and complications which will need much greater study before it will be possible to obtain words which will be proper for inclusion in a Convention. But the fact that the Conference did not feel able to agree to include that particular provision in the Convention in question does lay upon this Organisation an even greater responsibility to do its utmost to find words which will be capable of being put into a Convention and will embody the principle of the freedom of association and the right to organise which Mr. Ward put forward. In these further deliberations which the Organisation must undertake in order to try to find a sound and workable form of words, the United Kingdom Government will make its full contribution.

Mr. M. O'BRIEN *(Workers' adviser, Australia)* — I have listened very attentively to the excellent report that was made by the Reporter of the Committee, and he set out in detail the work that was undertaken by the Committee on freedom of association and industrial relations. From the outset of this Committee's work it was apparent to some of us that attempts were likely to be made to prevent a decision being reached on this particular occasion. The Workers' members of the Committee—to their credit, let me say—were insistent that, once this matter was referred to this body by the Economic and Social Council, some action should be taken to give effect to the questions that had been submitted to that body by the World Federation of Trade Unions.

This question of freedom of association has been the subject of discussion by the I.L.O. for over twenty years. Despite the fact that we have had considerable discussion on it, many countries are still refusing to recognise the rights of the trade unions to organise and to grant them freedom of association. Reports, even at this stage, that were submitted to the Workers' group on this particular Committee indicated to us that the intolerable conditions referred to by the World Federation of Trade Unions and in the report of the Committee still exist in many countries.

Well, the workers believe that, after having taken part and suffered severely in two world wars and in the greatest depression that this world has ever known, the time has arrived now when freedom of association and the right to organise shall become a practicable possibility and not merely a pious decision of this or any other body, because, as we mentioned during the course of our discussion, unless practical decisions are taken by this particular body, the workers of the world will turn elsewhere for assistance

to protect their rights. They have played their part in defeating the greatest menace the world has ever known, in fascism, and, while playing their part, they were promised a new world order. They desire that out of these international conferences shall come a new world order. They will not be satisfied with any patched-up old order. Consequently, those Governments and others who have the responsibility and who accept affiliation with this particular body have got to take note of any progressive decisions that are made, otherwise their affiliation can only be interpreted to mean that they are here to prevent and not to assist in progress.

Affiliation with this or any other body carries certain responsibilities and, in the view of the workers of this particular group of which I have the honour to be Chairman, if the decisions which we have arrived at, and which the Reporters have stated, were not completely satisfactory to us, they are at the present time our minimum requests, and unless we can have our minimum requests granted, then it must be obvious to us that when we place our major requests before this or any other body they will be rejected.

The list of points as set out in the report is most important. They are, as I say, minimum demands. To reach that list of points, many compromise decisions were taken with a view to having this question finalised as far as possible at this particular Session of the Conference, and I understand from the Standing Orders and procedure that in this Session we can only hope to go as far as to adopt the report of the Committee that has been set up.

There has been a tendency during the discussion on this particular matter to try to separate freedom of association and the right to organise. From the workers' point of view, we insist that freedom of association and the right to organise should go together. Freedom of association without the right to organise would be purely negative, and consequently that is why, even in the list of points, reference is made to the right to organise, while certain other questions have been stood over. I want to emphasise that point, because no doubt, at the 1948 Session of the Conference, further—and I suppose much more bitter—discussion will take place on these particular questions. So those who may represent their countries again will have to recognise that from the Workers' point of view we desire both freedom of association and the right to organise.

Should the I.L.O. fail in its obligations—and I have listened particularly, on many occasions, to Sir Guildhaume Myrddin-Evans, of the United Kingdom, referring to its responsibilities—should it fail to accept its responsibilities on this occasion, then no doubt the Economic and Social Council and others will assist those who desire assistance to prevent the attacks which are being made on them.

I want to say also that I was astounded when listening to a discussion here yesterday, at the remarks of the representative of the South African workers. I was astounded to know that even in that country today there is discrimination against members of the working class because of their particular colour. No trade union—I want to emphasise that—in my view can discriminate against any member of the working class, because it is necessary for us to have unity if we intend to make progress. In that respect I want also to emphasise that the workers of the world will object to discrimination against them by anybody on the grounds of sex, colour, race, creed, nationality or political opinion. Any decision by this or any other body that does not recognise these objections by the organised working class of the world will be unacceptable to the workers.

I want to give my impressions, in conclusion, of the working of the I.L.O. I believe that the decisions made by this body are extremely valuable as a propaganda measure against those in authority who refuse to recognise progressive decisions made here. I believe also that, while there are three parties represented at this particular Conference, we are reaching a stage where at least certain people—and I must in fairness name those whom I mean—where the Employers' group is attending this Conference in a block for the purpose of preventing that progress which the workers hope to achieve by international cooperation. Consequently, it will be incumbent on them as well as on Governments to recognise the need for freedom of association and the right to organise. Unless they do that it will be necessary for the Governments in charge in the respective countries to see that they do.

We have always found—or it has been my experience, both personal, and from a long study of literature issued by outstanding members of the working-class movement—that when the workers do progress, as some people believe, too quickly, an immediate attack is made on them, because it is an accepted fact, so far as the world labour movement is recognised, that in some countries and under some systems unemployment or surplus labour is necessary if the continued progress of the workers is to be prevented.

A writer on 30 June 1945 in the financial columns of the *Sydney Morning Herald*, one of the leading journals of Australia, asked this question: Is a depression necessary? And he proceeded to answer that to prevent the continued demands of the workers for improved conditions something was necessary, and some method must be found by which

there would be a surplus army of workers in the various countries. Now, that statement was not made idly—it was made by a paper that has a worldwide circulation and, consequently, the workers of Australia are not unmindful of the threat made there.

In conclusion, therefore, I am going to ask this Plenary Sitting to endorse the minimum demands of the Committee on freedom of association as set out in the report, and to say that those Workers' delegates who attend the 1948 Session of the Conference will be determined, as far as possible, to see that the balance of the questions which have been referred to us are dealt with. And we shall not be looking for words for that purpose, we shall be looking for deeds.

It would be unfair if I were to conclude without paying, on behalf of the Workers' group, a tribute to the excellent work performed by the Chairman of the Committee, the Hon. David Morse, of the United States of America. The Workers' group had complete faith in his impartiality, and valued the assistance which he gave us in bringing about even our minimum demands.

Mr. FRASER *(Workers' adviser, United States of America)* — I want to speak for just a moment about Part II of the proposed Resolution, and to refer in particular to Article 9, up to the end of clause (i), and paragraph (2), in connection with a question which was raised about the inconsistency of paragraph (2).

Article 9 (1) and the succeeding subparagraph and clause read as follows :

" 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 ; ".

In paragraph (2), which has reference to the sub-paragraph and clause I have just read and the following clauses, the statement is made that " 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 employdoes not fall within the terms of this Resolution ".

Someone who spoke from the platform raised the question of inconsistency with respect to the paragraph I have just read. I think there is a confusion of thought about two essential elements in the employer-employee relationship. There is first, the right of freedom of association, and second, the right of freedom of contract, and they are separate and distinct things. I make this statement because of an acquaintance with the laws and practices which are in effect in the United States of America. We first give men the right to associate themselves together and to organise; having accomplished that, we give them the right to bargain collectively for a contract or agreement.

A labour union must be responsible. Unless it is responsible in carrying out its part of the contract it would be of little avail for an employer to negotiate a contract with a labour union. So in connection with this very definite and very necessary responsibility on the part of the labour union, agreements are reached which provide for the union shop, or membership maintenance, or some other very necessary element in the carrying on of a labour union's functions. It costs money to operate a labour union. A labour union is of definite value to an employer, and I think there are many employers in this room—I know there are literally thousands of them in the United States—who would not attempt to operate their plant without some central body through which they can handle these very difficult personnel problems, that is, the labour union.

When we say, or when the Committee said—unfortunately I did not have any part in the discussion, but I have discussed this with the United States member of the Committee—that it should be understood that if there was 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, that does not fall within this Resolution generally—we had this one thought in mind. I think this Conference should give very careful consideration to any discussion which attempts to remove that paragraph from the Resolution. It is of the highest importance that it be left in there because, as I said at the outset, the minute you leave clause (i) and the succeeding clauses without that proviso, you invade the field of collective bargaining and the freedom of contract, and you leave the field of the right of association.

Interpretation: Mr. HAUCK *(Government delegate, France)* — In bringing the support of the French Government to the report which is presented to the Conference by the Committee on freedom of association, I wish, in my turn, to render homage to those whose work has made its success possible, and more particularly to the Chairman of the Com-

mittee, the Hon. David Morse, whose unwearying good humour permitted the work to be successfully concluded; and also to the staff of the I.L.O. who worked under extremely difficult conditions to allow the Committee to reach its decisions.

I wish also to render homage to the Reporters; to the Deputy Reporter, Mr. Cornil, and even more particularly to my friend Léon Jouhaux. It is indeed symbolic that on this question, which was brought before the Economic and Social Council by the World Federation of Trade Unions, and referred by the Council to the International Labour Organisation, it is symbolic, I say, that the Conference should have chosen as Reporter one of the Vice-Presidents of the World Federation of Trade Unions. The I.L.O. wished thus to show that it remains in close contact with trade unionism and that it wishes, as has been said during the debates in this Conference, to establish with this great workers' organisation—which, throughout the world, embraces more than seventy million organised workers—relations of the most close and fraternal kind, inspired by complete confidence.

The French Government, from the very beginning of the discussions in the Committee—and certain delegates reproached us with some bitterness for it—declared that it was in entire agreement with the memorandum and the conclusions of the World Federation of Trade Unions, and it is precisely because the Resolutions which are submitted to you answer the questions brought before us that I wish to express my satisfaction with the results of our discussions.

This satisfaction has many solid bases. First of all, in spite of the fact that the problems set before us were difficult and in spite of the often animated character of the discussions, a spirit of conciliation and of mutual understanding prevailed in the Committee, and was shown by both the Workers' and the Employers' members. The result of this has been that we have proved once more the excellence of the tripartite formula on which the I.L.O is based.

A second reason for my satisfaction—and several speakers have already said this before me—is that for the first time, on a large scale, we are entering into close co-operation with the United Nations, and this is being done through the Resolution which we are going to adopt and the work which we have done. This is the first example of effective collaboration, and I am certain that the whole Conference will subscribe to the wish which was expressed a few minutes ago by Mr. Jouhaux, and supported by Sir Guildhaume Myrddin-Evans, of seeing not only the Economic and Social Council, but the General Assembly of the United Nations itself, taking up the conclusions of our work.

In the third place, I wish to express my satisfaction because the Resolutions which are submitted to you answer, in a comprehensive way, all the questions which were raised by the World Federation of Trade Unions, and the Resolutions as prepared by the Office have been happily supplemented by the Resolution drawn up by the United Kingdom Government to set up international machinery for safeguarding the right of association. Everyone here is aware of the very numerous difficulties and the very complicated problems raised by the establishment of such an organisation, but the Conference, in adopting the British Resolution and in clearly indicating that it is indispensable to create such an agency, will show that it intends to give these Resolutions effective force for use against those who would wish to attack freedom of association.

Finally, I must express my satisfaction because we have the hope of seeing, next year, the basic principles on which we are in agreement in this Conference incorporated in one or in several international Conventions which will constitute the international safeguard and the international guarantee of freedom of association. In this the International Labour Organisation is playing its most proper part. It must adopt Conventions, and more particularly a Convention on freedom of association. By the means which it has and will have at its disposal, thanks to this international agency the creation of which so many of us hope for, it will at last be able to create throughout the world a proper respect for the fundamental rights of workers.

By treating the question which it has taken up this year and which it will continue to study next year, the International Labour Organisation has shown itself to be in contact with the realities of today. Many of us would have preferred that the Committee should have had more time and should have been able to examine, for instance, Part V of the text of the Resolution presented by the Office, which raises the question of industrial relations—a question linked with that of the very structure of the modern world and with all the problems which confront workers' organisations in that modern world. Unfortunately we have not had the time, but I hope that we shall be able to tackle this question next year.

Certainly—Sir Guildhaume Myrddin-Evans was right to say it a few minutes ago—prudence is essential, and we must not draw up texts without due reflection and discussion. None the less, in the period in which we live prudence may be wisdom, but daring is still greater wisdom. Events march faster than men, and if an institution like ours is not in step with the march of events and with the evolution of nations, it risks being left behind

and failing to play a decisive part in the direction of human affairs. It seems to me that this year we have avoided the danger of too great prudence and that we have been wise in being courageous and daring. This is the right path to follow, and I hope that this Organisation, having once shown that it can take this path, will go forward on it in the years to come.

Mr. TAYLOR *(Employers' delegate, Canada)* — The employers, in approaching this very important subject of freedom of association and industrial relations, announced at the very outset that they accepted the principle of freedom of association. At the time we made the announcement, it was quite clear that there were, and perhaps would continue to be, differences of opinion with regard to the application or the definition of freedom of association. That was inevitable, but, as we understand the principle of freedom of association, we accepted it then and we accept it now. It was with that thought that we approached debate in committee, determined to do our full share in seeing to it that something would emerge from the Committee that would point the way for things to come.

The employers have, I think, exercised considerable restraint in debate. They have co-operated. They have not at any time tried to be obstructionists, and they have—and I think it is worth repeating—done their very best to present their point of view. A subject of this character is bound to create differences of opinion. Those differences were evident in committee. The employers—and I am speaking on behalf of the group—felt that we should not undertake too much at one time, that it would be far better to take a portion of the problem and do a good job than to take a larger portion and do a poor job.

It was for those reasons that we felt we ought not to go beyond certain parts in the text which was before us. However, in the course of debate we agreed to go further than we first thought was possible. Out of this has developed a Resolution—or, to be more precise, perhaps—two Resolutions. In some respects these Resolutions go farther than the employers would have liked, and in others they do not go far enough. We are aware of that fact. It is precisely because of that that we made our position clear, that we should not at this point discuss or present for immediate consideration the details which were involved in Article 8 (2) of the Office text and related sections.

The employers take the position—and feel they are justified in taking the position—that the acceptance of the principle of freedom of association should surely not be at the price of individual freedom. Individual freedom and freedom of association as such are equally important. That is the position which we have taken throughout and which we re-affirm here. To be more precise, the question which has been introduced here in this debate by our colleagues from the Workers' group is that of the right not to belong to a trade union. The principle of the " closed shop " and compulsory unionism as such cannot be accepted by the employers, as we understand their application. Yet we have in committee accepted the Resolution in order that a discussion may be brought about at the appropriate time as outlined on those important matters. But we have repeatedly reminded the Committee—and we again remind the Conference—that our acceptance in those circumstances has clearly been without prejudice to the position which we may feel desirable at the appropriate time when the Convention itself is discussed.

We recognise the importance of having a unanimous decision from this Conference, and we do not feel that we wish to reintroduce debate here on those subjects, and so I am urging the Employers' group to accept the Resolution and the report, as you have them before you. However, I did feel it important, as was done in the case of my colleagues in the Workers' group, to make certain statements in order that the records of how we stand and how we stood in committee may be quite clear; but in spite of that we are going to support the Resolution, with that clear understanding.

The PRESIDENT — I will now adjourn the discussion and take the record votes as announced on today's agenda; but before we proceed to the record votes, Mr. Rappard, Government delegate, Switzerland, wishes to make a brief statement.

Ratification by Switzerland of the Constitution of the International Labour Organisation Instrument of Amendment, 1946

Interpretation: Mr. RAPPARD *(Government delegate, Switzerland)* — What I wish to say here is not a protest or a reservation, but good news.

A few days ago Mr. Troclet, the Minister of Labour of Belgium, told us that the Belgian Parliament had ratified the Instrument of Amendment of the Constitution of the International Labour Organisation. I am glad to be able to tell you today that the Swiss Government has also ratified this amendment. It had already been approved by our Parliament in March, but under our democratic Constitution we had to allow a period of three months for any possible protest to be made by public opinion. We call it a referendum. That period of three months has elapsed, no protest has been made, and we are now able to ratify this amendment.

Document No. 150

ILC, 30th Session, 1947, Record of Proceedings, Record vote on Resolution to place on the agenda of the next Session of the Conference: (1) the questions of freedom of association and of the protection of the right to organise, with a view to the adoption of one or several Conventions at that Session, and (2) the questions of the application of the principles of the right to organise and to bargain collectively, of collective agreements, of conciliation and arbitration and of co-operation between the public authorities and employers' and workers' organisations, for first discussion, p. 319

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We would next have been going on to deal with the report of the Committee on freedom of association, which is a unanimous report, but as a good many delegations are on the point of leaving Geneva and so we may have difficulty in finding the necessary quorum this afternoon, I propose, to continue the discussion this afternoon, and, if there is no objection, to take the record vote now on the Resolution concerning:

(1) The placing on the agenda of the next General Session of the Conference of the questions of freedom of association and of the protection of the right to organise with a view to the adoption of one or several Conventions at that session and

(2) The placing on the agenda of the next General Session of the Conference, for first discussion, of the questions of the application of the principles of the right to organise and to bargain collectively, of collective agreements, of conciliation and arbitration, and of co-operation between the public authorities and employers' and workers' organisations.

Record Vote on the Resolution to place on the Agenda of the next Session of the Conference : (1) the Questions of Freedom of Association and of the Protection of the Right to Organise, with a view to the Adoption of one or several Conventions at that Session, and (2) the Questions of the Application of the Principles of the Right to Organise and to Bargain Collectively, of Collective Agreements, of Conciliation and Arbitration, and of Co-operation between the Public Authorities and Employers' and Workers' Organisations, for first Discussion

For (124)

Afghanistan:
Mr. Akram (*G*)

United States:
Mr. Morse (*G*)
Mr. Thomas (*G*)
Mr. Zellerbach (*E*)
Mr. Watt (*W*)

Argentina:
Mr. Grether (*E*)

Australia:
Mr. Ward (*G*)
Mr. Amour (*G*)
Mr. Hawkins (*E*)
Mr. King (*W*)

Austria:
Mr. Hammerl (*G*)
Mr. Hofmann (*G*)
Mr. Roth (*E*)
Mr. Böhm (*W*)

Belgium:
Mr. Troclet (*G*)
Mr. Heyman (*G*)
Mr. Cornil (*E*)
Mr. Finet (*W*)

Bolivia:
Mr. Capriles Rico (*G*)

Brazil:
Mr. Parmigiani (*W*)

Bulgaria:
Mr. Mitovsky (*G*)
Mr. Nikolov (*G*)

Canada:
Mr. Renaud (*G*)
Mr. Hereford (*G*)
Mr. Taylor (*E*)
Mr. Berg (*W*)

Chile:
Mr. Araya (*W*)

China:
Mr. Li (*G*)
Mr. Pao (*G*)
Mr. Chwang (*E*)
Mr. An (*W*)

Colombia:
Mr. Herrera (*G*)

Cuba:
Mr. Sánchez (*G*)
Mr. Pi (*G*)
Mr. Fernández Pla (*E*)

Denmark:
Mr. Bramsnaes (*G*)
Mr. Koch (*G*)
Mr. Oersted (*E*)
Mr. Jensen (*W*)

Dominican Republic:
Mr. Franco (*G*)

Ecuador:
Mr. Gastelú (*G*)

Egypt:
Radi Bey (*G*)
Mr. Boutros (*G*)

Finland:
Mr. Mannio (*G*)
Mr. Järvenpää (*G*)
Mr. Karikoski (*E*)
Mr. Huunonen (*W*)

France:
Mr. Godart (*G*)
Mr. Hauck (*G*)
Mr. Waline (*E*)
Mr. Jouhaux (*W*)

United Kingdom:
Sir Guildhaume Myrddin-Evans (*G*)
Mr. Buckland (*G*)
Sir John Forbes Watson (*E*)
Sir Joseph Hallsworth (*W*)

Greece:
Mr. Raphael (*G*)
Mr. Pavlakis (*G*)
Mr. Tsatsos (*E*)
Mr. Makris (*W*)

Haiti:
Mr. Addor (*G*)

Hungary:
Mr. Tóth (*G*)

Iceland:
Mr. Gudmundsson (*G*)

India:
Mr. Ram (*G*)
Mr. Nanda (*G*)
Mr. Tata (*E*)
Mr. Joshi (*W*)

Iran:
Mr. Naficy (*G*)
Mr. Gheselbach (*W*)

Iraq:
Mr. Jawad (*G*)

Ireland:
Mr. MacWhite (*G*)
Mr. Williams (*G*)
Mr. O'Brien (*E*)
Mr. Hynes (*W*)

Italy:
Mr. Fanfani (*G*)
Mr. Villani (*G*)
Mr. Campanella (*E*)
Mr. Lizzadri (*W*)

Luxembourg:
Mr. Huberty (*G*)
Mr. Krier (*W*)

Mexico:
Mr. Serra Rojas (*G*)
Mr. Martínez Báez (*G*)
Mr. Noriega (*E*)

Netherlands:
Mr. Joekes (*G*)
Fr. Stokman (*G*)
Mr. Fennema (*E*)
Mr. Vermeulen (*W*)

New Zealand:
Mr. Jordan (*G*)
Mr. Bockett (*G*)
Mr. Mountjoy (*E*)
Mr. Herring (*W*)

Norway:
Mr. Frydenberg (*G*)
Miss Aarum (*G*)

Panama:
Mr. Amado (*G*)
Mr. Mora (*G*)
Mr. López Zapata (*W*)

Peru:
Mr. Bielich (*G*)
Mr. Cassinelli (*E*)
Mr. López Aliaga (*W*)

Poland:
Mr. Rusinek (*G*)
Mr. Altman (*G*)
Mr. Saper (*E*)

Portugal:
Mr. Caetano (*G*)
Mr. Veiga (*G*)
Mr. Calheiros Lopes (*E*)

South Africa:
Mr. van der Horst (*G*)
Mr. Hannah (*G*)
Mr. Gemmill (*E*)
Mr. Venter (*W*)

Sweden:
Mr. Björck (*G*)
Mr. Nyström (*G*)
Mr. Kugelberg (*E*)
Mr. Vahlberg (*W*)

Switzerland:
Mr. Rappard (*G*)
Mr. Kaufmann (*G*)
Mr. Kuntschen (*E*)

Turkey:
Mr. Yeniay (*G*)
Mr. Kardam (*G*)
Mr. Ipekman (*E*)
Mr. Birol (*W*)

Uruguay:
Mr. Perotti (*G*)
Mr. Pons (*E*)
Mr. Damonte (*W*)

Venezuela:
Mr. Millán (*E*)
Mr. Pérez Salinas (*W*)

Against (0)

The PRESIDENT — The result of the vote is as follows: for, 124; against, 0; abstentions, 0. The Resolution is therefore adopted.

(The Conference adjourned at 1 p.m.)

Document No. 151

ILC, 30th Session, 1947, Record of Proceedings, Report of the Committee on Freedom of Association, pp. 322–329

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Just think of it. Hundreds of millions of people living on or below a bare subsistence level and without the opportunity of doing anything better for themselves. Tens of thousands of new factories of all kinds waiting to be built and equipped to give them the opportunity of remunerative employment. Tens of thousands of miles of roads and railways waiting to be built to carry the traffic. Millions of houses wanted; millions of homes to be furnished and equipped. What a chance for the Trade and Labour Conference! What a chance for the I.L.O.! What a chance for the big industrial powers of the world to become arsenals of productive machinery, exporting to the ends of the earth not only the machinery and equipment, but the skill and experience of efficient industrial organisation and management instead of—or as well as, if you like—tearing the flesh from the bones of multilateral trade and biting each other in the process.

Are not these the directions in which world prosperity lies, for new countries and for the old, each country being encouraged to satisfy its own needs first—agriculturally and industrially—so far as that is possible, and then to draw from the outside world the maximum, not the minimum, of external goods, and to send forth to the world home-made commodities particularly suited to the country's production or the skill of its workpeople. And all the time the I.L.O. writing standards of safety and protection and a code of business and commercial standards of work and living.

I am very happy to be associated with the message which the President proposes to send.

The PRESIDENT — I presume there is no opposition to the proposal to authorise me to send a message to the Conference on Trade and Employment, and I consider that proposal adopted.

(The proposal is adopted.)

Report of the Committee on Freedom of Association *(contd.)*[1]

The PRESIDENT — We will continue the discussion on the report of the Committee on freedom of association.

Mr. NANDA *(Government delegate, India)* — My esteemed friend Mr. Joshi chose this morning to bring into the discussions of the report of the Committee on freedom of association the issue of civil liberty in India, the relevance of which appears to me to be doubtful.

Mr. Joshi reiterated here his opposition to the insertion of the words "lawful exercise" in Article 2 of the Resolution submitted by the Committee. He was the only person in that Committee who could see the appropriateness of his stand in the matter, namely, that the exercise of freedom of association should not be subject to the usual legal limitations on the ground of apprehension that the laws of a country may in certain cases constitute a hindrance to this freedom. His remarks may create an erroneous impression that in India the labour movement is subjected, under the guise of lawful administration, to treatment of a depressing character. I gave an answer in the Committee, and repeat it now, that the peaceful exercise of the workers' right to organise and conduct the business of their organisation is not obstructed by law or in practice in any territory for which the present Government of India is responsible.

Mr. Joshi has mentioned certain old legal provisions that have been cancelled and some new enactments which, according to him, invest the administration with arbitrary powers curbing the freedom of individuals in organisation. He points to the use of these powers as depriving the labour leaders and citizens of their liberty, and suppressing the working class movement in the country. The fact is that there is not a single piece of legislation in the country which is designed or operated for restricting the activities of any labour organisation as such. I may still be questioned as to the many extraordinary legal proceedings which Mr. Joshi has brought to the notice of the Conference. My answer is that not one of them has any reference to labour.

It is the great misfortune of my country that they have had to resort to such powers and to cancel old laws and create some fresh enactments. My country is passing through a most difficult period in its history. In the process men, women and children have perished by hundreds of thousands from want of food. Our position in this respect is still precarious; there are still shortages of food, cloth, building materials, textiles and every commodity the people want. Prices are several times higher than before the war. This is the aftermath of the war. At the same time a violent political transition is in progress. The country is suffering the ravages of communal strife. Assaults, arson, murders in the streets, are taking a heavy toll of life and property from day to day.

What the Governments of India are faced with are not ordinary problems of law and order which can be dealt with in the normal way. They are encountering disorders on the scale of a civil war, which dislocates economic activity and paralyses the life of the community. This is a state of urgency comparable to

[1] See *Third Part: Appendix X.*

a war situation. What must happen in the circumstances in any country, even with the highest democratic tradition, can easily be realised. It explains fully the recourse to exceptional powers which under compulsion become at times unavoidable, but protect life and property. This emergency legislation will, I am sure, lapse or be done away with as soon as abnormal conditions cease to exist.

The point of the matter is that it would not be reasonable to lay down that the workers and their leaders should be immune from the operation of the laws of the land, framed according to democratic procedures, which are not aimed against the working class, nor would it be reasonable to single them out for exceptional treatment. The use of the words "lawful exercise" in the context in which they appear do not take anything away from the potency of the fundamental right so far as it relates to the workers' or employers' freedom to organise and to conduct their activities fully in keeping with the requirements of freedom of association.

I have a suspicion that in the very grave view which Mr. Joshi has taken of the proposal before the Conference, he was perhaps consciously or unconsciously influenced by certain words which are to be found in the Committee's report, at the end of the discussion on the amendment submitted by the Employers' members of the Committee to Article 1 of the Resolution. Those words are as follows: "After an exchange of views between the different groups in the Committee, the Employers' members withdrew their amendment, it being understood that freedom of association—like every other freedom—is bound by national laws, as is envisaged in the Constitution of the International Labour Organisation, which in Article 41, clause 2, cites among principles of special and urgent importance: 'the right of association for all lawful purposes by the employed as well as by the employers'".

I would add in conclusion that the labour policy and legislation in India are actually in full accord with the requirements of the proposals embodied in the Committee's report. I can give this assurance to the Conference, that India will not lag behind any country in the world in extending the fullest measure of protection to the workers in the exercise of their right of freedom of association.

Interpretation: Mr. RAPPARD *(Government delegate, Switzerland)* — I should like first of all, on behalf of a country which has not taken a large part in the discussions in the Committee, to express our very great gratitude to the Chairman of the Committee and to Sir Guildhaume Myrddin-Evans, who was the moving spirit and also the moderating spirit of our meetings.

All members of a Committee should be grateful for an impartial Chairman and for a wise and conscientious fellow member. A small country has, to some extent, to bow to the views of the larger countries, and we are very grateful to those important countries for the attitude that they take. I feel sure that the future historians of this Conference will not fail to pay a just tribute to the very important part played by the wisdom, impartiality and patience of Mr. Morse and to the ingenious spirit and moderation of Sir Guildhaume Myrddin-Evans. I would say in passing that it was the representatives of those two countries, the United States and the United Kingdom, and of the Netherlands to which the International Labour Organisation owes the opportunity to undertake this study and to draft these Resolutions.

With regard to the substance of this important discussion, I will confine myself to three comments. The Swiss Confederation will celebrate next year the centenary of the Constitution it adopted in 1848. It is the Constitution which still governs us, and it contains a provision concerning freedom of association which was included ninety-nine years ago. It says that citizens have the right to form associations provided that the purpose of those associations and the means that they employ involve nothing illegal or dangerous for the State.

Switzerland is much attached to freedom of association, just as it is to its other public liberties—freedom of speech, freedom of the Press, freedom of voting and freedom of asserting all the fundamental rights of humanity. It is indeed too much attached to freedom to permit any restriction to be imposed on any minority, whether occupational, religious, or political. That is why Switzerland—I can say this right at the outset—can never accept an international Convention the provisions of which would exclude freedom of minorities.

I was very much surprised to learn that the American Federation of Labor was a champion of the "closed shop", because at the beginning of the memorandum which it communicated to our Organisation it said that every human being has the right to carry on his activity in freedom and in dignity. Should we be respecting that freedom and dignity for the worker if we face him with the alternative of joining an association contrary to his convictions, or plunging his family into poverty? That is really the dilemma which too often results from the system of the "closed shop". In saying this, I am not speaking merely on behalf of the Government of my country, but on behalf of our whole delegation, and more particularly of the Workers' representatives.

In a recent publication of the *Correspondance syndicale suisse*, I find, under the title of "Closed Shop", the follow-

ing statement : " We must not lose sight of the fact that the establishment of any monopoly means the oppression of a minority. Consequently, trade unions must not attempt to have a monopoly. Where a majority exists the minority must still have freedom of expression, otherwise you have legal dictatorship. From the ideological point of view such a dictatorship may be justified, but it is contrary to the idea of liberty."

This leads me to my second point, which was suggested to me by certain remarks in the Committee, and particularly the statement made to the Committee—and repeated here in the Conference—by the venerable and sympathetic representative of the Indian workers, Mr. Joshi. As the Government representative of India has said, Mr. Joshi seems to be very much afraid of the law. There are two kinds of countries in this world. On the one hand, there are those in which the law is the free expression of the will of the majority. On the other hand, there are those in which the majority are subject to laws imposed either by a minority or by a single tyrant. In countries of the first kind one has a democracy, and under the democratic system the majority can expect the fullest assistance and have nothing to fear from the law. In a liberal democracy any revolt is a revolt against the general interest and is a negation of public liberty.

On the other hand, if you are living under a dictatorship the law does not protect you, and only revolution can serve the cause of liberty. Those who are subject to the law of a minority or of a single tyrant cannot hope to find in an international Convention any protection which is refused to them by national legislation. Do you think that totalitarian Governments would in good faith sign, ratify and apply a Convention by which the international community would have the right to require that they apply within their frontiers the rights which they refuse to their own citizens ? I cannot conceive that that can be expected of regimes which do not apply a democratic system in their own countries. You can hardly expect them to bow to the will of an international community.

My third and last observation is this. Political freedom in our days and in our countries has two classes of enemies ; on the one hand, those who deny it, who violate it, who trample on it, and on the other hand, those who take advantage of it in order to sacrifice the prosperity and even the life of their State.

Political freedom, if I may say so, speaking as a professor of long standing, is one of the most precious flowers, but one of the most delicate flowers, of civilisation. Its hereditary enemy is violence and disorder. It is always chaos and violence which uproot the flower of liberty from the soil of free peoples, and it is only by disorder and violence that dictatorships succeed in depriving peoples of the right to govern themselves.

I am not talking about distant countries, I am talking only of Western Europe, which is our own Continent. If you go back to the origin of the Napoleonic dictatorship, one hundred and fifty years ago, or if you look at Italy at the beginning of the fascist period, or at Germany at the beginning of the nazi period, it was poverty and disorder that enabled ambitious people to get into power and to pose as the saviours of their countries. Too often it is people who claim to be respecting liberty who take advantage of it to lead their peoples astray and to destroy their liberty.

In conclusion, therefore, while I fully appreciate this discussion that we have had on freedom of association, I should like to express the hope that sooner or later we shall have an international Convention on the subject which will be designed not to flatter demagogues or to pave the way for those who want to destroy freedom, but to extend freedom of association throughout the world.

We all applauded this morning when Mr. Jouhaux, a veteran speaker in this Conference, declared that freedom was a condition of peace. I agree entirely with that statement, but we must not give freedom of association a definition which makes it synonymous with tyranny, and the rights which we demand in the name of freedom of association must not be demands which would lead our countries into disorder, chaos and, finally, dictatorship. In order to safeguard freedom of association we must put it under the protection of legislation which is freely accepted by free peoples, for it is only the nations which are truly free which will never become aggressive.

Interpretation : Mr. ALTMAN *(Government delegate, Poland)* — At this time, when the Conference has before it the report of the Committee on freedom of association, after three weeks of discussion in the Committee, I wish to make clear the attitude of my Government. It adheres to the principle of freedom of association, which is guaranteed by our Constitution and was recently re-affirmed in a Declaration of Rights of the citizen adopted by our Parliament last February, rights which are strictly applied in practice. We attach very particular importance to a guarantee, on the international level, of respect of freedom of association, which we consider a basic element of peace and collaboration among the nations of the world.

Two years after the end of the victorious war of the United Nations against fascism, which tried to stifle freedom, and in particular the freedom of association of the working classes, we observe with

anxiety the tendency which is showing itself in certain countries to destroy the bases of trade union legislation. The facts brought out in the memorandum submitted by the World Federation of Trade Unions to the Economic and Social Council, and some of the facts quoted in the appendices to the report of the Credentials Committee of our Conference, show that certain policies which were well known at the time of the fascist regimes continue to be applied in certain parts of the world against the trade union movement. This is all the more to be deplored at a time when in other countries which respect trade union freedom, the trade union movement is growing in extent and importance, and assuming an ever greater role in social and economic affairs.

In my own country, as in many others in Central and Western Europe, the trade unions, which are independent, are taking part to an ever greater extent in the general direction of the national economy and in the control of undertakings. Trade unions exercise a direct influence on the preparation of social legislation, and on its application, and conclude collective agreements, which are often extended to all workers in a given branch of industry. Such activities by the trade unions are having a great and beneficial influence on the reconstruction of my country.

The initiative of the World Federation of Trade Unions in attempting to ensure, at the international level, respect for freedom of association, was and is altogether appropriate and opportune. The decision of the Economic and Social Council to refer this question to the International Labour Organisation, with a view to having it placed on the agenda of the next session of the Conference, and to request the I.L.O. to send a report to the Economic and Social Council for its next meeting, gives the International Labour Organisation an exceptional opportunity to take decisions which will give effect to the principles of its Constitution and of the Declaration of Philadelphia, which recognise freedom of association as a basic condition of continued progress.

The long discussions in the Committee on freedom of association, and the results of these discussions as described in the report which is before us, show that unfortunately the I.L.O. has not taken full advantage of this exceptional opportunity to reinforce its authority with the working masses of the world organised in the World Federation of Trade Unions, which now has seventy million members. Notwithstanding my respect for the members of the Committee, especially its Chairman, Mr. Morse, and its Reporter, Mr. Jouhaux, I must point out that the problem has been side-tracked by using compromise texts and in some cases ambiguous legal terms. This is particularly the case in the elimination, from the list of points which are to come before the Conference in 1948, of those setting out in more detail the provisions of the present Article 9 of the Resolution, which contains principles fundamental to the whole problem of freedom of association.

This solution is not satisfactory to my Government, which, as I pointed out during the discussion in the Committee, supports without any reservation whatsoever the memorandum of the World Federation of Trade Unions. Nevertheless, we shall vote in favour of the adoption of the report of the Committee, expressing the hope that the work to be done later by the International Labour Organisation to establish satisfactory international standards concerning freedom of association will follow more closely the commitments laid down in the Constitution and in the Declaration of Philadelphia.

The Employers' and Workers' delegations of Poland have asked me to inform the Conference that they associate themselves with my declaration.

(Sir John Forbes Watson takes the Chair.)

Interpretation : Mr. FERNÁNDEZ *(Workers' delegate, Cuba)* — The declaration made this morning by Mr. Taylor in the name of the Employers' group is a repetition of the standpoint maintained by the employers all through the discussion in the Committee on freedom of association. If you read the report carefully as submitted by the Committee, you will see that the opposition to Article 8 (2), which was put forward this morning in the form of a reservation, was defeated by a large majority in two successive votes in the Committee.

We workers have done all in our power to ensure that the foundations were laid this year so that next year's session of the Conference can adopt a Convention guaranteeing the principle of freedom of association all over the world. Because we wanted this session of the Conference not to fail, because we wanted it to have real definite results, and because, as the French workers' leader, Mr. Jouhaux, said this morning, we did not want the mountain of this Conference to bring a mouse into the world, we have done all we possibly could so that the report and Resolutions submitted by the Committee should express in the fullest sense the principle of freedom of association.

Although we are not fully satisfied with the report, because it does not cover completely all our aspirations, we accept it as a step forward to the end that freedom of association and collective bargaining —which are inseparably united—may be affirmed as a fundamental right which should be applied and respected in all the countries of the world. So, although

we did not agree with the compromise suggested by Sir Guildhaume Myrddin-Evans, we accepted it so that this session of the Conference shall not fail with regard to freedom of association. We accepted it and believed that the employers would also accept it unreservedly.

The workers of Latin America, where many Constitutions recognise the right of freedom of association, but where we have seen it very often attacked, believe it necessary to arrive as soon as possible at an international Convention giving greater force and effect to this fundamental principle for, without its practical enforcement, we can have no social progress and improvement. This explains the great interest of the workers in Cuba and in Latin America as a whole, and particularly of our continental trade union central organisation, the Confederation of Workers of Latin America, which has been struggling so tirelessly for freedom of association, constantly threatened despite the constitutional laws and the official declarations of representatives of many Governments, which speak of democracy for export but do not practise it inside their own countries.

The I.L.O., as a specialised agency of the United Nations, has received a charge from the Economic and Social Council to submit a report on freedom of association throughout the world. It has now a great opportunity of giving force and practical effect to this principle which appears in the Constitution of the I.L.O. and has been brought to our notice now by the World Federation of Trade Unions.

As a member of the Workers' group, I should like in closing to express my gratitude to Mr. Morse, Chairman of the Committee, to Comrade Jouhaux, the Reporter, and to Mr. O'Brien, the Vice-Chairman of the Committee for the Workers' group, for the way in which they did everything possible to enable the Committee to obtain concrete results.

The seventy million workers represented by the World Federation of Trade Unions legitimately hope that the I.L.O. will not disappoint their expectations and that next year we shall adopt an international Convention affirming and guaranteeing freedom of association throughout the world. Only thus will the I.L.O. show itself to be equal to its duties and responsibilities, and its social work during the twenty-eight years of its existence will not have been sterile or in vain if the general principle affirmed in 1918 can be carried into effect next year.

Interpretation: Mr. ALCOBA *(Workers' delegate, Bolivia)* — The Workers' delegation from Bolivia supports with enthusiasm the proposed Resolution drawn up with such pains by the Committee. Even though it does not completely satisfy the aim which the Committee had set before itself—that of drafting a Convention for adoption next year, the workers believe, nevertheless, that with this Resolution we shall in the near future find a better solution to ensure the freedom of trade union organisation.

In my country, in spite of its industrial backwardness, we have full and unrestricted freedom of association for all intellectual and manual workers without political or other discrimination or interference on the part of the Government.

The coup d'Etat of a group of fascists in 1943 tried to limit this freedom and the Government openly interfered with the trade union organisations and thus repudiated the working class and public opinion generally, for, in addition to restricting trade union liberties, they restricted human liberties, wiping out all forms of freedom of speech and of the Press. The Government organised a typically fascist policy, and exiled or executed democratic people who would not collaborate with its fascist methods of administration. Nevertheless, the heroic people of Bolivia never ceased to fight for its liberty, and, on 21 July 1946, they succeeded in overthrowing the most powerful and ruthless Government of recent times. The greatest merit of this revolution was that it was carried out without arms, without money, without any political direction, although the forces of the Left took the most active part. The total losses on the people's side during the revolution were some 450 dead and 600 wounded ; the President, Villaroel was executed in the public square, together with seven of his most fanatical servants, to satisfy the wrath of the people.

This hard lesson which the Bolivian people had to learn serves, we think, as a warning to all those Governments who wish to practise dictatorship and annul human liberties, particularly the liberties of the workers. Now, after a short-lived provisional Government, the destiny of my country is governed by a real democrat, Dr. Enrique Hertzog. Thus, the people and the working class of Bolivia have recovered their full liberty, and in this atmosphere the trade unions and federations have made a notable recovery. Even though this Conference is discussing questions which are already covered by Bolivian legislation and our Magna Charta, we support the decisions and ask for your approval of them, as we wish all the workers of the world to have the same liberties.

The social legislation enjoyed by workers in my country is of great importance. Bolivia is one of the countries which closely follows the technical decisions of the International Labour Office and is one which most fully carries out its recommendations. We have therefore incorporated in the political Constitution of the State a whole chapter on social

matters, which provides for the right of association and the right to strike, for protection and insurance, for " trade union immunity ", so-called because it guarantees union officials freedom of action during their term of office and prohibits them from being dismissed or interfered with by the authorities.

On the basis of this experience I submitted a paragraph for Part II, Article 8, to the Committee, providing for the same guarantees for union officials in all countries. Unfortunately the draft was not fully understood and was not adopted.

In addition to these basic laws, the workers in my country are protected by subsidiary laws such as those providing compensation for years of service, benefit on compulsory or voluntary retirement, protection for working mothers, with sixty days' holiday with pay, maternity grant, annual bonuses, and the recognition of past service with retroactive effect, which is now being debated in Parliament.

Since the revolution of 21 July the workers have strengthened their organisations. Three national central bodies with some independent unions have a membership of 200,000 workers. The Trade Union Confederation of Bolivian workers, which is the largest and oldest central organisation, and is affiliated to the Federation of Latin-American Workers and to the World Federation of Trade Unions, has now held its third general meeting in the last eight years. Another Congress is already being prepared and it is hoped to bring about the unification of the three central bodies in one single body, so as to work for the most satisfactory conditions for the working classes in Bolivia.

In this modest way my country is moving along the path of social progress, and I may say that it is always one of the first to accept and apply the Conventions and Recommendations of the International Labour Organisation. Seeing that we are so backward in industry, while at the same time possessing vast unexplored and unexploited natural riches, our proletariat is still far too small in numbers. Though Bolivia is a mining country, it has no metal industries. As tin producers, we contribute something like 40 per cent. of the total world consumption. This percentage could be even higher but for the lack of capital, which would be well placed in Bolivia, as we have great agricultural and timber wealth as well as mineral wealth. Industrial initiative would have a great future, and we can say without exaggeration that our country is one of the greatest reserves of wealth for humanity.

I wish to say once more that I am in entire agreement with the proposed Resolution and respectfully ask you to approve it so that the working classes of the world may enjoy, in the near future, the fullest freedom of association without odious discriminations based on race, colour, or political or religious belief.

I wish also to express my appreciation to the Chairman and Workers' Vice-Chairman of the Committee, Mr. Morse and Mr. O'Brien, who understood so well how to guide the work of the Committee and of the Workers' group.

Mr. V. CYRIL PHELAN *(Government adviser, Canada)* — The Canadian Government delegation proposes to vote in support of the report, but feels that its vote should not only be recorded but should be vocal, in the sense that a brief statement of our position in regard to the matter should be made.

The proposal made by our delegation is not only that we should vote for the report, but that in voting for it we should feel that the Committee and the Conference have really accomplished something by the report, and should feel that they are voting for a report which they agree with and strongly support in all particulars.

In Canada we are fortunate in being one of those countries where freedom of all sorts is traditional, and has been for generations. Our battles for freedom were won by our forefathers—perhaps abroad rather than at home—many years ago. One of the benefits today handed down by those earlier peoples is the feeling on the part of Government and on the part of the public that the workers and the employers of Canada, as elsewhere, have every right to organise within the law. And when I add the qualification " within the law " that is subject only to very general limitations as to public order.

The Chairman of the Committee has already been complimented by many speakers on his handling of the work of the Committee, and I wish to associate myself with the words already spoken in regard to Mr. Morse, as also indeed with the kindly and well-deserved references to Sir Guildhaume Myrddin-Evans, whose wisdom and sagacity saved the Committee a great deal of effort and certainly assisted the Chairman of the Committee in producing the report now before us.

We feel that the present report and the work of the Committee represents a very timely and very sound summing up of the attitude of the I.L.O. as previously expressed on the whole matter of freedom of association. At the same time we feel that the groundwork this year has been laid, and well laid, for a Convention next year, and for deliberations and further instruments in later years to modify and clarify the views held by I.L.O. Members in regard to this fundamental subject.

I would like to point out that many speakers have made reference to compromises effected during the course of the deliberations of the Committee. I think those representing Governments on the

Committee were perhaps in a position to gauge fairly well the sentiment in all quarters, and certainly it was my view that the compromises were not as to principle, but rather as to the wording or the expression to be given to those principles. It was heartening to see that there was no fundamental difference within the Committee on the general and over-all question of freedom of association. That, I submit, is as it should be in an I.L.O. gathering. The arguments centred mainly around details and the wording to be used in giving expression to the principles, and more particularly to the details.

I do suggest that with the follow-up work which will have to be carried out by the Governing Body and the Office, with the subsequent consideration to be given to this subject, the I.L.O. should in 1948 and in 1949 be able to effect, in a manner not previously attempted, a setting forth of its views on this fundamental subject, securing the agreement and concurrence of Governments for subsequent domestic legislation which has hitherto not been so easily possible.

The Committee was disturbed, as one of the Resolutions recites, by reports that in several countries at the present time freedom of association may not be receiving the recognition in practice that they feel it should. In some cases it was felt by many of us that laws may pay lip-service to the right to organise, though in practice that right is restricted by administrative prescription. Therefore the I.L.O. should—and does, I am sure—welcome the opportunity it has had this year to accomplish something substantial in opening the way to those nations which do not yet give full and practical recognition to the freedom of association, in the hope that its precept may result in benefit for all citizens.

In Canada, as in many other countries, we have found it necessary in late years to embody in law the right to organise, although previously that right was fairly generally recognised in practice. We have found that embodying this principle in laws, rules and regulations has had a beneficial influence, and certainly gives verbal effect to the widely held—I might say the unanimously held—view of our Governments and our people.

Interpretation: Mr. MOCHAVER *(Workers' adviser, Iran)* — I do not wish to repeat what has been said before, but I feel I must express my thanks to the Chairman of our Committee, and to our comrade Léon Jouhaux, with whom I have had the honour to collaborate for the first time in this Conference.

I should like to come immediately to one important problem. While agreeing entirely, in principle, with the report of the Committee on freedom of association, the Workers' delegation of Iran thinks it necessary to make a few remarks which we consider of fundamental importance.

Mr. Léon Jouhaux, with his unparalleled eloquence, expounded the question of freedom of association in its historical and philosophical aspects. We have heard how the Economic and Social Council, at the request of the World Federation of Trade Unions, decided to refer the question of freedom of association to this Organisation, and at the same time referred part of the question to the Commission on Human Rights. If we try to examine the reasons for this procedure, we must conclude that in the view of the Economic and Social Council the individual liberty of every human being is linked up with his right freely to become a member of any trade union, or to withdraw from it at will. The Economic and Social Council, as far as can be seen, was considering the incorporation of this right in a declaration on human rights.

The text which we are now discussing is not, in my opinion, sufficiently clear to meet the aims of the Economic and Social Council. There is still a certain confusion. We must choose clearly between the different conceptions of liberty, and decide which is the better, and we must state categorically who is the person who is to benefit by this freedom ; is it the individual, or is it the trade union ? If we grant freedom to the individual, then we are remaining faithful to the classic conception of liberty, according to which the individual is free to become a member of, or to withdraw from, an organisation at will ; if, on the other hand, we say that freedom of association is something different, I think we must be perfectly clear on this point, because this may lead us to a sort of trade union monopoly, and a State-controlled or fascist kind of trade union such as was defended ten years ago on this rostrum by the Government delegate of Italy.

We who are true to the classical concept of freedom think that freedom of association is an attribute of the individual, who must, irrespective of race, colour, religion, political or other opinions, be absolutely free to join or not to join a trade union. If the amendment of the Workers' group were accepted, I think that most of these difficulties would be overcome. We must give some definition, and it must be a clear definition, of freedom of association ; and we must fix the limits of that freedom because mere freedom as such might well lead us to anarchy. If liberty were taken to mean that every man could do exactly what he wished, that would result in chaos. Therefore we must define liberty and fix its limits ; but in the proposed Resolution before us, these limits have not been fixed.

Another point which is not without importance is that we are going to

recognise freedom of association for all individuals without distinction as to nationality. The immediate consequence of that principle is that trade unions must have no political bias, because in many countries nationals and foreigners alike are admitted to employment, and consequently all these workers will be free to become members of trade unions. There are in fact trade unions the majority of whose members are nationals, but the remainder are foreigners. In our case, many of our workers are not of Iranian nationality, but come from India or Iraq ; these have formed a trade union. If this trade union adopts a political tone, what happens ? The members of this union have no political rights, any more than a foreign worker in France has the right to vote. How can a union, formed of individuals without political rights, adopt a political tone ? If we are not very careful, I am afraid that, instead of granting freedom of association, we are going to destroy it, because in such cases it will no longer exist.

We desire freedom for the individual, without distinction of race or nationality ; but what happens if a union, composed of individuals without political rights, is granted political rights, can take political action, and has a voice in national politics ? Either the union represents its members, or it does not. In the first case, it can have no political rights. We must take a choice, and take a very definite stand on this question of principle. It would be a good thing if the Conference and the Office took note of this statement and made a clear definition of the fundamental principles on which freedom of association is based, and at the same time determined its limits, as was advocated by Professor Kelsen in his well-known book on democracy.

I should like to add just one word. In our country we have had a rather unfortunate experience. It is a very young country as far as the trade union movement is concerned. In 1942 trade union organisations were established, and very soon adopted the political views of an extremist party. This party, and the unions with it, fell out of favour, because it was in league with the separatist movement in Azerbaidjan. All the workers resigned and formed new trade unions. There is now in Iran a general federation of more than seventy-one unions with no political tone. It is this experience that has led me to make this statement. The workers of Iran do not, of course, claim to point out the way to workers in other countries. I am merely explaining what happened to them over a period of five years.

In conclusion, I would add that the principles to which I have drawn attention here are fundamental and condition the economic peace of the world. We know that economic peace conditions social peace and political peace. Since the beginning of the last world war, economic peace has been profoundly disturbed, and the continuance of disorder adds to the risk of economic and consequently of political disputes, particularly in the East. If we are to establish and maintain peace, the first thing is to re-establish economic order on the basis of complete freedom of association. That is clearly a difficult task, but the risk which humanity is now running justifies the greatest efforts. It is our most ardent wish that the International Labour Organisation should have the honour of showing the world the way which will lead to peace and everlasting democracy.

(The President takes the Chair.)

The PRESIDENT — The report of the Committee on freedom of association, together with the Resolutions contained in the report, will now be put to the vote. The first Resolution concerns freedom of association and protection of the right to organise and to bargain collectively. If there are no objections, I shall consider it adopted.

(The Resolution is adopted.)

The PRESIDENT — A vote will now be taken on the recommended list of points which might form a basis of discussion by the Conference. If there are no objections, I shall consider the list adopted.

(The List of Points is adopted.)

The PRESIDENT — The third Resolution concerns international machinery for safeguarding freedom of association. If there are no objections, I shall consider it adopted, and, together with it, the report as a whole.

(The Resolution and the report as a whole are adopted.)

The PRESIDENT — I wish to express the thanks of the Conference to the Chairman and to the two Reporters of the Committee. Many speakers have already complimented them, but I consider that the thanks of the Conference should be conveyed officially now that we have adopted a report of such great importance.

Closing Speeches

Interpretation: Mr. SERRA ROJAS *(Government delegate, Mexico ; Chairman of the Government group)* — In the name of the Government group it gives me great pleasure to express our pleasure at

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INTERNATIONAL LABOUR CONFERENCE

THIRTIETH SESSION
GENEVA, 1947

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1948

09616

APPENDIX X

Seventh Item on the Agenda : Freedom of Association and Industrial Relations

(1) Text of proposed Resolution concerning Freedom of Association and Industrial Relations, prepared by the International Labour Office.

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 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 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.

(2) List of Points which might Form a Basis for Discussion by the Conference, prepared by the International Labour Office.

DESIRABILITY OF INTERNATIONAL REGULATION AND FORMS OF SUCH REGULATION

1. Desirability of adopting international regulations 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. Desirablity 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 employers 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 establishments 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.

(3) Report of the Committee on Freedom of Association. [1]

The Committee on freedom of association and industrial relations, appointed by the Conference at its Fourth Sitting, on 23 June 1947, was composed of 88 members (44 Government members, 22 Employers' members, 22 Workers' members). The Committee held fifteen sittings.

The Officers of the Committee were appointed as follows :

Chairman: Mr. Morse, Government member, United States of America ;

Vice-Chairmen: Mr. Taylor, Employers' member, Canada, and Mr. O'Brien, Workers' member, Australia.

Reporter : Mr. Jouhaux, Workers' member, France ; *Deputy Reporter:* Mr. Cornil, Employers' member, Belgium.

Representative of the Secretary-General: Mr. Rens, assisted by Mr. Bessling, Mr. Price and Mr. Herz.

Mr. Stanczyk, representing the United Nations, attended the meetings of the Committee.

The *Drafting Committee* of the Committee consisted, in addition to the Officers of the Committee, of Sir Guildhaume Myrddin-Evans, United Kingdom Government member, Mr. Finet, Belgian Workers' member, assisted by Mr. Bravo, Venezuelan Workers' member, and Mr. O'Brien, Irish Employers' member.

The Riddell system of voting was applied, that is to say, each Government member had one vote and each Workers' member and each Employers' member had two votes.

The Conference will remember that it was at the request of the Economic and Social Council of the United Nations that the problem of freedom of association and industrial relations came before the International Labour Organisation. The Economic and Social Council took this decision in accordance with the terms of the Agreement concluded between the United Nations and the International Labour Organisation, which was formally ratified both by the Assembly of the United Nations and by the International Labour Conference.

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

[1] See *Second Part*, pp. 299 and 322.

shall include on their agenda items proposed by the International Labour Organisation".

In view of the fact that this was the first time that the Agreement had become applicable, it is important to recall briefly the circumstances under which the problem of freedom of association was first brought before the Economic and Social Council and then transmitted to the International Labour Organisation.

It was at its Fourth Session (February-March 1947) that the Economic and Social Council of the United Nations had been called upon to consider the question of "guarantees for the exercise and development of trade union rights" which had been placed before it by the World Federation of Trade Unions. The American Federation of Labor, also, had submitted to the Economic and Social Council a memorandum on the same question. These two documents, which the Office took fully into account when preparing the texts which it submitted to the Conference, were set forth in full as an Appendix to the Report prepared by the Office.

It is desirable, however, to recall very shortly the actual circumstances which gave rise to such a procedure on the part of the American Federation of Labor and the World Federation of Trade Unions. The World Federation of Trade Unions itself refers to them in the memorandum which it submitted to the Economic and Social Council. It declares that :

> 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 organisations, the prohibition on occupational organisations against forming any federal occupational or inter-occupational organisations, 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.

Thus, the World Federation of Trade Unions, like the American Federation of Labor, had referred to the Economic and Social Council a concrete problem which required a solution on the international level.

By setting in motion the machinery of international regulation which is appropriate to it—that is to say, by adopting an international labour Convention on freedom of association and industrial relations—the International Labour Organisation is without doubt best able to offer to the workers this safeguard of an international character. In fact, countries which had ratified a Convention on freedom of association could no longer question this right by means of amendments to their internal legislation. An international Convention is well understood as being nothing less than a veritable international treaty binding on all the parties.

The Resolution adopted by the Economic and Social Council reads as follows :

> 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.

Following the communication of this Resolution, the Governing Body of the International Labour Office, 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.

In the short time available to it, the Office prepared a report on the general question of freedom of association and industrial relations.

The first part of the report relates to the history of the problem of freedom of association and industrial relations before the International Labour Organisation. The report begins by recalling that the Constitution of the International Labour Organisation clearly underlines its competence in this matter. Indeed, 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 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".

The Declaration of Philadelphia reaffirms these same principles with particular emphasis. It specifies in its first article, as one of the fundamental principles on which the International Labour Organisation 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 Organ-

isation 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 ".

The report goes on to refer to the action taken in the interval between the two world wars by the International Labour Organisation to secure the international regulation of the right of occupational association. The report notes in this connection that if, in spite of all these efforts, it has not been possible to reach agreement in the period between the two world wars, 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.

The second part of the report contains a survey of legislation and practice with reference to freedom of association, the protection of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations at the level of the undertaking, at the level of the industry and at the national level.

By adopting this broad conception of the problem of association as a whole, the Office intended to call the attention of the Conference to the fact that, by reason of the structural changes which have come about in a number of countries, occupational associations have no longer merely to defend material interests, but have also to assume their share of responsibility in the direction of national economy. And it is this wider conception of the part to be played by the organised movements which has inspired the texts submitted by the Office to the Conference, the scope of which was analysed in the third part of the report.

These texts included not only a proposed Resolution concerning : (1) freedom of association, (2) protection of the right to organise and to bargain collectively, (3) collective agreements, (4) conciliation and arbitration, (5) co-operation between the public authorities and employers' and workers' organisations, but also a List of Points covering the first four heads mentioned above.

I

Questions of Principle considered by the Committee

In the course of the discussions certain questions of principle which are of fundamental importance emerged, on which members of the Committee stated their views. These questions were dealt with in the order below.

1. *Competence of the International Labour Organisation*

When opening the discussion, the Chairman of the Committee indicated to a certain extent the general lines of the discussions which were to be developed by the representatives of the three groups. He began by calling the attention of the members of the Committee to the great responsibility with which they had been charged and to the great opportunity which had been presented to them.

The International Labour Organisation, he declared, was one of the essential parts of the machinery of the United Nations, created after the end of the Second World War for the purpose of ensuring international co-operation in every field. It had been the first specialised agency to enter into relationship with the United Nations for the co-operative attainment of the objectives set forth in the Declaration of Philadelphia, as it had also been the first agency to which the Economic and Social Council had referred a problem for consideration and decision.

The problem of freedom of association and industrial relations was not only within the competence of the International Labour Organisation, but the latter, by reason of its tripartite character, was particularly well fitted to find an appropriate solution for this problem. Indeed, the three parties associated in the work of the International Labour Organisation—Governments, employers and workers—were most particularly concerned in giving a definition to the principles which must form the very basis of their activities, both on the national and on the international levels.

The United Kingdom Government member expressed satisfaction that the question of freedom of association and industrial relations—" a question which was perhaps the most important which the Conference had ever considered "—had been submitted to the International Labour Organisation.

Referring to the circumstances under which this question had been raised, first before the Economic and Social Council, the speaker declared that the whole future of the International Labour Organisation and its relative status with regard to the Economic and Social Council might be seriously affected by them. He emphasised, in this connection, the fact that the International Labour Organisation was the only international agency which, by virtue of its Constitution, was able to draw up international instruments —international labour Conventions— which laid solemn and specific obligations on the States which ratified them, and

in the drawing up of which representatives of employers and workers, together with representatives of Governments, could take an active part and so help to determine international labour law not merely by their speeches, but by their votes.

The speaker addressed an urgent request to the representatives of the different groups not to neglect such a privilege and not to sacrifice the independence and autonomy of the International Labour Organisation in a field which was properly its own. The International Labour Organisation alone, and not some other body, should deal with this question and prove that it was capable of finding an appropriate solution for it.

For his part, the French Workers' member reminded the Committee that the Economic and Social Council, by referring this question to the International Labour Organisation in pursuance of the Agreement concluded between the United Nations and the International Labour Organisation, had itself formally recognised the competence of the International Labour Organisation. The task of the International Labour Organisation, therefore, was to draw up international labour Conventions on the principles contained in the proposed Resolution and the List of Points. If the Committee contented itself with submitting a report to the Economic and Social Council, it would be surrendering jurisdiction on a question which was directly within its competence.

The Economic and Social Council could not adopt Conventions of this kind ; and, even if it attempted to do so, it did not possess the necessary machinery for supervision to ensure the application of such a Convention. On the other hand, the International Labour Organisation, by its very Constitution, did possess such machinery for supervision and was, for that very reason, able to ensure the effective application of international labour Conventions.

Finally, the Canadian Employers' member, speaking on behalf of all the Employers' members of the Committee, declared that the International Labour Organisation was fully competent to deal with the problem of the right of occupational association (to the exclusion of the problem of the general right of association considered as a fundamental right of mankind) and the related problems of labour-management relations.

The Committee recognised that the International Labour Organisation was fully competent to deal with the questions of freedom of association and industrial relations.

The Czechoslovak Government member emphasised the need for full and complete collaboration between the International Labour Organisation and the United Nations.

2. *International Regulation*

The second question of principle on which the Committee had to take a decision was that of determining what effect should be given to the proposals laid before it by the Office.

The Workers' members of the Committee particularly urged the necessity for prompt international regulation, both as regards the problem of freedom of association in the strict sense of the term and as regards industrial relations. They pointed out to the Committee the fact that in several countries there still existed restrictions on freedom of association which could be removed only by international regulation.

They proposed, therefore, that the Committee should not confine itself to the adoption of the proposed Resolution, but should also adopt the List of Points, in order that the 1948 Conference should be able to adopt Conventions and Recommendations on all those questions which appeared to it to be suitable for immediate international regulation.

The position first taken up by the Employers' members was that it was expedient to adopt a Resolution based on the discussion of the Preamble and of Part I of the proposed Resolution, and to place the question of freedom of association on the agenda of the 1948 Conference for a first discussion, with a view to the adoption of a Convention at the following session of the Conference. The other parts of the proposed Resolution might, so far as time permitted, form the subject of a general discussion and report.

The Government members of the United States, France, the United Kingdom, Argentina, Belgium, Colombia, India, etc., all declared themselves to be in favour of the international regulation of the question of freedom of association and of certain aspects of the problem of industrial relations. While a satisfactory solution of the question of industrial relations did not, *ipso facto*, imply industrial peace and social justice, as the Indian Government member declared, the failure to find such a solution, on the other hand, would constitute a permanent threat to economic and social stability.

The United Kingdom Government member thought, for his part, that it was desirable first of all to reach agreement on certain basic principles and then to decide whether those principles should take the form of a Resolution or of a report, or a combination of both.

Finally, it would be necessary to decide whether these principles might be included in the texts of one or several Conventions and, if so, which of those texts might be suitable to be included in a Convention to be adopted next year, and which could more appropriately be considered for Conventions to be adopted in future years.

The Committee reached agreement on a common programme of internationa

regulation the extent of which will be explained in the Conclusions.

3. *International Machinery for Supervising Freedom of Association*

The Government members of France, Poland and Czechoslovakia, declaring themselves to be in complete agreement with the proposal submitted to the Economic and Social Council by the World Federation of Trade Unions, particularly called the attention of the members of the Committee to the suggestion made in the Federation's Resolution, which proposed the establishment of a Committee for Trade Union Rights, with the task of exercising permanent supervision over respect for trade union rights.

The Belgian Government member, while approving this proposal, thought nevertheless that any committee set up to supervise respect for trade union rights should come directly under the International Labour Organisation. On the other hand, the Polish and Czechoslovak Government members expressed the view that such a body would be able to act with greater efficiency if it was attached to the Economic and Social Council.

The United Kingdom Government member pointed out to the Committee the practical difficulties which would be encountered by a committee of this kind by reason of the fact that States, as experience had shown, were hardly inclined to surrender part of their national sovereignty.

In order to give effect to the proposal made by the World Federation of Trade Unions, the Workers' members had proposed the inclusion in the proposed Resolution on freedom of association of a new clause in the following terms :

Adequate permanent international machinery should be set up to safeguard respect for freedom of association.

After a long exchange of views, the Committee unanimously adopted a Resolution submitted by the United Kingdom Government member inviting the Governing Body of the International Labour Office to consider the question of the establishment of international machinery for supervising freedom of association under all its aspects and to report to the Conference at its 31st Session in 1948.

The text of this Resolution is contained in the chapter on Conclusions.

II

Discussion of the Proposed Resolution and List of Points

Proposed Resolution Preamble

The Office text of the Preamble was as follows :

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 :

The Employers' members submitted the three following amendments to the Preamble : (1) to substitute the word " develop " for the word " organise " in the third paragraph ; (2) to substitute the word " developing " for the word " establishing " in the fifth paragraph ; (3) to add the following passage from the Declaration of Philadelphia at the end of the second paragraph :

and 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 ".

The first two amendments were withdrawn.

With regard to the third amendment, the South African Employers' member considered that it was an essential addition to the Resolution, which might otherwise appear to be applicable only to those countries which had reached a fair stage of development in industrial relations. The South African Government member also supported the amendment, since it would enable his Government to apply the principles of the Declaration progress-

ively, that being the only possibility for a country in the unique position of the Union. The United Kingdom Workers' member stated that the Workers' members would not oppose the amendment, but would reserve the right to direct their endeavours to seeing that the text of the Resolution, rather than the Preamble, should be applied.

The amendment, and the Preamble as a whole, as amended, were adopted.

Proposed Resolution. I. Freedom of Association

1. *Right to establish Organisations.*

Paragraph 1 of the proposed Office text reads as follows :

> 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.

This paragraph, which had the object of ensuring freedom of association to all social classes without distinction, was the subject of several amendments relating in particular to : *(a)* the field of application of regulations ; *(b)* the objects of organisations ; and *(c)* the right to join or not to join organisations.

(a) *Field of application of regulations.* The Committee considered on the one hand an amendment submitted by the Workers' members proposing to insert the words " or political opinion " after the word " nationality ", and on the other hand an amendment submitted by the United Kingdom Government member proposing: (1) to delete the words "public or private " ; and (2) to replace the phrase "as to occupation, sex, colour, race, creed or nationality " by the word " whatsoever ".

After an exchange of views, the Committee adopted the proposal of the United Kingdom member. It was clear to the Committee that this proposal, far from limiting the number of persons to whom trade union rights might apply, would, on the contrary, express more adequately the universality of the principle of freedom of association. In order to leave no doubt of the real significance of this article, it was understood that the report of the Committee would stress the fact that according to the terms of Paragraph 1 freedom of association was to be guaranteed not only to employers and workers in private industry, but also to public employees, and without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.

The Mexican Workers' member opposed the adoption of this formula, which he considered was not only contrary to the spirit of the United Nations Charter and of the Declaration of Philadelphia, but was also susceptible of restrictive interpretation on the part of States.

The Indian Government member had submitted an amendment proposing to replace the words " public or private " by the words " private or public except the armed forces and the police ". In his opinion the armed forces and the police could not be included in 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.

Several Government members drew the attention of the Committee to the fact that, in certain countries, the members of the police force and of the public services were organised in the same way as workers in private undertakings ; in other countries their organisations were either forbidden or merely tolerated ; it was also pointed out that in some countries the armed forces have the right to organise.

The French Workers' member warned the Committe against the adoption of a text which did not recognise the principle of trade union organisation in force in the most advanced countries. A restrictive Convention could not serve as a model for less advanced countries. Public employees should enjoy full freedom of association, including members of the police force under municipal authorities not directly under the State.

The amendment was rejected by 1 vote to 57. The Government members of Belgium, Peru, and Portugal, as well as the Employers' members, abstained from voting.

(b) *Objects of organisations.* The Employers' members submitted an amendment proposing to insert between the word " establish " and the word " organisations " the following words : " for purposes of regulating relations between employers and employees and all other purposes not contrary to the general laws".

Several members of the Committee observed that this amendment was unnecessary and dangerous. It was unnecessary because trade unions, in common with other organisations and with ordinary citizens, had to be conducted according to general laws which were imposed on the whole population. The amendment was dangerous because it could enable a Government to declare illegal a trade union object which in itself was perfectly legitimate.

After an exchange of views between the different groups in the Committee, the Employers' members withdrew their amendment, it being understood that freedom of association—like every other freedom—is bound by national laws, as is envisaged in the Constitution of the International Labour Organisation, which in Article 41, clause 2, cites among principles of special and urgent importance :

" the right of association for all lawful purposes by the employed as well as by the employers ".

(c) *Right to join or not to join organisations.* An amendment submitted by the Workers' members to add the words "or join" after the word " establish " was intended to complete paragraph 1 by assuring to employers and workers not only the right to establish organisations but also the right to join the same.

The Employers' members proposed a sub-amendment by which the words " or not to join " were to be added.

After a short discussion the Employers' members' sub-amendment was rejected by 41 votes to 50.

The Workers' members' amendment was adopted without opposition, and the paragraph, as amended, was adopted.

2. *Autonomy of Organisations.*

Paragraph 2 of the Office text read as follows :

> 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 paragraph had the effect of completing the first article by guaranteeing to organisations freedom to organise their activities without fear of State interference.

The Employers' members proposed an amendment by which the word " public " would be replaced by the word " administrative ". In their opinion organisations could not be exempted from intervention by the legislative or judicial authorities, and in consequence it was necessary to limit the protection of trade union autonomy against interference by administrative authorities only.

The Workers' members were opposed to this amendment principally on the basis of the three following points :

(1) It was necessary to protect trade unions against interference by political authority. Under totalitarian régimes, political authority entirely dominated all other types of authority.

(2) The value of a guarantee would be lessened if legislation could authorise a Government to interfere with the activities of trade unions.

(3) The intervention of tribunals, especially by means of injunctions—as was the practice in the United States—would be not less dangerous for trade unions than intervention on the part of administrative authorities.

While admitting complete trade union autonomy, several Government members observed that the State could not abstain from all intervention, if only for the purpose of ensuring that the trade unions carried on their activities within the limits of the law.

In order to make their intentions clearer, the Employers' members proposed a sub-amendment to their first amendment : delete the words " on the part of the public authorities " and add after the words " without interference " the words " except by due process of law ".

The sub-amendment was rejected by 44 votes to 61 and the original amendment by 44 votes to 63.

An amendment submitted by the Cuban Government member proposed adding to the end of Paragraph 2 the words " provided that the effective exercise of such rights shall be subject to compliance with the formalities decreed by law ".

Several Government members stated that in practice organisations had to observe certain rules laid down by legislation such as, for example, provisions concerning the registration or depositing of rules.

The Workers' members, however, considered that the text if thus modified would be susceptible of a wide interpretation by certain Governments which would permit them to control the organisations.

In order, on the one hand, to safeguard respect for the legal position and on the other hand, to ensure full recognition of trade union rights, the United Kingdom Government member proposed to retain the first part of the Office text, but to replace the words " without interference on the part of the public authorities " by the following words :

> 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.

The Peruvian Government member proposed to add to this amendment the following words : " provided that in every case the general provisions of a legal character are fulfilled ".

The Committee rejected this sub-amendment by 39 votes to 54, and adopted with three dissenting votes the amendment proposed by the United Kingdom Government member.

After this vote the Cuban Government member withdrew his amendment. Similarly, the Indian Government member withdrew an amendment which he had submitted proposing to add at the end of Paragraph 2 the words " except to the extent necessary to protect the interests of the members of the organisation ".

Paragraph 2 was adopted, as amended.

3. *Dissolution of Organisations.*

The Office text of Paragraph 3 reads as follows :

> Employers' and workers' organisations should not be liable to be dissolved by administrative authority.

This provision was intended to exclude the possibility of the dissolution of an organisation by administrative authority. It did not cover, on the other hand, the case of dissolution by judicial process.

The Workers' members proposed to add after the word " dissolved " the words " or have their activities suspended ".

The Committee adopted this amendment without discussion, and the paragraph, as amended, was adopted.

4. *Federations and Confederations.*

Paragraph 4 of the Office text read as follows :

> 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.

An amendment presented by the Employers' members, proposing to insert the words " for lawful purposes " was withdrawn under the same conditions as the similar amendment presented under Paragraph 1.

An amendment submitted by the Turkish Government member, indicating the terms under which affiliation of a trade union to an international organisation should be subject to previous governmental authorisation where national legislation provided that this was necessary, was also withdrawn.

The paragraph was adopted without change.

5. *Guarantees relating to Federations and Confederations.*

The Office text of Paragraph 5 was as follows :

> 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.

This paragraph did not give rise to any discussion and was adopted unanimously.

6. *Legal Personality of Organisations.*

Paragraph 6 of the Office text read as follows :

> 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.

The Workers' members asked the Committee to adopt this paragraph in the following form :

> The acquisition or granting of civil and legal personality or of any other rights to employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association.

Following discussion, the Committee adopted the paragraph with the following text :

> 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. *Responsibilities of Organisations.*

The Employers' members proposed that the following new paragraph should be added to the Office text :

> The acquisition and exercise of the rights as outlined in this Part should not exempt the organisations from their full share of responsibilities and obligations.

The Workers' members considered that such a provision was too general and lacked precision. The Committee adopted the new paragraph by 54 votes to 51, and it became Paragraph 7 of the Committee's text.

List of Points : A. Freedom of Association

Immediately after the adoption of Part I of the Resolution concerning freedom of association and industrial relations, the Committee decided to examine the corresponding part of the list of points.

The Committee adopted, unanimously and without discussion, the list of points relating to freedom of association in the text as revised in conformity with the decisions taken by the Committee.

Proposed Resolution. II. Protection of the Right to Organise and to Bargain Collectively.

Part II of the proposed Resolution completes the guarantee of freedom of association.

In its form as presented by the Office, the text included three principal parts : the first was intended to ensure the protection of the right of association by means of mutual agreement between organisations ; the second provided, in the absence of agreement between the organisations concerned, for legal guarantees of the right to organise and to bargain collectively, and the third provided for the establishment of appropriate agencies if necessary for the purpose of ensuring the exercise of the right of association.

The Canadian Government member proposed that the Office text should be replaced by a single paragraph in the following terms :

> As a corollary of the rights of employers and workers to organise, the right of organisations of employers and workers to bargain collectively should be recognised fully, and should be assisted by mutual, as well as governmental, recognition and respect of the exercise of the right of association, and by the elimination of penalties designed to curtail the right of the individual worker, in respect of joining an organisation of his own

choosing ; it being understood, however, that collective agreements entered into freely, specifying membership in a certain trade union as a condition precedent to employment, do not constitute violation of the principles herein set forth.

The author of this amendment explained that the right of collective bargaining which gives substance to the right of association was at present recognised in many countries, but the methods of collective bargaining might give rise to differences of opinion. It was, therefore, not necessary to enter into detail, but to simplify the text of the Resolution.

Several Government members, as well as the Workers' members, opposed this amendment which they considered, in view of its lack of adequate preciseness of detail, could not serve as the basis for a future international Convention.

The amendment was withdrawn.

1. *Mutual Recognition of Organisations.*

Paragraph 7, as proposed by the Office, was as follows :

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.

The French Government member proposed that after the words " of employers and workers " the words " of a representative character " should be inserted.

In order to make this paragraph of general application without any restriction, the United Kingdom Government member proposed that the following text should replace the text of Paragraph 7 :

There should be agreement between organised employers and workers mutually to respect the exercise of the right of association.

The Committee adopted this amendment and the amendment of the French Government member was withdrawn. Paragraph 7 was adopted in the amended text form, and became Paragraph 8 of the Committee's text.

2. *Legal Guarantee of the Right to Organise and to Bargain Collectively.*

Paragraph 8, as proposed by the Office, was as follows :

(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 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.

In order to safeguard, so far as possible, the right to organise and to bargain collectively, the United Kingdom Government member proposed that sub-paragraph (1) of Paragraph 8 should be replaced by the following text :

Where full and effective protection is not already afforded, appropriate measures should be taken to enable guarantees to be provided for—

The Committee adopted this amendment by 101 votes to 0.

The Employers' members proposed that clause *(a)* of sub-paragraph (1) should be replaced by the following text :

the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source with the object of—

The amendment was adopted by 86 votes to 22.

Several amendments submitted by the Turkish Government member on the one hand, and by the Employers' members on the other hand, suggested putting on an equal footing both the guarantee of the right to join and the guarantee of the right to refrain from joining an organisation.

The Turkish Government member, in this connection, proposed to add to Paragraph 8 the following provision :

Each employer and each worker should be free to join or to withdraw from an organisation.

This amendment was rejected by 53 votes to 57.

Following this vote, the Employers' members withdrew the amendments of a similar nature which they had submitted, on the clear understanding that the withdrawal did not prejudice their right to raise the questions involved in these amendments at such a time as a Convention should be under discussion.

The Colombian and Venezuelan Government members proposed that the following new sub-clause (iv) should be inserted :

(iv) to guarantee the stability of employment of the substantive and substitute members of executive committees of trade union organisa-

tions during their statutory period of office, in the sense that they shall not be dismissed on grounds other than those for which there is legal sanction or which are authorised by competent judicial or administrative authorities.

The Employers' members were opposed to this amendment. The Workers' members expressed themselves as satisfied with the protection assured by Paragraph 8 (1) *(a)*, in the form adopted by the Committee.

The amendment was withdrawn.

The Employers' members proposed that clause *(b)* of sub-paragraph (1) should be replaced by the following :

it should be recognised that the exercise of the right of association by workers' organisations precludes any acts on the part of the employer or employers' organisations or their agents with the object of—

After an exchange of views this amendment was withdrawn.

The French Government member proposed that in sub-clause (i) of clause *(b)* the words "of the employer" should be deleted : the words "direct or indirect" should be inserted before the word "domination" : the word "employers" should be substituted for the word "employer".

After a short discussion the French Government member withdrew his amendment on the understanding that the words " the employer " would be replaced in the final text by the word " employers ".

The Employers' members proposed that sub-clause (iii) of clause *(b)* should be deleted. In their opinion such a provision would be better placed in that part of the text relating to collective agreements rather than to freedom of association.

The Workers' members were opposed to this amendment. They considered that the right to associate would become null and void if recognition of trade unions and their right to negotiate did not figure in the text of the Resolution.

Several Government members directed the attention of the Committee to the necessity of guaranteeing the right of negotiation exclusively to representative organisations, but they did not insist on this point in view of the previous decision taken by the Committee on this subject.

On the proposal of the United Kingdom Government member, the Committee adopted the following text in substitution for sub-paragraph (1) *(b)* (iii) of the Office text :

refusing to give practical effect to the principles of trade union recognition and collective bargaining.

The Employers' members withdrew their amendment.

An amendment submitted by the Turkish Government member suggested that sub-paragraph (2) should be deleted. In the opinion of this member, no worker should be obliged to belong to any given trade union in order to obtain or continue in employment. The majority of the Workers' members were opposed to this amendment. They emphasised the necessity of ensuring to trade unions the right to maintain and enter into collective agreements which include such a provision. The view was also expressed that it would be unfair to protect a worker who wished to enjoy all the advantages obtained by the trade unions but who refused to join the union. Some countries possessed legislation providing for compulsory trade union membership and the position would be seriously prejudiced if the amendment were carried.

The Employers' members, in supporting the amendment, urged that this was not a fit subject for discussion at this juncture, nor was it opportune to prejudge what a future Convention might contain. They further stressed the point that the principle involved was one of freedom and the liberty of the individual was directly involved.

The amendment was rejected by 53 votes to 57. On the taking of a record vote, at the request of the Employers' members, the amendment was rejected by 51 votes to 64.

After the rejection of this amendment, an amendment to the same effect, presented by the Employers' members, was declared by the Chairman to be unacceptable.

The United Kingdom Government member proposed that in the same sub-paragraph the word " compulsory " should be deleted. The Australian Workers' member observed that the deletion of this word should not be interpreted to mean that joining a trade union should not necessarily be compulsory.

The amendment was adopted on this understanding.

Paragraph 8, with the amendments, was adopted as a whole, and became Paragraph 9 of the Committee's text.

3. *Establishment of Appropriate Agencies for the Purpose of ensuring the Protection of the Right of Association.*

Paragraph 9 of the Office text read as follows :

Appropriate agencies should be established for the purpose of ensuring the protection of the right of association as defined in Paragraph 8 herein.

The Employers' members proposed the deletion of this paragraph, but withdrew their amendment after the English text had been corrected so that the words " if necessary " were included, after the word " established ", as in the French text.

With this correction Paragraph 9 was adopted, and became Paragraph 10 of the Committee's text.

List of Points : B. Protection of the Right to Organise

The Committee limited itself to inserting in Section B of the list of points the principles included in Paragraphs 7 and 9 of Part II of the Resolution (Paragraphs 8 and 10 of the Committee's text) and the principles of Paragraph 8 (Paragraph 9 of the Committee's text). It considered that Paragraph 8 was incomplete from several points of view, and that later discussions would be necessary. Consequently, the detailed clauses of that paragraph of the Resolution were not suitable for inclusion in a proposed Convention to be discussed by the Conference in 1948.

III

CONCLUSIONS AND DECISIONS OF THE COMMITTEE

The Committee included 44 Government members and thus included representatives of the very great majority of the Governments attending the Conference. It also included 22 Employers' members and 22 Workers' members, as well as a considerable number of substitute members. The Committee was therefore of a truly representative character and its decisions, which are set forth below, are a clear reflection of the opinions of the majority of the Committee.

PROPOSED RESOLUTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

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 mesasures" ; 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"[1] ; 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 day of 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

[1] This paragraph was inserted as the result of an amendment submitted by the South African Employers' member on behalf of the Employers' members of the Committee.

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.

LIST OF POINTS WHICH MIGHT FORM A BASIS OF DISCUSSION BY THE CONFERENCE

The Committee, considering that certain questions were already suitable to form the subject of one or several international Conventions in 1948, adopted the two following lists of points and recommended their adoption by the Conference :

A. Freedom of Association

1. Desirability of drawing up a proposed international Convention concerning freedom of association.

2. Need to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

3. (1) 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.

(2) Need to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right.

4. Need to provide that employers' and workers' organisations may not be dissolved or suspended by administrative authority.

5. 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.

6. Need to provide that the guarantees defined in paragraphs 2, 3 and 4 with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

7. Need to provide that 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.

8. Desirability of providing that the acquisition and exercise of the rights as

outlined in this Part should not exempt employers' and workers' organisations from their full share of responsibilities and obligations.

B. Protection of the Right to Organise

1. Desirability of drawing up a proposed Convention concerning the protection of the right to organise.

2. Need to provide that where full and effective protection is not already afforded appropriate measures should be taken to enable guarantees to be provided for the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source.

3. Desirability of making such provision as may be necessary for the establishment of appropriate agencies for the purpose of ensuring the protection of the right of association.

PROPOSED RESOLUTION CONCERNING THE AGENDA OF THE NEXT SESSION OF THE CONFERENCE

It was agreed that the questions included in the list of points should be placed on the agenda of the Conference of 1948 for the adoption of a Convention under the procedure of a single discussion.

It was recognised, however, that the questions of detail contained in Paragraph 9 of the Committee's text of the Resolution were not appropriate for inclusion in a Convention in 1948 since they would require much fuller consideration and would need to be amplified and extended. It was accordingly decided that they should form the subject of a first discussion in 1948. It was also decided to place the parts concerning collective agreements, conciliation and arbitration and co-operation between the public authorities and employers' and workers' organisations on the agenda of the 1948 Session of the Conference for first discussion.

Consequently, the Committee submits to the Conference the following proposed Resolution :

The Conference,

Having approved the report of the Committee appointed to consider the seventh item on its agenda,

Decides :

(1) to place on the agenda of its next general session, the question of freedom of association and of the protection of the right to organise with a view to the adoption of one or several Conventions at that session, and

(2) to place on the agenda of its next general session, as one item for first discussion : the application of the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations.

PROPOSED RESOLUTION CONCERNING INTERNATIONAL MACHINERY FOR SAFEGUARDING FREEDOM OF ASSOCIATION

The Committee submits the following text for approval by the Conference :

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 International Labour Organisation or not, of their obligations in this respect under the Constitution of the International Labour Organisation 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 World Federation of Trade Unions and the American Federation of Labor 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 safeguarding 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.

The mere enumeration of the decisions taken shows that the Committee has accomplished a considerable amount of work, since the machinery for international regulation has been set in motion with regard to all the questions submitted to it for consideration.

The Committee has afforded once more proof of the excellence of the method of tripartite collaboration which is the essential characteristic of the International Labour Organisation.

Geneva, 9 July 1947.

(Signed) DAVID A. MORSE,
Chairman.
LÉON JOUHAUX,
Reporter,
LOUIS E. CORNIL,
Deputy Reporter.

Document No. 153

ILC, 30th Session, 1947, Resolution concerning the Agenda of the 1948 Session of the International Labour Conference

Resolutions Adopted by the International Labour Conference at its 30th Session

II

Resolution concerning the Agenda of the 1948 Session of the International Labour Conference

(Adopted on 11 July 1947)

The Conference,

Having approved the report of the Committee appointed to consider the seventh item on its agenda,

Decides :

(1) to place on the agenda of its next general session the question of freedom of association and of the protection of the right to organise with a view to the adoption of one or several Conventions at that Session, and

(2) to place on the agenda of its next general session, as one item for first discussion, the application of the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations.

After having adopted the Resolution concerning the agenda of the 1948 Session of the International Labour Conference, the Conference adopted the two following lists of points, which enumerate a number of questions already suitable to serve as a basis for the adoption of one or several international labour Conventions in 1948 :

LISTS OF POINTS TO SERVE AS A BASIS FOR THE ADOPTION OF ONE OR SEVERAL INTERNATIONAL LABOUR CONVENTIONS IN 1948

(Adopted on 11 July 1947)

I. FREEDOM OF ASSOCIATION

1. Desirability of drawing up a proposed international Convention concerning freedom of association.
2. Need to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.
3. (1) 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.
(2) Need to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right.
4. Need to provide that employers' and workers' organisations may not be dissolved or suspended by administrative authority.
5. 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.
6. Need to provide that the guarantees defined in paragraphs 2, 3 and 4 with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.
7. Need to provide that 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.
8. Desirability of providing that the acquisition and exercise of the rights as outlined in this Part should not exempt employers' and workers' organisations from their full share of responsibilities and obligations.

II. Protection of the Right to Organise

1. Desirability of drawing up a proposed Convention concerning the protection of the right to organise.

2. Need to provide that where full and effective protection is not already afforded appropriate measures should be taken to enable guarantees to be provided for the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source.

3. Desirability of making such provision as may be necessary for the establishment of appropriate agencies for the purpose of ensuring the protection of the right of association.

Document No. 154

Economic and Social Council, 5th Session, 1947, Resolution 84 (V) on Trade union rights (freedom of association)

Resolutions

adopted by the

Economic and Social Council

during its Fifth Session from
19 July to 16 August 1947

Résolutions

adoptées par le

Conseil économique et social

pendant sa Cinquième Session du
19 juillet au 16 août 1947

UNITED NATIONS
Lake Success, New York

3. International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children; and

4. International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age;

Considering that in its resolution of 29 March 1947 the Council requested the Secretary-General to resume the study of the 1937 draft convention regarding the exploitation of the prostitution of others, make any necessary amendments in order to bring it up to date and introduce any desirable improvement in view of the changes in the general situation since 1937;

Considering the close connexion between the above-mentioned Agreements and Conventions and the 1937 draft convention, and the desirability of a unification of these instruments;

Requests the Secretary-General to present to the Social Commission at an early session a report on the questions concerning such unification; and

Requests the Social Commission to consider the possibility of such unification and to advise the Economic and Social Council at a future session as to the steps necessary for the implementation thereof.

3. Convention internationale du 30 septembre 1921, pour la répression de la traite des femmes et des enfants;

4. Convention internationale du 11 octobre 1933, pour la répression de la traite des femmes majeures;

Considérant que, dans sa résolution du 29 mars 1947, le Conseil a prié le Secrétaire général de reprendre l'étude du projet de convention de 1937 visant à réprimer le proxénétisme, d'y apporter tous amendements nécessaires pour la mettre à jour et d'y introduire toutes améliorations exigées par l'évolution générale depuis 1937;

Considérant le rapport étroit existant entre les accords et conventions ci-dessus mentionnés et le projet de convention de 1937 et la nécessité d'unifier ces actes;

Invite le Secrétaire général à présenter à la Commission des questions sociales, à une prochaine session, un rapport sur les questions relatives à cette unification;

Prie la Commission des questions sociales d'étudier la possibilité de cette unification et d'informer le Conseil économique et social, lors d'une session ultérieure, des mesures nécessaires pour la réaliser.

84 (V). Trade union rights (freedom of association)

Resolution of 8 August 1947[1]

The Economic and Social Council,

Having received the report transmitted by the International Labour Organisation in pursuance of the Council's request at its fourth session[2] that the memoranda on the subject of trade union rights submitted to the Council by the World Federation of Trade Unions and the American Federation of Labor might be placed on the agenda of the International Labour Organisation at its next session and that a report might be sent for the consideration of the Economic and Social Council at its next session,

Takes note of the report and observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognized competence,

Decides

(*a*) To recognize the principles proclaimed by the International Labour Conference;

(*b*) To request the International Labour Organisation to continue its efforts in order that one or several international conventions may be quickly adopted;

(*c*) To transmit the report to the General Assembly;

Awaits further reports on the subject to be transmitted by the International Labour Organisation and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject

[1] See document E/533.

[2] See *Resolutions adopted by the Economic and Social Council* during its fourth session, page 43.

84 (V). Droits syndicaux (liberté d'association)

Résolution du 8 août 1947[1]

Le Conseil économique et social,

Ayant reçu le rapport transmis par l'Organisation internationale du Travail en réponse à la demande que lui avait faite le Conseil, lors de sa quatrième session[2], d'inscrire à l'ordre du jour de la prochaine session de l'Organisation internationale du Travail, les mémorandums relatifs aux droits syndicaux, présentés au Conseil par la Fédération syndicale mondiale et l'*American Federation of Labor*, et de soumettre un rapport à l'examen du Conseil économique et social, lors de sa prochaine session,

Prend acte du rapport et se déclare satisfait des mesures prises ou envisagées par l'Organisation internationale du Travail dans le domaine où sa compétence est reconnue,

Décide

a) De reconnaître les principes énoncés par la Conférence internationale du Travail;

b) D'inviter l'Organisation internationale du Travail à poursuivre ses efforts afin qu'il soit possible d'adopter rapidement un ou plusieurs accords internationaux;

c) De transmettre le rapport à l'Assemblée générale;

Attend les autres rapports que l'Organisation internationale du Travail doit lui transmettre sur le même sujet, ainsi que le rapport qu'il doit recevoir en temps voulu de la Commission des droits de l'homme en ce qui concerne ceux des

[1] Voir le document E/533.

[2] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa quatrième session, page 43.

which might appropriately form part of the bill or declaration on human rights,

Notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organization,

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation, and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

85 (V). Protection of migrant and immigrant labour

Resolution of 13 August 1947[1]

The Economic and Social Council,

Having taken note of the item regarding the protection of migrant and immigrant labour placed on its agenda at the request of the American Federation of Labor, and the memorandum submitted by the Federation,

Noting also that the International Labour Organisation is now considering the revision of its existing convention and recommendations on migration,

Resolves to transmit this memorandum to the International Labour Organisation as the competent specialized agency concerned and, in view of the urgency of the problem,

Requests the International Labour Organisation actively to pursue its consideration of the subject and to inform the Economic and Social Council as soon as possible of the progress made, and

Calls the attention of the Social and Population Commissions to this memorandum in their consideration of the problems assigned to them by the Council by its resolution on migration of 29 March 1947[2].

86 (V). Narcotic drugs

Resolution of 13 August 1947[3]

The Economic and Social Council,

Having noted the opinion of the Commission on Narcotic Drugs, expressed in a resolution adopted during its second session on 1 August 1947[4], that it is urgent to take steps to limit the manufacture and regulate the distribution of new synthetic drugs capable of producing addiction, which cannot at present be brought under effect-

[1] See document E/546.

[2] See *Resolutions adopted by the Economic and Social Council* during its fourth session, Resolution No. 42 (IV), page 23.

[3] See document E/529/Add.1.

[4] Document E/CN.7/94.

aspects de la question qui pourraient avoir leur place dans la déclaration des droits de l'homme,

Note que les propositions tendant à la création d'un organisme international chargé de défendre la liberté d'association doivent être examinées par le Conseil d'administration de l'Organisation internationale du Travail,

Estime que la question de la mise en vigueur des droits, qu'il s'agisse des droits des individus ou de ceux des associations, pose des problèmes communs que l'Organisation des Nations Unies et l'Organisation internationale du Travail doivent examiner de concert, et

Invite le Secrétaire général à prendre telles dispositions qui permettront à l'Organisation internationale du Travail et à la Commission des droits de l'homme de collaborer dans l'étude de ces problèmes.

85 (V). Protection de la main-d'œuvre émigrante et immigrante

Résolution du 13 août 1947[1]

Le Conseil économique et social,

Ayant pris acte du point de l'ordre du jour concernant la protection de la main-d'œuvre émigrante et immigrante, inscrit sur la demande de *l'American Federation of Labor*, ainsi que du mémorandum présenté par cette Fédération,

Prenant acte aussi du fait que l'Organisation internationale du Travail envisage, en ce moment, la revision de sa convention et de ses recommandations sur l'émigration.

Décide de transmettre ce mémorandum à l'Organisation internationale du Travail en sa qualité d'institution spécialisée intéressée et compétente, et, en raison de l'urgence du problème,

Invite l'Organisation internationale du Travail à poursuivre activement l'examen de cette question et à informer aussitôt que possible le Conseil économique et social de l'état d'avancement des travaux, et

Attire l'attention de la Commission des questions sociales et de la Commission de la population sur ce mémorandum, en ce qui concerne les questions dont l'étude leur a été confiée par le Conseil dans sa résolution du 29 mars 1947[2], relative au problème de migration.

86 (V). Stupéfiants

Résolution du 13 août 1947[3]

Le Conseil économique et social,

Prenant acte de l'opinion exprimée par la Commission des stupéfiants dans une résolution adoptée le 1er août 1947[4], lors de sa deuxième session, selon laquelle il est urgent de prendre des mesures en vue de limiter la fabrication et de réglementer la distribution des nouvelles drogues synthétiques capables d'engendrer la

[1] Voir le document E/546.

[2] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa quatrième session, résolution No 42 (IV), page 23.

[3] Voir le document E/529/Add.1.

[4] Voir le document E/CN.7/94.

Document No. 155

United Nations General Assembly Resolution 128 (II) on Trade union rights (Freedom of association), 1947

tions amongst themselves and to achieve international co-operation in promoting and encouraging respect for human rights and fundamental liberties;

Considering that to attain this end it is essential to facilitate and increase the diffusion in all countries of information calculated to strengthen mutual understanding and ensure friendly relations between the peoples;

Considering that substantial progress in this sphere can be achieved only if measures are taken to combat, within the limits of constitutional procedures, the publication of false or distorted reports likely to injure friendly relations between States,

Invites the Governments of States Members

1. To study such measures as might with advantage be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States;

2. To submit reports on this subject to the Conference on Freedom of Information so as to provide the Conference with the data it requires to enable it to start its work immediately on a concrete basis;

Recommends to the Conference on Freedom of Information that it study, with a view to their co-ordination, the measures taken or advocated in this connexion by the various States, as being relevant to the discussion of items 2(*d*) and 5(*c*) of section II of its provisional agenda.

Hundred and fifteenth plenary meeting,
15 November 1947.

entre eux des relations amicales et réaliser la coopération internationale en développant et en encourageant le respect des droits de l'homme et des libertés fondamentales;

Considérant que pour atteindre ce but il est essentiel de faciliter et d'augmenter la diffusion dans tous les pays des informations susceptibles d'accroître la compréhension mutuelle et d'assurer des relations amicales entre les peuples;

Considérant que de substantiels progrès dans ce domaine ne peuvent être réalisés que si des mesures sont prises pour lutter dans les limites constitutionnelles contre la publication des nouvelles fausses ou déformées qui sont de nature à nuire aux bons rapports entre Etats,

Invite les Gouvernements des Etats Membres

1. A étudier les mesures qu'il y aurait lieu de prendre sur le terrain national pour lutter dans les limites constitutionnelles contre la diffusion des nouvelles fausses ou déformées qui sont de nature à nuire aux bons rapports entre Etats;

2. A présenter à la Conférence sur la liberté de l'information un rapport à ce sujet afin de fournir à cette Conférence les éléments qui lui permettront d'entamer immédiatement ses travaux sur une base concrète;

Recommande à la Conférence sur la liberté de l'information d'étudier, en vue de les harmoniser, les mesures qui seraient prises ou préconisées à cet égard par les différents Etats, en tant que se rapportant aux débats sur les points 2 *d*) et 5 *c*), section II, de son ordre du jour provisoire.

Cent-quinzième séance plénière,
le 15 novembre 1947.

128 (II). Trade union rights (Freedom of association)

The General Assembly,

Taking note of resolution 52 (IV)[1] adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on "Guarantees for the Exercise and Development of Trade Union Rights"[2] 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";

Taking note also of resolution 84(V)[3] adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled "Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947",[4] to recognize the principles proclaimed by the International Labour

[1] See *Resolutions adopted by the Economic and Social Council* during its fourth session, page 43.
[2] See document A/374.
[3] See *Resolutions adopted by the Economic and Social Council* during its fifth session, page 54.
[4] See document A/374/Add.1.

128 (II). Droits syndicaux (liberté d'association)

L'Assemblée générale,

Prenant acte de la résolution 52 (IV)[1] du Conseil économique et social adoptée au cours de sa quatrième session, par laquelle il a été décidé de transmettre les points de vue de la Fédération syndicale mondiale et de l'*American Federation of Labor* sur les "garanties d'exercice et de développement du droit syndical[2]" à la Commission des droits de l'homme, "pour qu'elle étudie les aspects qui pourraient trouver place dans la Déclaration des droits de l'homme";

Prenant acte également de la résolution 84(V)[3] dudit Conseil, adoptée au cours de sa cinquième session, par laquelle il a été décidé de transmettre à l'Assemblée générale des Nations Unies le rapport de l'Organisation internationale du Travail intitulé "Décisions relatives à la liberté d'association adoptées à l'unanimité par la trentième session de la Conférence internationale du travail du 11 juillet 1947[4]", de reconnaître les prin-

[1] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa quatrième session, page 43.
[2] Voir le document A/374.
[3] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa cinquième session, page 54.
[4] Voir le document A/374/Add.1.

Conference and to request the International Labour Organisation to continue its efforts in order that one or several international conventions may be adopted,

Approves these two resolutions;

Considers that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being;

Declares that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognized and which are mentioned in the Constitution of the International Labour Organisation[1] and in the Declaration of Philadelphia[2] and, in particular, sub-section (*a*) of section II, and sub-sections (*a*) to (*j*) inclusive of section III, which are given in the annex to this resolution;

Decides to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52(IV) of the Economic and Social Council, and

Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

Hundred and seventeenth plenary meeting,
17 November 1947.

Annex

PRINCIPLES SET FORTH IN SECTION II(*a*) AND SECTION III(*a*) TO (*j*) OF THE DECLARATION OF PHILADELPHIA

Section II

(*a*) All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Section III

(*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;

[1] See *First Report of the International Labour Organisation to the United Nations*, vol. II, page 1.
[2] *Ibid.*, page 19.

cipes énoncés par la Conférence internationale du travail et d'inviter l'Organisation internationale du Travail à poursuivre cet effort afin qu'il soit possible d'adopter une ou plusieurs conventions internationales,

Approuve les deux résolutions;

Considère que la liberté syndicale d'association, droit inaliénable, est, ainsi que d'autres garanties sociales, essentielle à l'amélioration de la vie des travailleurs et à leur bien-être économique;

Déclare qu'elle fait siens les principes énoncés par la Conférence internationale du travail en ce qui concerne les droits syndicaux ainsi que les autres principes dont l'importance pour le monde du travail a déjà été reconnue et qui sont mentionnés dans la constitution du Bureau international du Travail[1] et dans la Déclaration de Philadelphie[2] et en particulier à l'alinéa *a*) de la section II et aux alinéas *a*) à *j*) de la section III, qui sont donnés en annexe à la présente résolution;

Décide de transmettre le rapport de l'Organisation internationale du Travail à la Commission des droits de l'homme aux mêmes fins que celles exprimées par la résolution 52(IV) du Conseil économique et social et

Recommande à l'Organisation internationale du Travail sur sa base tripartite, de poursuivre d'urgence, en collaboration avec l'Organisation des Nations Unies et conformément à la résolution de la Conférence internationale du travail relative aux dispositions à prendre sur le plan international pour assurer les droits syndicaux et la liberté d'association, l'étude du contrôle de leur application pratique.

Cent-dix-septième séance plénière,
le 17 novembre 1947.

Annexe

PRINCIPES ENONCES A LA SECTION II *a*) ET A LA SECTION III *a*) A *j*) DE LA DECLARATION DE PHILADELPHIE

Section II

a) Tous les êtres humains, quels que soient leur race, leur croyance ou leur sexe, ont le droit de poursuivre leur progrès matériel et leur développement spirituel dans la liberté et la dignité, dans la sécurité économique et avec des chances égales.

Section III

a) La plénitude de l'emploi et l'élévation des niveaux de vie;

b) L'emploi des travailleurs à des occupations où ils aient la satisfaction de donner toute la mesure de leur habileté et de leurs connaissances et de contribuer le mieux au bien-être commun;

c) Pour atteindre ce but, la mise en œuvre, moyennant garanties adéquates pour tous les intéressés, de possibilités de formation et de moyens propres à faciliter les transferts de travailleurs, y compris les migrations de main-d'œuvre et de colons;

[1] Voir le *Premier rapport de l'Organisation internationale du Travail aux Nations Unies*, vol. II, page 1.
[2] *Ibid.*, page 19.

(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 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;

(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 opportunities.

129 (II). Transfer to the World Health Organization of certain assets of the United Nations

The General Assembly,

Having considered the resolution adopted by the Economic and Social Council at its fifth session on 22 July 1947,[1] concerning the request of the Interim Commission of the World Health Organization for the transfer to it of certain assets of the League of Nations which have been transferred to the United Nations, and

Recognizing the desirability of transferring certain of such assets to the World Health Organization,

Instructs the Secretary-General

1. To take the necessary steps, subject to the agreements concluded between the Secretary-General of the United Nations and the Secretary-General of the League of Nations, to effect the following transfers to the World Health Organization:

(a) Title of ownership of the archives and correspondence files of the League of Nations Health Section;

(b) Title of ownership of the stock of publications of the League of Nations Health Section, provided the World Health Organization shall reimburse to the United Nations the value of such publications as may be established by negotiation between the Secretary-General of the United Nations and the Director-General of the World Health Organization;

(c) Title of ownership of the archives, furniture and financial assets of the Eastern Bureau of Epidemiological Intelligence of the League of Nations in Singapore;

[1] See *Resolutions adopted by the Economic and Social Council* during its fifth session, resolution 93 (V), page 85.

d) La possibilité pour tous d'une participation équitable aux fruits du progrès en matière de salaires et gains, de durée du travail et autres conditions de travail, et un salaire minimum vital pour tous ceux qui ont un emploi et ont besoin d'une telle protection;

e) La reconnaissance effective du droit de négociation collective et la coopération des employeurs et de la main-d'œuvre pour l'amélioration continue de l'organisation de la production, ainsi que la collaboration des travailleurs et des employeurs à l'élaboration et à l'application de la politique sociale et économique;

f) L'extension des mesures de sécurité sociale en vue d'assurer un revenu de base à tous ceux qui ont besoin d'une telle protection, ainsi que des soins médicaux complets;

g) Une protection adéquate de la vie et de la santé des travailleurs dans toutes les occupations;

h) La protection de l'enfance et de la maternité;

i) Un niveau adéquat d'alimentation, de logement, et de moyens de récréation et de culture;

j) La garantie de chances égales dans le domaine éducatif et professionnel.

129 (II). Transfert à l'Organisation mondiale de la santé de certains avoirs de l'Organisation des Nations Unies

L'Assemblée générale,

Ayant examiné la résolution adoptée par le Conseil économique et social le 22 juillet 1947, au cours de sa cinquième session[1], et relative à la demande de la Commission intérimaire de l'Organisation mondiale de la santé, visant au transfert à cette Organisation de certains avoirs de la Société des Nations qui sont devenus propriété de l'Organisation des Nations Unies, et

Reconnaissant qu'il serait désirable de transférer à l'Organisation mondiale de la santé certains de ces avoirs,

Invite le Secrétaire général

1. A prendre les mesures nécessaires, compte tenu des accords conclus entre le Secrétaire général de l'Organisation des Nations Unies et le Secrétaire général de la Société des Nations, en vue de transférer à l'Organisation mondiale de la santé:

a) La propriété des archives et des dossiers de correspondance de la section d'hygiène de la Société des Nations;

b) La propriété du stock de publications de la section d'hygiène de la Société des Nations, à condition que l'Organisation mondiale de la santé rembourse à l'Organisation des Nations Unies la valeur de ces publications, qui sera fixée par entente entre le Secrétaire général de l'Organisation des Nations Unies et le Directeur général de l'Organisation mondiale de la santé;

c) La propriété des archives, du mobilier et des avoirs financiers du Bureau d'information épidémiologique d'Extrême-Orient de la Société des Nations, à Singapour;

[1] Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa cinquième session, résolution 93 (V), page 85.

Document No. 156

Minutes of the 103rd Session of the Governing Body, December 1947, Fourth Supplementary Note, Freedom of Association (Trade Union Rights), pp. 123–125

INTERNATIONAL LABOUR OFFICE

MINUTES

OF THE

103RD SESSION

OF

THE GOVERNING BODY

GENEVA — 12-15 DECEMBER 1947

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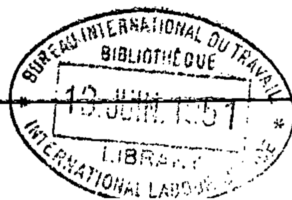

Cop. 3

14. The temporary addition of one executive director for the Fund and the Bank respectively was approved. The new directors are to be elected as soon as possible after the first of the year by those members who, as of 31 December 1947, are not entitled to appoint directors, and whose votes are not entitled to be cast by directors holding office.

15. The Governor from China, Mr. O. K. Yui, was elected Chairman of the Joint Boards of Governors for the following year, and the Governors from France, India, the United Kingdom and the United States were elected Vice-Chairmen.

16. The annual meetings of the Boards of Governors will be held in Washington next year.

Supply of Statistical Information to the International Monetary Fund

17. The International Labour Office has agreed to supply the International Monetary Fund each month with cost-of-living indices for various countries. The data supplied to the United Nations for the *Monthly Bulletin of Statistics* are also communicated to the Fund. In addition, the supplementary data received too late to be published in the *Monthly Bulletin of Statistics*, but in time to be included in the *International Financial Statistics*, are sent directly to the Fund.

18. These arrangements have been made in order to avoid duplicating requests addressed to Governments and to eliminate sources of divergencies in the published figures. The arrangements at present in force may be extended so as to cover other elements of labour statistics, should the Fund wish to include them in the *International Financial Statistics*.

Fourth Session of the Interim Commission of the World Health Organisation

19. The Fourth Session of the Interim Commission of the World Health Organisation was held in Geneva from 30 August to 13 September 1947. The I.L.O. was represented at this meeting.

20. The World Health Organisation is not yet in existence, as the ratifications of 26 States Members of the United Nations necessary to bring its constitution into force have not yet been received. Ratifications have been received from 16 States Members of the United Nations and from nine other States. Sixty-four States have expressed their desire to become Members of the World Health Organisation, and it is expected that the constitution will be brought into force in the first half of 1948.

21. Two committees of the Interim Commission dealt with epidemiology and quarantine, together with other medical questions, and with the priority to be assigned to projects of a medical nature to be carried out by the World Health Organisation when established.

22. The minimum standards of health and safety in the construction of the United Nations headquarters were discussed. It was pointed out that the I.L.O. is the competent agency in the field of the protection of the health of working people and it therefore was decided to establish a small committee of experts, to be appointed in agreement with the I.L.O., to consider this question.

23. The relations of the World Health Organisation with other international organisations were discussed and Agreements with the United Nations, U.N.E.S.C.O. and F.A.O. were approved. A separate paper on the Agreement between the I.L.O. and the World Health Organisation is being circulated to the Governing Body.

FOURTH SUPPLEMENTARY NOTE

Freedom of Association (Trade Union Rights)

1. The decisions concerning freedom of association adopted by the International Labour Conference at its 30th Session were communicated to the United Nations, for the information of the Economic and Social Council, immediately after the close of the session of the International Labour Conference in July. The action taken by the I.L.O. in response to the request of the Economic and Social Council was discussed by the Council on 8 August 1947 during its Fifth Session at New York.

2. The International Labour Organisation was represented at the Fifth Session of the Economic and Social Council by a tripartite Governing Body delegation consisting of Mr. David A. Morse (United States Government member), Mr. H. W. Macdonnell (Employers' Deputy member) and Mr. Paul Finet (Workers' member), and by Mr. Jef Rens, Assistant Director-General of the International Labour Office. Mr. Jouhaux was unable to attend the session of the Council and was replaced by Mr. Finet.

3. The Council adopted on 8 August 1947 the following resolution:

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

The Economic and Social Council,

Having received the report transmitted by the International Labour Organisation in pursuance of the Council's request at its Fourth Session that the memoranda on the subject of trade union rights submitted to the Council by the World Federation of Trade Unions and the American Federation of Labor might be placed on the agenda of the International Labour Organisation at its next session, and that a report might be sent for the consideration of the Economic and Social Council at its next session,

Takes note of the report and observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognised competence,

Decides:

(a) To recognise the principles proclaimed by the International Labour Conference;

(b) To request the International Labour Organisation to continue its efforts in order that one or several international Conventions may be quickly adopted;

(c) To transmit the report to the General Assembly;

Awaits further reports on the subject to be transmitted by the International Labour Organisation and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the bill or declaration on human rights;

Notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organisation;

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation, and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

4. In accordance with paragraph *(c)* of this resolution, the report of the International Labour Organisation was transmitted to the General Assembly of the United Nations at its Second Session, which opened in New York on 16 September 1947.

5. The International Labour Organisation was represented at the Second Session of the General Assembly by a tripartite Governing Body delegation consisting of the Chairman, Sir Guildhaume Myrddin-Evans, the Employers' Vice-Chairman, Mr. J. D. Zellerbach and the Workers' Vice-Chairman, Mr. Léon Jouhaux, and by the Director-General.

6. The General Assembly referred the question to its Third Committee on Social, Humanitarian and Cultural Questions, where a lengthy discussion took place. The report of the International Labour Organisation was vigorously defended by Mr. Jouhaux, who was also the representative of France on the Third Committee, and by a number of other delegates.

7. After considering the report of a subcommittee to which a number of resolutions submitted by various delegations had been referred, the Third Committee adopted, by 31 votes to 5 with 6 abstentions, a resolution for submission to the plenary meeting of the General Assembly.

8. Several amendments to this resolution were proposed when it came before the General Assembly. After considerable discussion, the General Assembly adopted, with certain modifications, by 45 votes to 6 with 2 abstentions the resolution submitted by the Third Committee.

The text of the resolution adopted by the General Assembly is as follows:

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

The General Assembly

Taking note of resolution 52 (IV) adopted by the Economic and Social Council at its Fourth Session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on " Guarantees for the Exercise and Development of Trade Union Rights " 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 ";

Taking note also of resolution 84 (V) adopted by the Council at its Fifth Session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled " Decisions concerning freedom of association adopted unanimously by the Thirtieth Session of the International Labour

Conference on 11 July 1947 ", to recognise the principles proclaimed by the International Labour Conference and to request the International Labour Organisation to continue its efforts in order that one or several international conventions may be adopted,

Approves these two resolutions;

Considers that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being;

Declares that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognised and which are mentioned in the Constitution of the International Labour Organisation and in the Declaration of Philadelphia and, in particular, subsection *(a)* of Section II and subsections *(a)* to *(j)* inclusive of Section III which are given in the annex to this resolution [1];

Decides to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52 (IV) of the Economic and Social Council; and

Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

Fifth Supplementary Note

The Economic and Social Council and its Commissions and Committees

I. *Fifth Session of the Economic and Social Council*

1. The Fifth Session of the Economic and Social Council was held at Lake Success from 16 July to 16 August 1947.

2. The International Labour Organisation was represented at this session of the Council by a tripartite Governing Body delegation consisting of Mr. David A. Morse (United States Government member), Mr. H. W. Macdonnell (Employers' deputy member), and Mr. Paul Finet (Workers' member), and by Mr. Jef Rens, Assistant Director-General of the International Labour Office. Mr. Jouhaux was unable to attend the session of the Council and was replaced by Mr. Finet.

Freedom of Association (Trade Union Rights).

3. The decisions concerning freedom of association adopted by the International Labour Conference at its 30th Session were communicated to the United Nations for the information of the Economic and Social Council. A separate paper has been circulated to the Governing Body on this question.[2]

Protection of Migrant and Immigrant Labour.

4. The American Federation of Labor requested the Council to consider the question of the protection of migrant and immigrant labour and submitted a memorandum on the subject, together with a draft resolution recommending that : " The Economic Commissions for Europe and Asia promote the use of standards recommended by the International Labour Organisation in expediting efficient mobilisation of manpower in the reconstruction of countries ", and urging the International Labour Organisation " to expedite its reconsideration of its Conventions and Recommendations concerning migrant workers ". In an introductory statement, the representative of the American Federation of Labor stressed the fact that, owing to post-war conditions, large migratory movements were taking place and protection should be afforded to the migrant workers, when they have settled abroad, by international action. On 13 August the Council adopted the following resolution by 15 votes to nil with 3 abstentions:

The Economic and Social Council,

Having taken note of the item regarding the protection of migrant and immigrant labour placed on its agenda at the request of the American Federation of Labor, and the memorandum submitted by the Federation;

Noting also that the International Labour Organisation is now considering the revision of its existing Convention and Recommendations on migration;

Resolves to transmit this memorandum to the International Labour Organisation as the competent specialised agency concerned and, in view of the urgency of the problem;

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[1] For the text of the Declaration of Philadelphia, see *Official Bulletin*, Vol. XXVI, No. 1, p. 1.

[2] See above, p. 123.

Document No. 157

ILC, 31st Session, 1948, Questionnaire, Freedom of Association and Protection of the Right to Organise

1948
31st SESSION
VII

QUESTIONNAIRE

International Labour Conference

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

Seventh Item on the Agenda

GENEVA
International Labour Office
1947

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INTRODUCTION

The International Labour Conference decided, at its 30th Session (June-July 1947), to place on the agenda of its 31st Session the questions of "freedom of association" and of the "protection of the right to organise", with a view to their consideration under the single-discussion procedure.

Article 31 of the Standing Orders of the Conference provides that, in the case of single-discussion procedure, the Office shall circulate to the Governments a summary report of the question under consideration, containing a statement of the law and practice in the different countries, together with a questionnaire.

The statement of law and practice referred to in Article 31 of the Standing Orders is contained in Report VII, *Freedom of Association and Industrial Relations*, which the Office submitted to the 30th Session of the Conference. This Report has already been communicated to the Governments.

Accordingly, it will be sufficient to recall briefly the circumstances under which the question of freedom of association and industrial relations came to be placed on the agenda of the 30th Session of the Conference, to indicate the decisions taken by the Conference, and to explain, in the light of the discussions which took place in the Committee on Freedom of Association and Industrial Relations, the scope of the principles which form the basis of this questionnaire.

History of the Question

The problem of freedom of association and industrial relations was brought before the International Labour Organisation at the request of the Economic and Social Council of the United Nations. The Economic and Social Council had been called upon, at its 4th Session (February-March 1947), 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. The American Federation of Labor had also submitted to the Council a memorandum concerning this matter.

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, which was formally ratified both by the Assembly of the United Nations and by the International Labour Conference.

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 decided to place the question of "freedom of association and industrial relations" on the agenda of the 30th Session of the Conference, which met in Geneva from 19 June to 11 July 1947.

The Report which the Office submitted to the Conference contained in its conclusions two series of texts :

1. A proposed Resolution covering : (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 relating only to the first four subjects indicated above.

Decisions of the Conference

At the conclusion of its discussions, the Conference unanimously adopted a series of important decisions to which it is desirable to call the attention of the Governments.

In the first instance, the Conference adopted a Resolution concerning freedom of association and protection of the right to organise and to bargain collectively, which defines the fundamental principles on which freedom of association should be based. This Resolution was as follows :

RESOLUTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

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.

Secondly, the Conference, being of the opinion that it was necessary for measures to be taken as rapidly as possible in order to give effect to these principles by embodying them in an international instrument, decided to place on the agenda of its next general session the question of freedom of association and of the protection of the right to organise with a view to the adoption of one or several Conventions at that session.

Accordingly, it approved a list of points which should form the basis on which the Convention or Conventions should be drawn up.

This list of points is set forth below :

LIST OF POINTS

I. Freedom of Association

1. Desirability of drawing up a proposed international Convention concerning freedom of association.

2. Need to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

3. (1) 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.

(2) Need to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right.

4. Need to provide that employers' and workers' organisations may not be dissolved or suspended by administrative authority.

5. 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.

6. Need to provide that the guarantees defined in paragraphs 2, 3 and 4 with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

7. Need to provide that 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.

8. Desirability of providing that the acquisition and exercise of the rights as outlined in this Part should not exempt employers' and workers' organisations from their full share of responsibilities and obligations.

II. Protection of the Right to Organise

1. Desirability of drawing up a proposed Convention concerning the protection of the right to organise.

2. Need to provide that where full and effective protection is not already afforded appropriate measures should be taken to enable guarantees to be provided for the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source.

3. Desirability of making such provision as may be necessary for the establishment of appropriate agencies for the purpose of ensuring the protection of the right of association.

Thirdly, the Conference, considering that the measures taken with regard to the fundamental principles of freedom of association should be deemed to be nothing more than the first stage in the programme which the International Labour Organisation had to undertake in this connection, decided, also unanimously, to place on the agenda of its next general session, as one item for first discussion, the application of the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations.

This involves a series of very important questions, which, in the opinion of the Conference, form an essential part of the general problem of freedom of association and industrial relations. The measures which will be taken with regard to these questions, and for which the 1948 Session of the Conference will be a point of departure, must be considered as being the second stage in the realisation of the programme of the International Labour Organisation.

Finally, the Conference adopted a Resolution concerning the question of establishing international machinery for safeguarding freedom of association, in accordance with the proposals

put forward by the World Federation of Trade Unions and the American Federation of Labor.

The Conference recognised that this involved a question of the highest importance, requiring careful and detailed examination. Consequently, the Resolution 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.

Observations on the Decisions taken by the Conference

The questions concerning the application of the principles of the right to organise and to bargain collectively, collective agreements, conciliation and arbitration, and co-operation between the public authorities and employers' and workers' organisations, which have been placed on the agenda of the 1948 Session of the Conference for first discussion, will form the subject of separate reports and questionnaires which will be transmitted to Governments at a later date. This questionnaire, therefore, relates only to the questions of freedom of association and protection of the right to organise, which are to be the object of international regulation at the next session of the International Labour Conference.

In view of the fact that the points adopted by the Conference with regard to these two questions are to serve as the basis on which the questionnaire should be drawn up, it has been deemed necessary to explain their significance in the following pages.

I. Freedom of Association

1. *Establishment of Organisations*

The text proposed by the Office was as follows :

> 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.

The Committee unanimously took the view that freedom of association should be guaranteed in general terms. Two opposing views were expressed : first, whether it would be desirable to formulate the guarantee in explicit terms by adding to the Office text a new clause concerning non-discrimination, in respect of the right of association of employers and workers, on the grounds of their "political opinions"; secondly, whether it would be prefer-

able to adopt a formula of completely general application which would have the advantage of avoiding the dangers inherent in a detailed enumeration, which might in any event be incomplete and, therefore, limitative.

The Committee approved the latter view, and adopted the point in the following form :

> Employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

However, in order to avoid such a general text serving as a pretext for any restrictive interpretation, it was agreed that the report of the Committee should stress the fact that, according to the terms of this clause, freedom of association should be guaranteed, without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion, not only to employers and workers in private industry, but also to public officials or employees. Recognition of the freedom of association of officials by means of international regulation should not, however, in any way prejudge the question of the right of such officials to strike.

In view of the differences of opinion which were made manifest in the Committee with regard to the precise field of application of the guarantee of freedom of association, the Office has thought it desirable to submit for the choice of the Governments two alternative formulas defining the right of employers and workers to establish organisations.

2. *Functioning of Organisations*

The text submitted by the Office was as follows :

> 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.

The object of this clause was to complete the guarantee with regard to the establishment of organisations by a guarantee of the functioning of such organisations in full freedom.

The Committee, while unanimously recognising the need for such a guarantee, considered, however, that this object would best be realised if the right of organisations to organise their internal and external life in full autonomy was completed by an

obligation, on the part of the public authorities, to refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right.

By including in the text the word "lawful", the Committee merely intended to declare that employers' and workers' organisations, like any other organised collectivities, are bound, in the exercise of their rights, to respect the general laws of the country, which, by definition, are binding upon everyone.

Thus amended, the point relating to the functioning of organisations was adopted in the following terms :

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. *Dissolution and Suspension of Organisations*

The text submitted by the Office was intended to protect employers' and workers' organisations against arbitrary dissolution by administrative authority. The Committee decided to extend this guarantee equally to the question of suspension of an organisation by administrative authority.

With this amendment, the point adopted by the Conference is as follows :

Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

4. *Federations, Confederations and International Organisations of Employers and Workers*

The text proposed by the Office was intended to assure to employers' and workers' organisations, first, the right to establish federations and confederations and, secondly, the right of affiliation with international organisations of employers and workers.

After the rejection of an amendment which sought to make the affiliation of a national to an international organisation subject to previous authorisation by the Government, the Office text was adopted, without alteration, in the following terms :

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. *Guarantees relating to Federations and Confederations*

The Conference adopted with a slight alteration the Office text, as follows :

> The guarantees defined in the paragraphs relating to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. *Acquisition of Legal Personality*

The text proposed by the Office was intended to provide that the acquisition of special privileges by employers' and workers' 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. This was a saving clause intended to prevent the attribute of legal personality or other similar privileges from serving as a pretext for certain States to reintroduce by this means any prohibitive régime concerning associations (for example, by making the acquisition of legal personality subject to previous authorisation or by subjecting the functioning of associations to permanent control by the administrative authorities). The Committee deleted the phrase "the acquisition of special privileges" in the Office text and adopted the point in the following form :

> 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. *Responsibilities of Organisations*

On the proposal of the Employers' members of the Committee, the following point was adopted by 54 votes to 51 and was added to the list of points prepared by the Office :

> The acquisition and exercise of the rights as outlined in this Part should not exempt employers' and workers' organisations from their full share of responsibilities and obligations.

The view was expressed in the Committee that such a clause appeared to lack the necessary precision for inclusion in a Convention on freedom of association, which should lay down clearly defined rights and obligations. Its real scope could be determined

only in relation to the obligations which employers' and workers' organisations are called upon to assume in respect of collective agreements or the settlement of labour disputes. It might, therefore, appear preferable to reserve such a provision for inclusion in due course in the international regulation of collective agreements or conciliation and arbitration. It is for this reason that the Office has thought it useful to consult the Governments on this point also.

II. Protection of the Right to Organise

The texts proposed by the Office under this heading were intended to complete the guarantee of freedom of association in relation to the State by a guarantee of the exercise of the right to organise in relation to the other party to the labour contract. Freedom of association, even where it is recognised by the State, might be prejudiced by the other party to the labour contract, if the latter should use his economic strength to hinder the exercise of a right formally recognised by the law.

The Office, taking into account the fact that the recognition of freedom of association might result either from agreements freely concluded between the parties concerned or from formal legal provisions, proposed two alternative methods of regulation, namely :

(1) regulation by agreement; or

(2) in the absence of appropriate contractual regulation, the guarantee of the exercise of the right of association by legislation.

The Office text with regard to the recognition of the right of association by agreement was as follows :

> 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.

The Committee, while fully supporting the method of contractual regulation, nevertheless laid down the relevant provisions in the following terms :

> There should be agreement between organised employers and workers mutually to respect the exercise of the right of association.

The text proposed by the Office concerning the legal guarantee of the right to organise was as follows :

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 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.

Under the terms of this provision, the acts enumerated in the text were judged to be unlawful simply because they were such as to prevent the exercise of the right of association of the workers or of workers' organisations. The Committee considered that the question was too complicated to be regulated as a whole by means of an international labour Convention at the next session of the Conference. It decided, therefore, for the purposes of international regulation in 1948, to take only the principle of the legal protection of the right to organise, and to refer to the next session of the Conference, in accordance with the double-discussion procedure, the questions of the application of the principle of the right to organise.

Consequently, the Committee adopted the point relating to the principle of the protection of the right to organise in the following terms :

Where full and effective protection is not already afforded, appropriate measures should be taken to enable guarantees to be provided for the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source.

Finally, the Committee approved without alteration the following point submitted by the Office :

Appropriate agencies should be established, if necessary, for the purpose of ensuring the protection of the right of association.

* * *

Article 31, paragraph 1, of the Standing Orders of the Conference defines the procedure for the consultation of Governments by means of a questionnaire. It prescribes, in particular, that "this questionnaire shall request Governments to give reasons for their replies". The Office calls the attention of the Governments to this provision and requests them to be good enough to indicate, at least briefly, in every case in which it may be useful, the reasons for their replies.

On the basis of the replies from the Governments, the Office will draw up a final report which will be placed before the Conference at its 31st Session (1948) for final discussion and decision. In order that the Office may study these replies, draw up the report mentioned above and communicate it to the Governments so that they may receive it sufficiently early for them to be able to consider it and to hold the necessary consultations before the departure of their delegations, *it is important that, in accordance with the Standing Orders of the Conference, the replies from the Governments should reach the International Labour Office, in Geneva, not later than 1 December 1947.*

Geneva, August 1947.

QUESTIONNAIRE

I. Desirability and Form of International Regulation

1. *Do you consider that the Conference should adopt international regulations concerning freedom of association and the protection of the right to organise in the form of one or several Conventions?*

2. *If the answer to Question 1 is in the affirmative, do you consider that the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise?*

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

3. (a) *Do you consider that it would be desirable to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation?*

or, alternatively,

(b) *Do you consider that it would be preferable to enumerate descriptively the persons to whom the right of association should apply and, therefore, to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation?*

(c) *Do you consider that 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?*

III. Functioning of Organisations

4. (a) *Do you consider that it would be desirable 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?*

(b) *Do you consider that it would be desirable to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right?*

IV. Dissolution and Suspension of Organisations

5. *Do you consider that it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority?*

V. Federations, Confederations and International Organisations of Employers and Workers

6. *Do you consider that it would be desirable to provide that employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers?*

VI. Guarantees relating to Federations and Confederations

7. *Do you consider that it would be desirable to provide that the guarantees with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations?*

VII. Legal Personality of Organisations

8. *Do you consider that it would be desirable to provide that 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?*

VIII. Responsibilities of Organisations

9. (a) *Do you consider that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their full share of responsibilities and obligations?*

or, alternatively,

(b) *Do you consider that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration?*

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

10. *Do you consider that international regulations should guarantee the exercise of the right to organise?*

11. *If the answer to Question 10 is in the affirmative, do you consider that the protection of the right to organise should be effectively assured by means of mutual agreement between organised employers and workers?*

12. *Do you consider that, in the absence of full and effective guarantee by means of mutual agreements, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source?*

X. Establishment of Agencies for the Purpose of Ensuring Respect of the Right to Organise

13. *Do you consider that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise?*

* * *

14. *Have you any proposal or suggestion to make on any point relating to the questions of freedom of association and of protection of the right to organise, to which no reference has been made in this questionnaire?*

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REPORT VII

International Labour Conference

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

Seventh Item on the Agenda

GENEVA
International Labour Office
1948

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INTRODUCTION

The International Labour Conference decided, at its 30th Session, to place on the agenda of its 31st Session (San Francisco, June-July 1948) the questions of freedom of association and of the protection of the right to organise, with a view to their consideration under the single-discussion procedure.

In accordance with the first paragraph of Article 31 of the Standing Orders of the Conference, the Office circulated to the Governments a summary report, together with a questionnaire, requesting that the replies of the Governments should reach the Office not later than 1 December 1947.[1]

In accordance with paragraph 2 of the same Article 31, the Office, on the basis of the replies from the Governments, has to draw up a final report which may contain one or more Conventions or Recommendations.

As the question was not placed on the agenda of the Conference eighteen months before the opening of its 31st Session, this report, in accordance with paragraph 3 of Article 31 of the Standing Orders—adopted by the Conference at its 30th Session—has to be communicated to the Governments within a period determined by the Governing Body or, under exceptional circumstances, decided by the Officers of the Governing Body, in agreement with the Director-General. In accordance with this last provision, it was agreed that the final report should reach the Governments by 15 February 1948.

By 25 January 1948, the Office had received replies from the following Governments : Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, the Netherlands, Sweden, Switzerland, the Union of South Africa, the United Kingdom and the United States.

In order to be in a position to communicate the report to the Governments sufficiently early to enable them to hold the necessary consultations before the departure of their delegations,

[1] International Labour Conference, 31st Session, Questionnaire : *Freedom of Association and Protection of the Right to Organise*, Geneva (I.L.O.), 1947.

the Office, in preparing the report, has been able to take account only of the replies of the nineteen Governments referred to above. Any replies which arrive at a later date will be published in a brief supplementary report.

Before considering the replies of the Governments, it is necessary to recall very briefly the action taken by the United Nations agencies concerned with regard to the decisions of the last session of the Conference.

THE QUESTION OF FREEDOM OF ASSOCIATION BEFORE THE UNITED NATIONS

The Conference will remember that the question of freedom of association and industrial relations came before the International Labour Organisation at the request of the Economic and Social Council, applying the provisions of the Agreement entered into between the United Nations and the International Labour Organisation.[1]

In the Resolution by which the Economic and Social Council referred these problems to the International Labour Organisation [2], the Council expressed the desire that it should have before it, at its next session, a report from the International Labour Organisation on the action taken in accordance with its request.

In deference to this wish, the International Labour Organisation, immediately after the close of the 30th Session of the Conference, in July 1947, sent to the Economic and Social Council a report which set forth, *inter alia*, the decisions unanimously taken by the Conference concerning freedom of association. [3]

The Office report gave rise to an extensive discussion on the part of the Economic and Social Council, on 8 August 1947, in the course of its fifth session, which was held in New York. [4]

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[1] See International Labour Conference, 30th Session, Geneva, 1947, Report VII: *Freedom of Association and Industrial Relations*, pp. 1-12, Geneva (I.L.O.), 1947.

[2] *Op. cit.*, p. 1.

[3] *Cf.* INTERNATIONAL LABOUR OFFICE: *Decisions concerning Freedom of Association adopted unanimously by the Thirtieth Session of the International Labour Conference on 11 July 1947*, and *Speeches delivered before the Conference by Mr. Léon Jouhaux, Reporter, and Mr. Louis E. Cornil, Deputy Reporter, of the Committee on Freedom of Association*, Geneva (I.L.O.), 1947.

[4] *Cf.* UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL: E/533, etc.

The International Labour Organisation was represented at this session by a tripartite delegation of the Governing Body, consisting of Mr. David A. Morse (United States Government member), Mr. H. W. Macdonnell (Employers' deputy member) and Mr. Paul Finet (Workers' member), substitute for Mr. Jouhaux, together with Mr. Jef Rens, Assistant Director-General of the International Labour Office.

At the close of its discussion, the Economic and Social Council, by 15 votes to 2, with one abstention, adopted the following resolution :

The Economic and Social Council,

Having received the report transmitted by the International Labour Organisation in pursuance of the Council's request at its fourth session that the memoranda on the subject of trade union rights submitted to the Council by the World Federation of Trade Unions and the American Federation of Labor might be placed on the agenda of the International Labour Organisation at its next session and that a report might be sent for the consideration of the Economic and Social Council at its next meeting,

Takes note of the report and observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognised competence,

Decides :

(a) to recognise the principles proclaimed by the International Labour Conference ;

(b) to request the International Labour Organisation to continue its efforts in order that one or several international Conventions may be quickly adopted ;

(c) to transmit the report to the General Assembly ;

Awaits further reports on the subject to be transmitted by the International Labour Organisation and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights ;

Notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organisation ;

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation ; and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

In accordance with sub-paragraph *(c)* above, the report of the International Labour Organisation was transmitted to the

General Assembly of the United Nations, whose Second Ordinary Session opened on 16 September 1947, in New York.

The International Labour Organisation was represented at this session by a tripartite delegation of the Governing Body, consisting of its Chairman, Sir Guildhaume Myrddin-Evans, the Employers' Vice-Chairman, Mr. J. D. Zellerbach, and the Workers' Vice-Chairman, Mr. Léon Jouhaux, together with the Director-General.

The General Assembly referred the question to its Third Committee (the Committee dealing with social, humanitarian and cultural questions), which further referred the matter to a specially constituted subcommittee in order to reconcile the different proposals submitted by a number of delegates.

On the report of the subcommittee, the Third Committee, by 31 votes to 5, with six abstentions, adopted a resolution to be submitted to the Assembly. After a long discussion [1], the Assembly adopted, with slight modifications, by 45 votes to 6, with 2 abstentions, the resolution submitted by the Third Committee.

The text of the resolution adopted by the Assembly is as follows :

The General Assembly,

Taking note of resolution 52 (IV) adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on " Guarantees for the Exercise and Development of Trade Union Rights " 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 " ;

Taking note also of resolution 84 (V) adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled " Decisions concerning Freedom of Association adopted unanimously by the Thirtieth Session of the International Labour Conference on 11 July 1947 ", to recognise the principles proclaimed by the International Labour Conference, and to request the International Labour Organisation to continue its efforts in order that one or several international Conventions may be adopted ;

Approves these two resolutions ;

Considers that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the

[1] See UNITED NATIONS, GENERAL ASSEMBLY: A/C. 3/166, etc., and A/444, etc.

improvement of the standard of living of workers and to their economic well-being ;

Declares that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognised and which are mentioned in the Constitution of the International Labour Organisation and in the Declaration of Philadelphia and, in particular, subsection *(a)* of Section II and subsections *(a)* to *(j)* inclusive of Section III of the Declaration of Philadelphia [1] ;

Decides to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52 (IV) of the Economic and Social Council ; and

Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

The importance of the Resolutions adopted, both by the Economic and Social Council and by the Assembly of the United Nations, will certainly not escape the notice of the Conference.

It is important to emphasise, in the first place, that the Economic and Social Council, as well as the Assembly, " observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognised competence". Thus, the proper competence of the International Labour Organisation, in questions concerning the regulation of trade union rights and industrial relations, has been formally recognised by the various agencies of the United Nations.

Secondly, the Economic and Social Council and the Assembly of the United Nations have endorsed the principles proclaimed in respect of trade union rights by the International Labour Conference and have, therefore, requested the International Labour Organisation to continue its efforts with a view to the adoption of one or several international Conventions. This official sanctioning, by the United Nations, of the decisions taken at its 30th Session by the International Labour Conference enhances their character of universality, as it associates with them a number of countries, Members of the United Nations, which are not as yet Members of the International Labour Organisation. The Economic and Social Council expressed once

[1] Sub-paragraphs *(a)* to *(j)* of Section III of the Declaration of Philadelphia are quoted in the annex to the Resolution.

more on this occasion a desire to receive further reports on the progress of the activities undertaken in this field by the International Labour Organisation.

Thirdly, the Economic and Social Council and the Assembly of the United Nations have given prominence to the importance of the problem of international supervision of the effective application of freedom of association. In this connection, it may be recalled that, in accordance with the suggestions made on this matter by the World Federation of Trade Unions and the American Federation of Labor, the 30th Session of the Conference adopted a Resolution concerning international machinery for safeguarding freedom of association. [1] In this Resolution, the Conference recognised that the question was one of paramount importance which required careful and detailed examination and, therefore, requested the Governing Body to examine the question in all its aspects and to report back to the Conference at the 31st Session in 1948.

The Economic and Social Council, in its resolution of 8 August 1947, while noting that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Office at the same time expressed the opinion that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Office. Consequently, the Council requested the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

For its part, the General Assembly of the United Nations recommended to the International Labour Organisation, on its tripartite basis, to pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

In the light of the decisions taken by the Economic and Social Council and in accordance with the Resolution adopted

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[1] See International Labour Office: *Official Bulletin*, 31 July 1947, Volume XXX, No. 1, p. 69.

by the 30th Session of the International Labour Conference, the Governing Body, therefore, will have to examine the question in its entirety in order that, at the appropriate time, concrete proposals concerning this matter may be placed before the Conference and the United Nations.

Finally, the Assembly of the United Nations decided to transmit the report of the International Labour Organisation on freedom of association to the Commission on Human Rights.

It is important to emphasise, in this connection, that the Commission on Human Rights, which met in Geneva in its second session from 2 to 17 December 1947, included, among the objects which associations may pursue, "trade union" objects, which were not referred to in the draft submitted by the Drafting Committee. On the other hand, taking into account the special competence of the International Labour Organisation with regard to the question of regulation of trade union rights, the Commission on Human Rights refrained from dealing with this problem in the Draft International Covenant on Human Rights.

The Conference will no doubt observe with satisfaction that a particularly fruitful collaboration has been established between the United Nations and the International Labour Organisation with regard to a question of vital importance both for the Governments and for the workers and employers of all countries in the world.

CHAPTER I

REPLIES OF THE GOVERNMENTS

General Observations

Austria

At the present day, it would not be possible to imagine a democratic régime without the participation of employers' and workers' associations in the field of social and economic policy; these associations are the determining factors whose objective and responsible co-operation, free from outside influence, and directed towards the best interests of the community, constitutes the best guarantee of the harmonious development of social and economic legislation and of that social peace which is necessary for such development.

In Austria, where the right of workers and employers to form associations in full freedom has been guaranteed for decades under the Constitution (leaving aside the latest years of the totalitarian régime), both the legislative and administrative authorities have always attached the greatest importance to the extensive co-operation of workers' and employers' associations in the field of social and economic policy. Particular progress has been made in the case of collective agreements, on which new legislation was enacted in 1946 to correspond with present-day circumstances.

Netherlands

In replying to the questions contained in the questionnaire, it has been taken as a matter of course that freedom of association—like every other freedom—is bound by the requirements of public order, as defined by national legislation.

SWITZERLAND

Switzerland prides itself on being a country in which the spirit of freedom is ever alive and could not be extinguished. It therefore attaches very great importance to freedom of association, although the right to combine has not, in Switzerland, given rise to extensive legislation. The right is laid down in the Federal Constitution ; Article 56 provides that " citizens have the right to form associations, provided that the objects and methods of such associations are not unlawful or dangerous to the State ". However, this constitutional provision governs only relations between the citizen and the State and does not, therefore, protect freedom of association against interference on the part of individuals. In the latter case, private law is applicable, and, in particular, the provisions of the Swiss Civil Code concerning protection of civil status (Article 27 f.) and those of the Swiss Code of Obligations concerning the liability resulting from unlawful acts (Article 41 ff.). It should be added that the Civil Code allows great freedom with regard to the formation of associations ; it imposes only a minimum number of requirements in this connection.

In order to guarantee even more effectively the right of association, the competent authorities are at present considering a proposed Federal Decree concerning the protection of the right of association of workers and salaried employees. Moreover, it may be observed that the recent adoption by the Swiss people, on 6 July 1947, of the Federal Decree concerning the Articles of the Federal Constitution relating to the economic field (4 April 1946) may have a favourable influence on the activities of associations. Article 34 *ter (b)* of the Constitution confers on the Confederation henceforth the right to legislate regarding the relations between employers and workers or salaried employees, and especially on the joint regulation of questions concerning the undertaking or the occupation.

UNION OF SOUTH AFRICA

In approaching this question it should be constantly borne in mind that the International Labour Organisation is composed of a large number of Member States of varying national practices and traditions and involving peoples at widely varying stages

of social and economic development, these variations sometimes being evident as between the population of one Member State and another, sometimes as between the population of the metropolitan Member State and the population of its dependent territories, and sometimes as between different sections of the population in the territory of the same Member State.

Furthermore, some States have "Constitutions" in which certain principles are enunciated. While setting out to ensure the fundamental rights, for the protection of which any Convention which may be adopted is designed, great care should be exercised in ensuring, if at all possible, that the text of any Conventions adopted should not involve the amendment of the " Constitution " of any State as a preliminary to ratification.

What is desired is results from the adoption and subsequent ratification of any such Conventions, and it is suggested that in the approach to this question the International Labour Organisation should constantly bear in mind the principles set out in the Resolution adopted at the New York Conference of 1941 on the question of collaboration between public authorities and workers' organisations and employers' organisations—a principle which it is considered applies with equal force to the fundamental questions of freedom of association, the protection of the right to organise and collective bargaining, all of which constitute the foundation on which any such collaboration must be built.

The relevant paragraph of the Resolution reads as follows :

> The Conference,
>
> . . . .
>
> 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. [1]

A perusal of the Director-General's report on the earlier attempts to regulate these matters and a perusal of the reports to and discussions of various regional conferences indicate that, while fundamental rights should be clearly stated, any Conven-

[1] See Report VII, 1947, *op. cit.*, p. 27.

tions adopted will fail in their purpose, and positive results will not be obtained unless the terms of such Conventions permit of development along the lines of national experience.

I. Desirability and Form of International Regulation

1. *Do you consider that the Conference should adopt international regulations concerning freedom of association and the protection of the right to organise in the form of one or several Conventions?*

2. *If the answer to Question 1 is in the affirmative, do you consider that the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise?*

Australia

1. Yes. Freedom of association, coupled with the right of employers and workers to organise, is already firmly established as a way of life in Australia. The proportion of the working population already organised in trade unions is believed to be higher than in any other country in the world, excepting the Soviet Union, and it is doubtful whether it would ever be necessary, unless in exceptional circumstances, to protect this right in Australia. The adoption of international regulations would not involve any alteration of the position in Australia, except in a matter of form, but in other countries international regulation may be of concrete value in furthering freedom of association and the protection of trade unions.

2. If protection of the right to organise, as well as the right of freedom of association, is to be provided for by international regulation, then a single Convention, rather than separate Conventions, is favoured.

Austria

1. In view of the importance of " freedom of association " and of the " protection of the right to organise " as outlined in the introduction to this reply[1], it would seem necessary that

[1] See above, under " General Observations ", p. 8.

the international regulation of these two legal questions should take the form of a Convention.

2. The international regulation of the matters mentioned under Question 1 should be dealt with not by two separate Conventions, but by a single Convention. The protection of the right to organise is a necessary complement to freedom of association ; these two legal questions are so closely related to each other and bear upon each other in so many ways that it appears desirable to adopt a single Convention for their international regulation.

Belgium

1. International regulations concerning freedom of association and protection of the right to organise should be adopted by the Conference in the form of a Convention.

2. These two questions seem to be so closely related that it appears reasonable to contemplate only a single Convention.

Bulgaria

1. Yes.
2. Yes.

Canada

1. Yes.
2. Yes.

China

1. Yes, the Conference should adopt international regulations concerning freedom of association and protection of the right to organise in the form of one or several Conventions.

2. It is recommended that the Conference should adopt one Convention concerning freedom of association and protection of the right to organise, because, although these are two separate questions, they are closely related.

Denmark

1. Yes.[1]
2. No.

[1] In its reply to the Questionnaire, the Danish Government communicated to the Office the opinions of the Danish Employers' Confederation and of the Confederation of Danish Trade Unions with regard to each question, indicating that the Government was of the same opinion as these organisations in respect to Questions 1-4, 6-9 and 11-14. The replies to these questions, therefore, should be considered as an expression of the views jointly held by the Danish Government and the employers' and workers' organisations.

Ecuador

1. The Government of Ecuador considers that the international regulations concerning freedom of association and protection of the right to organise should be adopted under the form of a single Convention, as these two questions are closely related to each other.

2. As already indicated, only a single Convention should be contemplated, in view of the close connection between freedom of association and protection of the right to organise.

Finland

1. The reply is in the affirmative.

2. The Conference should adopt two separate Conventions which should be discussed at the same time.

France

1. Yes.
2. Yes.

Hungary

1. Yes.
2. It would be sufficient to adopt a single Convention.

India

1. Yes.

2. The Conference should adopt two separate Conventions, one concerning the freedom of association and the other concerning the protection of the right to organise.

Mexico

1. Yes.

2. It would be sufficient to have one Convention on freedom of association.

Netherlands

1. The reply to this question is not in the negative, but it may be doubted whether without effective international supervision the practical realisation of this laudable principle will be achieved. Experience shows that the virtual situation in a country may lead to the impairment of freedom, against which international Conventions as such are of little avail.

2. If the suggestion made in the reply to Question 10 is not adopted, the subject matter of both parts of the questionnaire could be embodied in one Convention.

Sweden

1. Yes.
2. To the Swedish Government it seems desirable that freedom of association and the protection of the right to organise should be dealt with in a single Convention.

Switzerland

1. Inasmuch as freedom of association constitutes an element in the basic freedoms of the individual, it is considered that freedom of occupational association, as well as the protection of the right to organise, should be guaranteed by international regulation.
2. A single Convention should suffice to include both these questions, which are closely related to one another. Perhaps it might be advisable for it to be supplemented by a Recommendation dealing with certain points which cannot be set forth in detail in a Convention.

Union of South Africa

1. No. It is considered preferable that, in the first instance, the international regulations should take the form of Recommendations. Conventions could follow in the light of experience of reports on Recommendations. If, however, the Organisation decides upon the form of Conventions, then it is considered desirable that there should be two or more Conventions, unless one Convention divided into parts can be devised with the right vesting in Members to ratify one or more parts.
2. Subject to what has been stated in reply to Question 1, the answer is in the affirmative.

United Kingdom

1. Yes ; provided that the regulations do not require the enactment of legislation concerning freedom of association or the protection of the right to organise in cases where this

freedom and right exist under current law or are satisfactorily secured in other ways.

2. The two subjects might be dealt with in a single Convention.

UNITED STATES

1. Yes.
2. Yes.

The drafting of the Convention relative to the protection of the right to organise will be complicated by the need to make it effectively responsive to widely varying conditions with respect to the actual security and power of employers' and workers' organisations and with respect to the existing machinery of the Government members for protecting the right to organise. Problems arising from these varying circumstances should not be allowed to complicate or delay the adoption of a Convention formulating the nature of the right whose recognition should guide us and whose exercise it should be our duty fully to protect.

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

3. (a) *Do you consider that it would be desirable to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation ?*

or, alternatively,

(b) *Do you consider that it would be preferable to enumerate descriptively the persons to whom the right of association should apply and, therefore, to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation ?*

(c) *Do you consider that 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 ?*

Australia

3. *(a)* Yes. This has been, and still is, the policy in Australia both in public and in private employment.

(b) No.

(c) Yes.

Austria

3. *(a)* and *(b)* It would be preferable to adopt the formula set forth in Question 3 *(b)*, as the words " without distinction whatsoever " might, in view of their having too general a meaning, lend themselves to different interpretations and, therefore, to a restricted interpretation, with the result that there might be grounds for fearing that, when the Convention is applied by the States Members, the categories of persons protected would come to be defined in a different way and the real objects of the international regulations would not be fully realised. The wording adopted under Question 3 *(b)* has the advantage of specifying clearly the categories of employers and workers to whom the Convention shall apply.

It is evident that the establishment of workers' and employers' associations should not be made subject to " previous authorisation ". But this should not mean that, when associations are being established, the administrative formalities in force in the various States may be disregarded. In Austria, associations both of employers and of workers are established in accordance with the Associations Act of 15 November 1867 (R.G.Bl. 1. Nr. 134), under the provisions of which the proposal to establish an association (occupational organisation) must be notified in writing to the competent administrative authority (provincial governor) and copies of the rules submitted. The administrative authority has power to prohibit the formation of the association only within four weeks of receiving the notification, and only if its objects or constitution render the organisation contrary to law or dangerous to the State. If the administrative authority does not issue any prohibition within a period of four weeks, or if the authority declares, before the expiration of this period, and after considering the rules which have been submitted, that it does not prohibit the establishment of the association, such association may commence to operate. A decision to prohibit the association may

be appealed against within sixty days to the Minister of the Interior.

Under the provisions of the Austrian Associations Act, in order to establish a workers' or employers' association, it is necessary, therefore, in principle, merely to make a declaration to that effect to the administrative authority, but there is no need to obtain previous authorisation. If the words " without previous authorisation " relieved associations of any obligation to comply with formal requirements such as those indicated above, it would be necessary, in order not to render the ratification of the Convention more difficult, to take account of this aspect of the question by inserting supplementary clauses.

(c) In view of the fact that in many countries, under the legal regulations governing the public services, officials are placed in a situation of particular responsibility in relation to the State, and because by virtue of that situation certain officials may themselves frequently represent the State authority, it seems desirable to specify in the Convention that the recognition of the right of association of these officials in no way prejudges the question of their right to strike.

BELGIUM

3. *(a)* The inviolable right to establish or join organisations of their own choosing without previous authorisation should be guaranteed to employers and workers, without distinction whatsoever; this is the corollary to freedom of association, the principle of which was solemnly affirmed in the Preamble to Part XIII of the Treaty of Versailles and reaffirmed by the Declaration of Philadelphia in 1944.

(b) See reply to *(a)* above.

(c) Freedom of association being recognised for all workers, whoever they may be, it is desirable, in accordance with the decision of the International Labour Conference in 1947, to defer for the time being questions of application of this principle, one of which is necessarily the question of the exercise of the right to strike by public officials.

BULGARIA

3. *(a)* Yes.

(b) No.

(c) Yes.

CANADA

3. *(a)* Yes.

(c) It is considered that recognition of right of association of public officials should not carry with it recognition of any right to strike.

CHINA

3. *(a)* The Chinese Government agrees with this, but would like to point out that these organisations should be set up in conformity with the national laws or regulations concerned.

DENMARK

3. *(a)* Yes.

(b) No.

(c) Yes.

ECUADOR

3. *(a)* Yes, provided that this does not cover public employees, in the case of whom national legislation must be left free to grant or regulate or refuse this right according to circumstances.

(b) It is considered that this right should be accorded and ensured as a full and general right, except for the reservations which each country may make with regard exclusively to public employees and officials, as indicated in the reply to *(a)* above.

(c) In view of the fact that each country should be left free to legislate with regard to the right of association of public officials, it is considered that each country should also have the right to regulate or prohibit the right to strike of such officials ; the international regulations, therefore, should in no way prejudge this question.

FINLAND

3. *(a)* The reply is in the affirmative, but the right of association should also mean that employers and workers might, if they so choose, refrain from joining organisations. The State and municipal authorities, in the rôle of employers, should not be members of the organisations of private employers.

(b) The reply is in the negative.

(c) The reply is in the affirmative.

France

3. *(a)* and *(b)* The formula of *(a)*, being in general terms, appears to be preferable to that of *(b)*.

(c) Yes. It may be recalled in this connection that the French Constitution provides that the right to strike shall be exercised within the limits of the laws regulating that right. A reservation of this kind might be contemplated in the circumstances.

Hungary

3. *(a)* and *(b)* The solution contemplated under *(a)* appears to be preferable by reason of its clarity, which excludes the possibility of any distinction. It is of paramount importance, however, that the rights provided by the Convention should be ensured only to those organisations which satisfy the standards of democracy. Moreover, workers' organisations should benefit from the application of these rights only if they include a specified proportion of the workers in the occupation concerned, a proportion which might be fixed by national legislation.

(c) The provision suggested under head *(c)* should be included in the Convention.

India

3. *(a)* Yes, but the regulations should be so framed as to make clear that the right to establish or join organisations should be in conformity with the provisions in the national Constitution regarding the freedom of speech and combination, the right to form associations and the right of assembly.

(c) Yes, but it should be made clear that the recognition of the right of association of public officials in no way implies any recognition, directly or indirectly, of the right of such officials to strike.

Mexico

3. *(a)* Yes.

(c) No.

Netherlands

3. *(a)* This is preferred to 3 *(b)*.

(c) Questions relating to the right to strike have not yet been under consideration for the purposes of the proposed

Convention ; a provision concerning the right to strike should therefore not be included.

Sweden

3. *(a)* Yes.

(c) Since the question of the right of public officials to strike does not appear to be directly connected with the right of association, this question should not be dealt with in the Convention.

Switzerland

3. *(a)* Employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

(b) Any enumeration such as is set forth under *(b)* could only be limitative, and might have the effect of giving rise to controversies likely to disturb social peace.

It is suggested that the two following rights might be dealt with in the Convention ; that of employers and workers to associate and, as a kind of corollary to that right, the right to refrain from association. Admittedly, it has been urged that the simple affirmation of the right to associate fully safeguards the right not to associate. However, it would appear desirable that this principle should be clearly laid down. This question has, in fact, already given rise to discussion in the Committee on freedom of association last summer in Geneva.

(c) It is considered necessary to provide that the recognition of the right of association of public officials should in no way prejudge the question of the right to strike of such officials. The Federal Act respecting the conditions of service of officials of 30 June 1927 provides specifically that the right of association is guaranteed to officials within the limits prescribed by the Federal Constitution. However, they are forbidden to strike.

Union of South Africa

3. For the reasons which follow in detail it is considered that any provision in a Convention dealing with this principle should be phrased somewhat as follows :

Employers and workers shall have the right, without previous authorisation, to establish or join organisations for the furtherance of their interests as such and for membership of which they are eligible subject only to such minimum compulsory statutory requirements of the national authority as will ensure :

(a) adequate adaptation to the pattern of the legislative system of wage regulation and collective bargaining and industrial regulation ; and

(b) protection of the organisation's assets against misappropriation and misapplication to non-lawful or non-constitutional purposes ; and

(c) non-participation of organisation in fields of activity not sufficiently closely connected with the purpose for which such organisation was primarily established, for example compulsory political activities.

It is considered that in framing measures of this nature the use of adjectives such as " inviolable " should be avoided. There is a likelihood of a meaning being read into the word other than that intended by the contracting parties. More particularly is it undesirable to utilise such unqualified phraseology and to proceed thereafter to whittle down the scope, as, for example, was done in the Resolution adopted at the 30th Session, where it was necessary to exclude a provision in a collective agreement stipulating compulsory membership of a particular organisation. Such compulsory membership seems in conflict with the phrase " the inviolable right. . . to establish or join . . . organisations of their own choosing ".

The term " establish organisations " is also too wide. What is apparently intended by the Resolutions adopted at the 30th Session is to recognise the right of workers as such to establish " trade unions " to protect their interests as " workers ", and of " employers " to establish " employers' organisations " to regulate relations between themselves and their employees. The right of both employers and workers to establish organisations for any other purpose should be the same as for the ordinary citizen.

It is considered that any Convention should relate only to workers' and employers' organisations in their capacity as representatives of workers and employers as such. Their purpose should be to further the interests of workers or employers in the particular undertaking, industry, trade or occupation and to regulate relations between them. It would be preferable to define what is intended. The phrase " of their own choosing " is unreal and should be deleted. In actual practice considerable

limits on the right of choice are imposed by the employers or workers who themselves form the various organisations. This right of choice would apply equally to the formation of new organisations.

It is quite impracticable to concede the complete freedom of any employers or workers to establish organisations of their own just when and how they choose. The fundamental right of both the workers and the employers to associate to further and protect their respective interests must be maintained, but orderly regulation is essential if the objective of successful collective bargaining is to be attained, and any Convention adopted should specifically recognise this. Differences in race, custom, stage of social and economic development and education between various population groups are such that in some countries the interpenetration of various groups within the same geographical areas renders the intermingling of the members of such groups within the same organisation impracticable. This is the more so when a large section of a population is slowly emerging into a more socially and economically developed state. If there existed an "inviolable right" to join an organisation "of their own choosing" the less developed sections of the population in such lands having little or no experience of such matters but which might nevertheless be numerically the largest group could take over the control of long-established organisations of many years' experience.

The freedom of choice should be restricted to organisations established according to the pattern upon which industrial relations in a country are organised inasmuch as the main function of employers' organisations and trade unions is collective bargaining. Jurisdictional disputes dissipate the energies and revenues of such organisations and give rise to an atmosphere in which collective bargaining is seriously impeded. The right of the worker and the employer to organise should be guaranteed.

3. *(c)* The right of servants of the State to association should be subject to similar principles as apply in the case of non-servants of the State, in so far as grouping of different racial and cultural elements is concerned, but distinctions must be drawn between associations of State employees and other associations of public officials. The former should not participate in the ordinary legislative pattern of collective bargaining nor

should they have the right to strike. Public officials in the employ of municipal or other local authorities should generally fall within the ambit of collective bargaining but should not be permitted to strike if employed upon " essential services ", *i.e.* services to the community such as the supply of light, power, water, sanitation and the extinguishing of fires.

United Kingdom

3. A general formula such as that suggested in 3 *(a)* is considered to be preferable to an enumeration, as in 3 *(b)*, for the reasons given on pages 7-8 of the Questionnaire. The provision should be so framed as to preserve the right of organisations to decide whether or not to accept applications for membership.

3. *(c)* There appears to be no reason why the recognition of the right of association of public officials by international regulation should prejudge the question of their right to strike, but no objection is seen to the inclusion of a provision stating that it does not do so.

United States

3. *(a)* and *(b)* It is considered preferable to state generally that employers and workers should have the stated right, and not to state that employers and workers, public or private, should have the stated right. The term " employers and workers " if unaccompanied by limitation would encompass both public employers and workers and private employers and workers and would not exclude, or create doubt with respect to the inclusion of, any worker who might not seem to fall properly under the category of either " public " or " private ".

It is likewise considered preferable to provide generally against discrimination, and not to attempt to enumerate the types of discrimination which ought to be prohibited. It would be unfortunate if, in our concern to give more definite content to the provision against discrimination, we should actually limit the concept and fail to provide against other forms of discrimination which might be the occasion for an equally serious threat to the right of free association.

The phrasing of paragraph *(a)* was designed to fulfil the objective which the United States approves. The wording

"employers and workers, without distinction whatsoever" may, however, be somewhat ambiguous, in that it may not be clear whether it means (1) only that no distinction is to be made between employers' rights to establish or join employers' organisations and workers' rights to establish or join workers' organisations, or (2) primarily that no distinction is to be made in either group on any ground whatsoever with respect to individual workers and individual employers. It is clear, of course, that the second of these meanings was intended when the proposed language was selected. It is suggested that the latent ambiguity would be eliminated and that the phrasing would be more apt if it were stated :

Employers and workers without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, and without any other distinction, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation.

(c) Yes.

There are at present in Member countries limitations on the right of public officials to strike, supported by the belief that special considerations apply to this problem which do not apply to the general recognition and protection of the right of freedom of association and organisation. It is felt that this belief has substantial basis and that it would, therefore, be undesirable to attempt to resolve this problem under the Convention.

III. Functioning of Organisations

4. (a) *Do you consider that it would be desirable 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 ?*

(b) *Do you consider that it would be desirable to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right ?*

Australia

4. *(a)* Yes. This is fundamental to the concepts underlying the right of freedom of association as understood in Australia.

(b) Yes. It is noted that the Resolution of the Committee at the 30th Session, upon which this question is based, was adopted with only three dissentients " in order to safeguard on the one hand respect for the legal position and to ensure, on the other hand, full recognition of trade union rights ".

Austria

4. *(a)* and *(b)* In principle, the reply to both questions must be in the affirmative, for otherwise the complete independence of employers' and workers' organisations which is desired would not be ensured.

However, the provisions contemplated under *(a)* and *(b)* should not relieve organisations of their obligation to observe the administrative formalities prescribed by national legislation, as for instance, those concerning the matters which must in any event be covered by the rules, the communication of the names of the executive officers of the organisation, the notification of general meetings. These administrative formalities which are prescribed by the Austrian Associations Act in no way restrict freedom of association. The words " lawful exercise " included under *(b)* appear adequate to ensure the observation of such administrative formalities.

Belgium

4. *(a)* 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, this right giving effect to the principle of freedom of association.

By their constitutions and rules, which the members should be able to adopt or accept in full freedom, they must have the opportunity to determine how they will make use of their right to organise.

By freely appointing the agencies which, on various levels, will be entrusted with management and supervision, they must have every opportunity to participate effectively in the

life of their organisation and to influence the direction of its activities in accordance with the views of the majority of the members.

By the formulation of their programmes, the employers' and workers' organisations should be able to progress and to recruit new members who will co-operate in the realisation of their aims.

(b) It would be desirable to provide that the public authorities should refrain from any interference which would restrict this right or impede the exercise thereof.

Bulgaria

4. *(a)* Yes.
(b) Yes.

Canada

4. *(a)* Yes.
(b) Yes.

China

4. *(a)* Yes.
(b) No. In the event of any interference which restricts this right or impedes the exercise thereof, employers and workers respectively have the right to request the public authorities to intervene.

Denmark

4. *(a)* Yes.
(b) Yes.

Ecuador

4. *(a)* Yes.
(b) Yes, provided that the exercise of this right does not endanger the security of the State and that organisations pursue their objects by means which are lawful and not contrary to the Constitution and to public morals.

Finland

4. *(a)* The reply is in the affirmative, provided that the term " legal " in the text is intended to imply (in accordance with the understanding in the Committee) that occupational organisations, like other organised collectivities, are bound, when exercising their rights, to observe the general law of the country which, by definition, is binding on everyone.

France

4. *(a)* Yes, provided that occupational organisations undertake to respect the fundamental rules of public law.

(b) Yes.

Hungary

4. *(a)* Yes.

(b) Yes.

India

4. *(a)* and *(b)* Yes ; it would be desirable 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 ", provided the methods followed are open, strictly peaceful and within the law, and are not in any way calculated to interfere with the exercise of similar rights by other people and organisations.

Mexico

4. *(a)* Yes.

(b) Yes.

Netherlands

4. *(a)* Yes.

(b) Yes.

Sweden

4. *(a)* Yes.

(b) Yes.

The term " lawful exercise " is rather vague, however, and might not exclude the adoption of special legislation under which public authorities could interfere with the functioning of organisations. The text of the Convention should be drafted so as to eliminate the possibility of such an interpretation and application of the term.

Switzerland

4. *(a)* It is considered that it would be desirable 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. Moreover, this right is fully recognised in Switzerland, provided that, by the terms of Article 56 of the Federal

Constitution, the objects and methods of such associations are not unlawful or dangerous to the State.

(b) It is considered that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, on the understanding that the term "lawful" is to be interpreted as meaning that occupational organisations, like other organised collectivities, are bound, when exercising their rights, to observe the general law of the land. Moreover, this basic principle is expressed in the second paragraph of Article 41 of the Constitution of the International Labour Organisation.

Union of South Africa

4. *(a)* and *(b)* Clearly employers' organisations and workers' organisations should have the right to draw up their constitutions and rules. Similarly they should have the right to organise their administration and activities and to formulate their programmes, provided these fall within the terms of their own constitutions and rules and conform to legitimate activities for organisations of this nature.

If by the proposal it is meant that employers' organisations and trade unions should be free to include in their constitutions provisions unrelated to the main purpose of such organisations, then the Union Government is fundamentally opposed to any such provision. Having regard to the real purpose of the whole structure—namely, representative organisations regulating conditions of employment by means of collective agreements—it is essential that there should be orderly regulation of the purpose and administration of such organisations. Otherwise the whole structure would be endangered.

It is of interest to note that the W.F.T.U. in its representations to the Economic and Social Council appreciated the necessity for some such regulation. In paragraph 2 of the Resolution as printed on pages 138 and 139 of Report VII—*Freedom of Association and Industrial Relations*—considered by the 30th Session of the International Labour Conference, the following view is expressed by the W.F.T.U. :

> Trade union organisations 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.

As "employers' organisations" and "trade unions", when they collaborate in the negotiation of collective agreements, become quasi-legislative bodies and, in fact, perform functions of a semi-judicial character, it is considered to be essential that there should be orderly regulation and that their constitutions and rules should conform to certain main principles.

The legislation for the Union of South Africa, for example, provides that in order to obtain registration the constitution of an "employers' organisation" or "trade union" must provide for certain matters, such as: the qualification for membership; the determining of the amount of subscriptions; the appointment, removal and powers of officials; the calling and conduct of meetings; the keeping of books of account, auditing of accounts, and submission of audited accounts to members once a year; the circumstances in which a member ceases to be entitled to membership; the alteration of the constitution, etc. All those matters are aimed at the orderly regulation of bodies which perform an important function. There is an overriding authority permitting of refusal of registration if any of the provisions of a constitution are unreasonable in relation to the members or the public. Against such a decision there is an appeal to the Courts.

All these provisions are aimed at orderly regulation and do not appear to fall within the phrase "interference which would restrict the right or impede the organisations in the lawful exercise of their rights". If there is any doubt on the question it is considered that any Convention should make the position clear, as the Union Government from long experience is convinced that without such orderly regulation the whole system would be endangered.

There is a further aspect of the question. The South African Industrial Conciliation Act forbids any employers' organisation or trade union to delegate to any other person or body the power to take any ballot or to take part in or to continue or discontinue any lockout or strike. It is considered that in such matters the proper democratic method is for the organisations themselves in terms of their constitutions to take the decision. It would, for example, be quite wrong for it to be possible for a federation of employers' organisations to be empowered to decide that a particular employers' organisation should declare a lockout. Similarly a federation of trade unions should not have the right

to call a strike in any one or more industries. In both cases the members of the organisation concerned should reach their own decision.

In any Convention, paragraph 2 of the Resolution on freedom of association should be phrased somewhat as follows :

Employers' and workers' organisations shall, in conformity with national law, have the right to draw up their constitutions and rules, etc.

The answer to the question is thus in the affirmative, subject only to such minimum compulsory statutory requirements as will ensure—

(a) adequate adaptation to the requirements of the legislative pattern of wage regulation, collective bargaining and industrial regulation ;

(b) protection of the organisation's assets against misappropriation or misapplication to unlawful or unconstitutional purposes, or to such purposes, directions or other activities (in particular the compulsory participation in political activities) not sufficiently closely connected with the purposes for which such organisations primarily exist, namely to deal with matters connected with or arising from employment.

UNITED KINGDOM

4. *(a)* Yes.

(b) Yes.

UNITED STATES

4. *(a)* Yes.

The rights specified seem inherent aspects of the right freely to associate. Unless the members of associations can decide for themselves the basis for their association and can determine democratically how their association shall be constituted and how it shall function, any right of free association would seem an empty theory, of little substantive import or practical value.

(b) Yes.

If the members of associations are to be allowed the rights specified under 4 *(a)* above, then the Governments of the Members must refrain from a negation of those rights. Expressly stating that they " should refrain from any interference which would restrict this right," therefore, seems appropriate and desirable. Similarly, it seems advisable to indicate expressly

that Member Governments cannot effect the same object indirectly by impeding the organisations in their actual operation. It is considered, also, that the word " lawful " should be included (as it is under the proposed phrasing) because, in the opinion of the United States Government, it is important to recognise that organisations of freely associated individuals, democratically instituted and operated, are, otherwise, like individuals themselves, subject to the general laws of the community, State or nation.

IV. Dissolution and Suspension of Organisations

5. *Do you consider that it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority ?*

AUSTRALIA

5. Yes, on the understanding set out in the report of the Committee at the 30th Session. Under the Commonwealth Conciliation and Arbitration Act, and some of the Arbitration Acts of the States, provision has been made, in certain circumstances, for suspension or cancellation by the Court of the awards and orders applicable to organisations, and even for the de-registration of organisations, the effect of such action being to deprive the organisations, until such time as the Court rescinds its order, from continuing their activities in obtaining terms and conditions of employment through awards of the Court, which, under the Australian system, is a normal union activity.

AUSTRIA

5. It is not possible to give an affirmative reply to this question in the general form in which it is drafted at present. It must be possible for employers' and workers' organisations, like any other associations of individuals, to be dissolved or suspended when they contravene the national law which is in force. Under the Austrian Associations Act, an association (occupational organisation) may be dissolved by the administrative authority when it takes decisions or measures which contravene the penal law or by which, owing to their substance or form, it assumes powers over matters in the competence of the legis-

lative or executive authority, or when the association exceeds the limits of the sphere of activity prescribed by its rules, or, in a general way, when it no longer fulfils the conditions to which its legal existence is made subject. The decision of dissolution or suspension taken by the administrative authority may be appealed against before the Constitutional Court.

In view of these obligations, which certainly exist in other countries also, it appears desirable that the provision dealing with this question to be included in the Convention should be drafted in the following terms :

Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority except when their activities are contrary to the national laws in force.

Belgium

5. It would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

Bulgaria

5. Yes.

Canada

5. Yes.

China

5. Yes, it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority, but special cases should be exempt from this provision.

Denmark [1]

5. It is pointed out that Article 65 of the Danish Constitution Act runs as follows :

Citizens have the right, without preliminary authority, of forming associations having a legal object. No association may be dissolved by Governmental action. Nevertheless, an association may be temporarily forbidden, but proceedings to affect its dissolution should at once be taken against it.

[1] Employers' and workers' organisations answer in the affirmative.

As it appears from this provision, an association may be temporarily forbidden, but, if so, proceedings should be instituted immediately in the courts against the association, demanding its dissolution. The Government will have to reserve its position on the question whether according to Danish conditions there is a case for affording the organisations of employers and workers a protection in this respect going beyond that of Article 85 of the Danish Constitution Act.

Ecuador

5. Yes; provision should be made for invoking judicial procedure in order to bring about the suspension or dissolution of organisations.

Finland

5. The reply is in the affirmative.

France

5. Yes. (This provision implies that employers' and workers' organisations may not be dissolved except by judicial procedure.)

Hungary

5. Yes.

India

5. The employers' and workers' organisations should not be liable to be dissolved or have their activities suspended except by a due process of law.

Mexico

5. Yes.

Netherlands

5. Yes, it being understood that in this context administrative authority means any other authority than the legislative and judicial authorities.

Sweden

5. Yes.

Switzerland

5. We consider that the dissolution and suspension of employers' and workers' organisations should not be permitted except, of course, where the existence of the State is imperilled or where certain associations attempt to obtain an unlawful monopoly of rights to the detriment of other organisations, and also in those cases provided for by civil law. Thus, Articles 77 and 78 of the Swiss Civil Code provide for the automatic dissolution of an association when it is insolvent, when the executive can no longer be constituted according to the rules, or when the objects of the association are unlawful or contrary to public morals.

Union of South Africa

5. Yes, except where suspension or dissolution is effected in terms of specific legislative authority under the statutes of the country concerned which shall set out clearly the grounds upon which suspension or dissolution shall be effected and which provide for the right of appeal against such administrative decisions to the Courts of Justice.

The above remarks do not relate to what is known as " de-registration ". In the Union of South Africa employers and workers have always been free to form organisations. They are, however, not fitted into the legislative pattern of statutory agreements unless they are " registered "—*i.e.* unless they are in fact representative and conform to the orderly regulation prescribed by legislation. There is, for example, no reason why an employers' organisation or a trade union, if it becomes insolvent, should not be subject to the national laws for liquidating any insolvent concern.

Subject to the above, the Union Government agrees that such organisations should not be subject to arbitrary dissolution or suspension by administrative authority alone. Any such action should rest upon legislative authority and be appealable to the Courts of the State concerned.

UNITED KINGDOM

5. Yes.

UNITED STATES

5. Yes. This provision seems a suitable precaution under the principles of 4 *(a)* and 4 *(b)* above.

If administrative authority could be used to dissolve the employers' or workers' organisations or to suspend their activities, the protection of the rights already guaranteed would seem inadequately safeguarded. Rights of such fundamental importance should not be subject to denial without opportunity for public presentation of the facts and arguments.

V. Federations, Confederations and International Organisations of Employers and Workers

6. *Do you consider that it would be desirable to provide that employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers ?*

AUSTRALIA

6. Yes. This is a logical extension of the rights which should be granted in the local and national sphere.

AUSTRIA

6. Yes. The inclusion of such a provision merely legalises the *de facto* position which has existed for a long time.

BELGIUM

6. The Government cannot conceive that the reply to this question could be in the negative, for that would amount, on the national level, to the negation of every possibility of organisation.

The right of affiliation with international organisations of employers and workers should also be accorded to employers' and workers' organisations.

Bulgaria

6. Yes.

Canada

6. Yes.

China

6. Yes.

Denmark

6. Yes.

Ecuador

6. Yes. The right to establish federations and confederations within each country should be guaranteed to employers' and workers' organisations. They should also be accorded the right to affiliate with international confederations, provided that the sovereignty, security and dignity of their country are safeguarded and that the trade unions and associations shall not be bound to follow the instructions of international organisations which might be of a character to injure the country to which the association, trade union or organisation concerned belongs. If any dispute should arise between a confederation and an affiliated body, it should be for an international tribunal to adjudicate thereon.

Finland

6. The reply is in the affirmative.

France

6. Yes.

Hungary

6. Yes.

India

6. Yes, provided the exercise of this right does not in any way injure the security of the State.

Mexico

6. Yes.

Netherlands

6. Yes.

Sweden

6. Yes.

Switzerland

6. Provided always that they do not exceed the limits prescribed by law, employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers.

Union of South Africa

6. Yes, provided that it is made amply clear that any such federation is consultative in its purpose and is concerned substantially with the achievement of the objects of the trade unions and employers' organisations. It must have no power to direct the policy of any affiliated body, nor should the basis of the affiliation derogate from the independence of action of such organisations. For example, it would be quite wrong for a federation of employers' organisations to be in a position to decide that any constituent organisation should declare a lockout or refuse to agree to increased wages. Similarly, a federation of trade unions should not be competent to call a strike. In each and every case the decision should rest with the organisation itself.

Where the federation exists to any substantial extent for purposes other than those for which the organisations exist, then obviously affiliation may involve the expenditure of the organisations' assets on purposes to which all members may well not subscribe, and where such factors are involved in the affiliation it should be open to the national authority to require cancellation of the affiliation or, failing such cancellation, to withdraw statutory recognition to the organisation concerned.

Any provision included in a draft Convention might read :

Employers' and workers' organisations shall have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers provided such federation or affiliation in no way imposes upon such organisation any limit as to freedom of action in terms of its own

constitution or in determining its programme and provided that such organisations exist substantially for the purpose of furthering the same objects as such organisations themselves.

UNITED KINGDOM

6. Yes.

UNITED STATES

6. Yes. This seems to be only a logical extension of the previous provisions, if employers' and workers' organisations are to enjoy the same rights internationally as nationally. We believe that such organisations should enjoy the right of free association on an international basis and that the recognition of this right is important and in accordance with the general approval of international association in political affairs.

VI. Guarantees relating to Federations and Confederations

7. *Do you consider that it would be desirable to provide that the guarantees with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations?*

AUSTRALIA

7. Yes.

AUSTRIA

7. Yes. However, the reservations made in the replies to II, 3, and III, 4, must apply in this case also.

BELGIUM

7. Everything which applies to workers' and employers' organisations should also apply in the case of their federations and confederations.

It is for the organisations themselves to decide whether they wish to limit their activities to the regional, occupational or industrial field, to form or affiliate with a central federation or to affiliate with a confederation.

Each of these organisations should have the same right to draw up its constitutions and rules, to organise its administration and activities and to formulate its programmes.

Bulgaria

7. Yes.

Canada

7. Yes.

China

7. Yes.

Denmark

7. Yes.

Ecuador

7. It is considered that there is no practical objection to these rights being accorded to federations and confederations.

Finland

7. The reply is in the affirmative.

France

7. Yes, subject to the reservations expressed under 4 *(a)* and 5.

Hungary

7. Yes.

India

7. Yes.

Mexico

7. Yes.

Netherlands

7. Yes.

Sweden

7. Yes.

SWITZERLAND

7. The guarantees accorded to employers' and workers' organisations referred to in the replies to Questions 3, 4 and 5 should apply to federations and confederations of employers and workers except where this is contrary to national legislation.

UNION OF SOUTH AFRICA

7. No.

UNITED KINGDOM

7. Yes.

UNITED STATES

7. Yes.

The answers of the United States Government to Questions 3, 4 and 5, in conjunction with the answer to Question 6, adequately explain the reasons for the affirmative reply to Question 7.

It is assumed that it is uniformly understood that the provisions discussed under Questions 4 *(b)* and 5 apply to Member Governments and do not apply to international public authorities. If there is not such uniform understanding, the Government would like to express the opinion (1) that it is clearly beyond the power of the International Labour Organisation to limit, in any respect whatsoever, the power of the United Nations or such other public international authorities as exist in connection with it, or may exist ; and (2) that it is clearly inappropriate, likewise, for a Convention to enunciate any principle with respect to the limitation of such power.

VII. Legal Personality of Organisations

8. *Do you consider that it would be desirable to provide that 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 ?*

AUSTRALIA

8. Yes.

AUSTRIA

8. Yes.

Under Austrian law, employers' and workers' organisations automatically acquire legal personality when they are legally and effectively established. (See the explanation given under II, 3 *(a)* and *(b)*.)

BELGIUM

8. It is evident that the authority which would make the acquisition of legal personality by employers' and workers' organisations subject to any condition of such a character as to restrict freedom of association—even if free organisations retained the right not to acquire legal personality—would be acting in a manner contrary to the principle of freedom of association by conferring on those organisations which agreed to conform to the conditions prescribed the benefit of the advantages resulting from civil personality.

It is therefore desirable to prevent any possibility of States permitting any inequality to arise in this way between employers' and workers' organisations, which must remain entirely free and the sole arbiters of their destiny.

BULGARIA

8. Yes.

CANADA

8. Yes.

CHINA

8. No.

DENMARK

8. Yes.

ECUADOR

8. It is considered that the enjoyment of legal personality should not be limited except under conditions determined by each State in order to protect its own security and the well-being of its citizens. The most simple and practical measures should be adopted, so as not to restrict the right of freedom of association as above defined, inasmuch as the purpose is to guarantee it.

Finland

8. The reply is in the affirmative, but account should also be taken of those formal provisions in national legislation which impose conditions by which the acquisition of legal personality by organisations is governed.

France

8. Yes.

Hungary

8. Yes.

India

8. Yes.

Mexico

8. Yes.

Netherlands

8. Yes.

Sweden

8. Yes.

Switzerland

8. It would be desirable to provide that 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. However, the interpretation of legal personality varies so much from one country to another that the Swiss Government wonders whether it would not be preferable for the international regulations to omit this question or for it to be dealt with only in a Recommendation.

In Switzerland, the great majority of trade unions are constituted in the form of associations in the sense of Articles 60 *et seq.* of the Swiss Civil Code. Article 60 provides :

> Political, religious, scientific, artistic or charitable associations and those formed for purposes of recreation or other purposes, whose aims are not of an economic character, acquire legal personality as soon as the intention to organise themselves on a corporate basis has been explicitly expressed in their constitution.

UNION OF SOUTH AFRICA

8. No—on the contrary, if such organisations are to fulfil a statutory rôle in a national legislative system of labour regulation, then recognition must necessarily be on a basis of association consistent with the pattern of the legislation, and organisations which do not conform to such basis should be denied legal personality. Only in this manner is it possible to control demarcation and jurisdictional disputes between organisations and prevent the exploitation of a majority by an organised minority.

" Freedom of association ", if it means " freedom " in the true sense, obviously also connotes freedom not to associate if the individual, or at any rate the majority, so desires.

UNITED KINGDOM

8. No objection is seen to the inclusion of such a provision if this is felt to be generally desirable.

UNITED STATES

8. Yes. This provision seems to be a natural corollary of 4 *(a)* above.

VIII. Responsibilities of Organisations

9. (a) *Do you consider that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their full share of responsibilities and obligations ?*

or, alternatively,

(b) *Do you consider that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration ?*

AUSTRALIA

9. *(a)* No. It would be preferable to reserve such a provision for inclusion in the international regulation of collective

agreements or conciliation and arbitration, when endeavour could be made to lay down clearly defined rights and obligations.

(b) Yes. See 9 *(a)*.

AUSTRIA

9. *(a)* and *(b)* The Convention should be limited to the international regulation of those questions which are fundamental to freedom of association and the protection of the right to organise, that is to say, to questions of a purely organisational character, while the rights and obligations of employers' and workers' organisations and, therefore, their responsibilities should be left to be dealt with by other international Conventions.

BELGIUM

9. *(a)* It would be difficult to accept a provision which did no more than declare that the acquisition and exercise of the right to organise should not exempt employers' and workers' organisations from their respective responsibilities and obligations ; it would be necessary to specify and define these responsibilities and obligations.

(b) It would be preferable to reserve such a question for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

BULGARIA

9. *(a)* Yes.

(b) Yes.

CANADA

9. *(a)* Yes.

CHINA

9. The Government agrees with *(b)*.

DENMARK

9. *(a)* Yes.

ECUADOR

9. *(a)* The acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their responsibilities and obligations.

(b) It does not seem necessary to reserve such a provision for inclusion in other international regulations and, therefore, the question should be dealt with in the general regulations guaranteeing freedom of association and organisation.

FINLAND

9. *(a)* The reply is in the affirmative.

FRANCE

9. *(a)* and *(b)* It would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration, subject to it being redrafted in more definite terms than were adopted by the Committee.

HUNGARY

9. The solution contemplated under *(a)* appears to be the more reasonable, as occupational organisations have to assume certain responsibilities as a direct result of the rights accorded.

INDIA

9. *(a)* Yes. Every right has its counterpart in obligations. The recognition of a right should be, therefore, balanced by a recognition of corresponding responsibilities.

MEXICO

9. The Government would prefer that this matter should not be dealt with by international legislation, but that the States should be left to take appropriate measures.

NETHERLANDS

9. *(a)* The wording of this provision is too vague. The suggestion of *(b)* is preferred.

SWEDEN

9. *(a)* and *(b)* If the question under *(a)* refers only to the obligations of organisations to comply with existing legislation, such an obligation would seem so evident that special provisions

on this matter in the Convention should be superfluous. Since, however, the purport of this question is not quite clear, it would seem preferable to refer the question of responsibilities of organisations to further examination in connection with the preparations for a Convention concerning collective agreements, conciliation and arbitration.

Switzerland

9. *(b)* In the opinion of the Government, a clause relating to the responsibilities and obligations of employers' and workers' organisations should be included in international regulations concerning collective agreements or conciliation and arbitration. It should be observed, however, that certain influential circles in Switzerland are inclined to favour the solution under *(a)*. In fact, the regulation contemplated under *(b)* would exclude from its scope many associations which are not covered by collective agreements or by provisions on conciliation and arbitration.

Union of South Africa

9. *(a)* No.

(b) It is not clear exactly what is intended by the phrase " not exempt employers' and workers' organisations from their full share of responsibilities and obligations". They would, of course, be subject to the common law of the land and the mere fact that they are associated together would not affect the position. They would, for example, have the responsibility of remaining solvent.

United Kingdom

9. It is considered that a provision on the subject might be included in the international regulations concerning freedom of association.

United States

9. The Government approves alternative *(b)*.

The clause, as stated under 9 *(a)*, seems to lack the necessary precision of meaning for inclusion in a Convention. Any attempt to render its meaning exact and definite would involve us prematurely in the detailed problems with respect to the international regulations concerning collective agreements or conciliation and arbitration.

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

10. *Do you consider that international regulations should guarantee the exercise of the right to organise?*

11. *If the answer to Question 10 is in the affirmative, do you consider that the protection of the right to organise should be effectively assured by means of mutual agreement between organised employers and workers?*

12. *Do you consider that, in the absence of full and effective guarantee by means of mutual agreements, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source?*

AUSTRALIA

10. Yes. See answers to Questions 1 and 2.

11. Yes.

12. Yes.

AUSTRIA

10. Yes. See reply to Question 2.

11 and 12. To ensure the protection of the right to organise, it would be quite inadequate to rely only on mutual agreements between organisations of employers and workers. The protection of the right to organise, free from any constraint, which is so important for the employers and above all for the workers, should be internationally guaranteed by special provisions to be included in the Convention.

BELGIUM

10. International regulations should guarantee the exercise of the right to organise.

11. This guarantee may be effectively assured by means of mutual agreement between organised employers and workers.

The international regulations, therefore, should take account of appropriate methods of facilitating the making of such agreements.

The convocation of a national labour conference, the consultation of a central joint council, agencies within which representatives of employers' and workers' organisations may discuss and define their respective rights and obligations, may result in the drawing up of a national agreement laying down the general principles governing the exercise of the right to organise.

On the basis of these general directives, joint industrial committees could then conclude separate agreements which would take account of the requirements and circumstances in each of the branches of industry concerned.

12. Even in those cases where the protection of the right to organise is ensured by means of mutual agreements between organised employers and workers, provision should be made to protect the exercise of the right to organise against any intimidation, coercion or restraint from any source.

Freedom of association should guarantee the indefeasible right of the members of an employers' or workers' organisation to meet peacefully without previous authorisation, without being obliged to admit representatives of authority, and solely on the decision of the executive which they have elected in full freedom.

States should also protect the exercise of the right to organise within the undertaking.

In view of the fact that the representatives of organisations of workers work in an undertaking under the terms of a contract for hire of services which confers on them the legal position of a subordinate, States should agree that the trade union representative should benefit from a special guarantee as regards the period of notice of dismissal to be given, so that an employer may not, of his own free will and by making use of his rights under a contract, rid himself over easily of a worker whom he might consider to be too strong an advocate of the claims of those whom he represents.

BULGARIA

10. Yes.

11. Yes.

12. Yes.

CANADA

10. Yes.

11. Yes, where established practice and the degree of organisation would make this feasible.

12. Yes.

CHINA

10. Yes.

11. Yes.

12. Yes, in this case, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

DENMARK

10. The Danish Government reserves its opinion—having regard also to the replies of the employers' and workers' organisations [1] to this question—until more concrete particulars of the guarantee suggested are available.

11. The Danish Government holds the same views on this question as do the occupational organisations. [2]

12. Yes.

ECUADOR

10. The international regulations should guarantee the exercise of the right to organise to the fullest and most effective degree.

11. Yes, provided that the two elements in production, capital and labour, act with the sincere intention of achieving co-operation and harmony. The agreements reached would effectively put an end to violent labour disputes.

12. If no such agreement as referred to in Question 11 is reached, and even where the best possible agreement may be concluded, such measures as may be deemed appropriate should be taken to render effective the protection of the right to organise against any desire to interfere with or restrict it or any other improper intention.

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[1] The Danish Employers' Confederation replies in the negative to this question, for it does not see how such an international guarantee can be made effective. The Confederation of Danish Trade Unions considers that such a guarantee can hardly be of any value.

[2] The Danish Employers' Confederation considers that the right of association should be safeguarded effectively by mutual agreement between organised employers and workers ; both it and the Confederation of Danish Trade Unions point out that this is the case in Denmark by the Agreement of 5 September 1899.

Finland

10. The reply is in the affirmative.

11. The reply is in the affirmative.

12. The reply is in the affirmative.

France

10. Yes.

11. Yes ; collective agreements, in fact, play an important part in the protection of the right to organise. But this should not be the only solution, as in many countries such agreements would be clearly inadequate.

It is for the democratic State, the protector of public liberties, to ensure the respect of the right to organise, which is one of the fundamental liberties of modern society. It would be essential, therefore, to provide that the State remains in the final instance the protector of the right to organise and that it is the duty of the State to ensure the respect of that right whenever it may be necessary.

However, a law, whether it is constitutional or enacted by Parliament, can lay down only general principles, and it will be for collective agreements to determine in greater detail the conditions under which the right to organise may be exercised where work is carried on.

12. Yes, and especially in order to guarantee to wage-earners that the question of belonging or not belonging to a trade union may not be taken into account in relation to engagement, maintenance in employment, or dismissal.

Hungary

10. Yes.

11. No, as there is no guarantee that such an agreement can suffice to cover all cases or all circumstances.

12. Yes.

India

10. Yes.

11. Yes.

12. Yes.

Mexico

10. Yes.

11 and 12. The Government would prefer that such guarantee should be left to the legislation in force in each country.

Netherlands

10. Yes. The desirability, however, may be questioned of embodying in a Convention a number of principles, as envisaged in Questions No. 11 and No. 12, on the protection of the right to organise, without including at the same time provisions for the practical application of these principles, which provisions will come under first discussion at the 31st Session of the International Labour Conference. It appears to be more systematic to embody both the principles and the provisions for practical application thereof, without which the principles may hardly be considered as clearly defined, together in one Convention. In that case one Convention should be adopted for freedom of association in 1948, whereas Chapter B of the Questionnaire and related questions could be internationally regulated in 1949.

11. If not assured, the protection of this right will be furthered by this provision.

12. Yes.

Sweden

10. Yes.

11 and 12. The only way effectively to assure the right to organise is by means of legislation securing to every citizen an unconditional right to establish or join organisations, the " positive " right to organise. On the other hand, the "negative" right to organise, *i.e.* the right of every citizen not to establish or join organisations, should not be regulated by law. Nor should the right of employers' and workers' organisations to conclude mutual agreements concerning the protection of the right to organise be regulated by law.

Switzerland

10. Yes ; it would not be possible to visualise the recognition of the right of employers and workers to associate in full freedom, without ensuring at the same time that their exercise of this right was guaranteed.

11. The protection of the right to organise should be effectively assured by means of mutual agreements between organised employers and workers. In Switzerland, many collective agreements or understandings between employers' and workers' organisations already make express provision for the recognition of the right to organise.

12. It is considered that, in the absence of full and effective guarantee by means of mutual agreements, appropriate measures should be taken to protect the exercise of the right to organise against any acts of intimidation, coercion or restraint from any source. However, the adoption and application of such measures would not appear to be a simple matter.

Union of South Africa

10-12. Adequate protection against victimisation in connection with the right to form organisations (*cf.* Section 78 (1) of the Industrial Conciliation Act, No. 36 of 1937) and protection against victimisation on account of participation in the lawful activities of any such organisation outside working hours or, with the consent of the employer, during working hours, should be provided. Section 78 (1) and Section 66 of the Union's Act No. 36 of 1937 could usefully be used as a model in framing any such provisions.

Concurrently, employers' organisations should be free of pressure or intimidation in their attempts to organise. This difficulty has been experienced in South Africa.

The protection should find its place in legislation and not be left to collective agreements, more particularly as, in the nature of things, organisation must precede the collective agreement.

United Kingdom

10-12. Yes, subject to considerations similar to those stated in the answer to Question 1. In the United Kingdom the matters referred to in Questions 10-12 rest upon the relations which have developed between organised employers and workpeople, and, while international regulations should guarantee the exercise of the right to organise, the regulations should not be drafted in such a way as to require the enactment of legislation in cases where mutual recognition of the right to organise is achieved in other ways.

UNITED STATES

10. Yes.

11. Yes.

12. Yes.

X. Establishment of Agencies for the Purpose of Ensuring Respect of the Right to Organise

13. *Do you consider that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise?*

AUSTRALIA

13. Yes, subject to the insertion of the words " if necessary " after the word " establishing ", as recommended by the Committee and adopted by the Conference at the 30th Session.

AUSTRIA

13. It would be desirable to include in the Convention a provision imposing on States Members a general obligation to provide in their national legislation for the establishment of appropriate agencies for the purpose of ensuring the respect of the right to organise. However, it would be desirable to refrain from including in the Convention any detailed provisions dealing with this question, in order to afford to the States Members, when applying the Convention, sufficient latitude with regard to the establishment of such agencies; in fact, in view of the differences prevailing with regard to the competence of administrative and judicial authorities, any other solution might stand in the way of the ratification of the Convention.

In Austria the protection of the right to organise falls within the competence of the administrative authorities. But, in view of the fact that this right is guaranteed by the Constitution, and in order to avoid any restriction of the right to organise, the decision of the final administrative authority may be appealed against before the Constitutional Court.

Belgium

13. The Government considers that the establishment, under the auspices of the International Labour Organisation, of an appropriate agency for the purpose of ensuring the respect of the right to organise should be provided for by international regulation.

Bulgaria

13. Yes.

Canada

13. Yes.

China

13. Yes.

Denmark

13. Yes.

Ecuador

13. It is considered desirable and necessary that a national agency should be set up composed of representatives of employers, workers and the State for the purpose of ensuring the respect of the right to organise. This agency should be provided for by regulations.

Finland

13. As the organisation and duties of the agencies in question are still undecided it is difficult to adopt any attitude concerning this question.

France

13. It would be desirable to consider whether effect should not be given to this proposal within the framework of the International Labour Organisation.

Hungary

13. Yes.

India

13. Yes.

Mexico

13. If a guarantee is established by law, States should take appropriate measures to deal with violations of the law.

Netherlands

13. The principle that these agencies should exist in each country should be laid down in a Convention. It should be left to each country, however, to decide which agency, independent of the administration, should be charged with these duties.

Sweden

13. In Sweden, this is in the first instance a matter for the organisations themselves. The strength of the organisations is no doubt such as to make them fully capable of ensuring the respect of the right to organise. In case of dispute it is possible to have the question examined by a Labour Court, *i.e.* a special tribunal dealing mainly with disputes relating to interpretation and application of existing collective agreements. If the Court should come to the conclusion that the right to organise has been violated, the guilty party is liable to pay compensation for any damages caused thereby. The Swedish Government is not in a position to judge whether provisions on the lines suggested would be required in other countries. The Convention should be drafted in such a way as to allow for exercise of the supervision in question by existing qualified agencies.

Switzerland

13. The Government is not in favour of the idea that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise, if such a conception should result in the creation of international machinery to supervise the right to organise.

In Switzerland, it is left to the ordinary courts to adjudicate with regard to violations of the right to organise in contravention of the Swiss Civil Code or Penal Code.

Union of South Africa

13. The phrase " appropriate agencies " is not clear. The " right " should be embodied in national legislation, leaving the Courts of the land to deal with contraventions of the law.

UNITED KINGDOM

13. Such a provision would not be appropriate to conditions in the United Kingdom.

UNITED STATES

13. Yes, if they are necessary to ensure the respect of the right.

* * *

14. *Have you any proposal or suggestion to make on any point relating to the questions of freedom of association and of protection of the right to organise, to which no reference has been made in this Questionnaire?*

BELGIUM

14. The Belgian Government reserves the right to put forward any proposal or suggestion which may appear desirable during the discussion of the questions by the Conference, in particular with regard to certain questions to which replies have been given but which, being not sufficiently clearly defined, can be answered only in general terms.

FRANCE

14. The French Government would be grateful to the International Labour Office if it would study more intensively the question of the representative character of trade union organisations, especially in those countries where several trade union movements exist, and in particular :

(a) whether it is not contrary to freedom of association to accord by law to certain organisations, deemed to be the most representative, a privilege entitling them to represent the whole of the wage-earners concerned for the purpose of concluding collective agreements which, according to a specified procedure, may become generally binding.

(b) in the negative, what would be the criteria, not contrary to freedom of association, which would enable the most representative organisations to be determined.

Finally, it is advisable to point out that it may appear reasonable enough theoretically to desire to establish, along

the lines of the proposed texts, a constant parallel between the organisational rights of trade unions and employers' associations, whereas the objects pursued and the conditions under which those rights are exercised by workers and by employers may present very appreciable differences, and workers' organisations, in particular, are far more exposed to acts of intimidation, coercion or restraint.

It is not so much the legal status of the organisations concerned, but their very objects, that is to say, the defence of the occupational and social interests of their members, which calls for the measures of protection contemplated in the present text.

India

14. The object of the regulations is to secure an effective functioning of free institutions in democratic communities. It is, therefore, essential to provide that the rights shall be available only to organisations of employers and workers which—

(a) do not exclude from their membership any individual or group of individuals, who may otherwise be eligible, merely on grounds of sex, colour, race, creed or nationality ;

(b) do not interfere in any way with the right of any individual or group of individuals to pursue peacefully his or their trade and vocation and to exercise the right of citizenship, and

(c) conduct their activities according to democratic procedure.

Union of South Africa

14. Yes.

An examination of the earlier Conventions adopted by the International Labour Conferences indicates that they are appropriate to States with a homogeneous population.

At the outset it was realised that States which could accept Conventions for their metropolitan territories would have difficulty in applying them to dependent territories such as colonies and mandatory territories, and the Constitution of the International Labour Organisation made provision for the ratification in respect of such territories with reservations to be determined by the competent authority. The same principle was repeated in the revised Constitution adopted in 1946. The reason is clear, namely, that Conventions appropriate to highly

civilised communities could not be applied in their entirety to populations less socially and economically developed.

In other Conventions it was realised that conditions which might be appropriate to densely populated industrialised areas would be incapable of application to scattered thinly populated areas, and provision was made for regional application.

In yet other Conventions it was realised that certain countries, on account of the stage of social and economic development of the general mass of the population, could not, at the time, subscribe to the proposed conditions, and special provision was made for somewhat easier conditions.

Attention is, however, invited to the fact that a fourth type of State exists, and that is the State which within its own borders contains all these elements, namely, the State whose urban industrial working population is made up of inter-penetrating groups which have reached varying stages of social and economic development (that is to say, groups which although at varying stages of development, are not separated geographically in so far as either their domicile or their place of work is concerned) and in which it is quite impracticable to apply concurrently identical provisions to all the groups. The Union of South Africa falls within this classification.

The Declaration of Philadelphia, in Part V, recognised that it might be necessary to differentiate in the manner of the application of the principles set out in that Declaration with due regard to the stage of economic and social development of the peoples concerned. The 30th Session of the International Labour Conference saw fit, in its Resolution concerning freedom of association, to make reference in the preamble to Part V of that Declaration.

While the Union of South Africa is more directly concerned with the problems which arise within its own borders, it is also desirous of ensuring that any Conventions on this question which may, at this third attempt, be adopted by the International Labour Conference should have a reasonable prospect of being generally ratified and achieving " positive results " in the direction of the betterment of the lives of the peoples of the world.

It is apparent from a perusal of, for example, the records and discussions of regional conferences that many States would have considerable difficulty in proceeding in one step to the standard expressed in the Resolution referred to, but it is con-

sidered that much can be achieved by permitting qualified or progressive application either to the entire population of a State or, where the urban industrial working population consists of inter-penetrating groups at varying stages of economic and social development, to groups of the population.

It is considered that this principle, which is incorporated in the preamble to the Resolution, should be included in the text of any Convention considered by the next session of the Conference. Only by such measures can real results be achieved.

United States

14. The Government has made a suggestion in its reply to Question 3 above, which is not directly solicited under the phrasing of the question.

The Government has made a suggestion in its reply to Question 7 above, which is not directly solicited under the phrasing of the question.

It is suggested that the scope, functions and powers of the International Labour Organisation, and the intended purpose and the implied meaning of the language of the Convention, support the inclusion of a definition clause in the Convention stating as follows :

> " Employers' and workers' organisations " as used in this Convention means organisations of employers and workers with respect to their participation in all matters relating to trade union affairs and employer-employee relations.

In this connection, the Government wishes to point out that its affirmative support of a Convention declaring the right of freedom of association of employers and workers without qualification is based on its understanding that the Convention relates solely to trade union affairs and employer-employee relations, and not to other activities, extraneous to these fields, in which employer and worker organisations may engage.

It is assumed that the Convention will include the usual clauses providing for subsequent revision or modification. This seems desirable if the Convention is to afford leeway for further amelioration of its terms.

CHAPTER II

ANALYSIS OF THE REPLIES OF THE GOVERNMENTS

The following pages contain an analysis of the replies of the nineteen Governments set forth in the preceding chapter, made with a view to arriving at practical conclusions for the drawing up of proposed international regulations.

In this analysis the same order is followed as in the Questionnaire, except where the observations of the Governments relate to several points, or even to the Questionnaire as a whole. In the latter case, the observations have been grouped together under the heading to which they most particularly relate.

Preliminary Observations

Several Governments have seen fit to preface their replies by certain preliminary observations, focusing attention on problems of a general kind, which, in their opinion, should be specially considered when drawing up the international regulations.

Some Governments stress, in the first place, the importance which they attach to freedom of association, a principle recognised for a long time in their national legislation (Austria and Switzerland). The Austrian Government declares, *inter alia,* that employers' and workers' organisations are the essential factors in all social progress and that their free co-operation constitutes the best guarantee of social peace.

In the second place, many Governments observe that the exercise of freedom of association should naturally be kept within the limits of the law. They bring up this point either as a special preliminary observation (Netherlands) or in relation to Questions 3, 4, 5 and 7 (Austria, Finland, India, Switzerland, Union of South Africa and United States).

The Netherlands Government points out in particular that in giving its approval to international regulation by means of

a Convention it has taken it as a matter of course that freedom of association, like every other freedom, is subject to the provisions of national legislation with relation to public order.

The Governments of India and of the Union of South Africa express the opinion that the guarantee of freedom of association should be in conformity with national constitutional principles. The Danish and Swiss Governments refer particularly to the provisions in their national Constitutions recognising freedom of association within the limits of the law.

The Governments of Austria, Finland, France and the Union of South Africa point out that occupational organisations, when exercising their rights, are obliged, like any other organised collectivity, to observe the fundamental laws of the country.

The Governments have not made any concrete proposals on these questions, but from the previous remarks there emerges the belief that the international regulations, while emphasising the importance of freedom of association, should make it perfectly clear that workers, employers and their respective organisations are just as much subject to the law as any other person or organised collectivity.

The South African Government calls attention to a third problem. It emphasises the fact that the degree of social and economic development of populations varies, not only between one State and another or between the metropolitan country and non-metropolitan territories, but sometimes, also, even within the frontiers of a single State. In its opinion, no Convention would attain its object or could have positive results if, with regard to the methods and principles of its application, it did not take adequate account of the degree of development of each people and of national conditions. The suggestion made in this connection by the South African Government is considered further in relation to Question 14.

I. Desirability and Form of International Regulation

Questions 1 and 2

The first question asked whether the Conference should adopt international regulations concerning freedom of association and the protection of the right to organise in the form of one or several Conventions.

All the Governments have declared themselves to be in favour of regulations under the form of an international Convention. However, the South African Government, without formally opposing this, would prefer the process of regulation by successive stages. In its opinion, the Conference should first adopt a Recommendation, and only at a later date, in the light of the reports which the Governments would forward with regard to the application of the Recommendation, proceed to adopt international regulations under the form of a Convention.

The Government of the United Kingdom points out that the international regulations should not impose an obligation on a State Member to enact legislation concerning freedom of association or the protection of the right to organise, where this freedom and this right are recognised by the legislation in force or are sufficiently assured by other means.

The second question concerned the point whether the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise.

The opinions of the Governments are divided. The majority (Australia, Austria, Belgium, China, Denmark, Ecuador, Hungary, Mexico, Netherlands, Sweden and United Kingdom) consider that freedom of association and the protection of the right to organise should be dealt with in a single Convention, while the minority (Bulgaria, Canada, Finland, France, India, Union of South Africa and United States) are of the opinion that the two questions should be dealt with in two separate Conventions.

The Austrian, Belgian and Swiss Governments, in favour of the former alternative, urge in particular that the two questions are so closely related that they could not be dealt with on a separate basis.

Supporting the other alternative, the Government of the United States calls attention to the different circumstances existing in various countries, both with regard to the protection of the right to organise by means of agreements and as regards protection by legislation. In its opinion, these differences might result in delaying the adoption of a Convention concerning freedom of association, which is the paramount task of the Conference. The South African Government, also, as already pointed out in its preliminary observations, emphasises the importance of the different national customs and traditions.

If the Conference, says that Government, should decide in favour of regulation by international Convention, it should do so by means of at least two Conventions, or draw up a text which could be adopted in separate parts.

Finally, the Netherlands Government, while declaring itself to be in favour of the adoption of a single Convention, expresses some doubt as to the desirability of regulating separately, as contemplated by the Conference at its 30th Session, the principles of the protection of the right to organise and the methods of application of those principles, that is to say, of settling the first of these questions by the single-discussion procedure and the second under the double-discussion procedure, and, therefore, dealing with the same problem in two separate texts. In its opinion, it would be more desirable to limit the Convention of 1948 to freedom of association and to unite in a single text all the questions relating to the protection of the right to organise, a question on which the Conference will have to take a final decision in 1949.

To sum up, the Governments are almost unanimous in recognising the need, and even the urgency, for an international Convention on freedom of association and the protection of the right to organise. Their opinions differ, on the other hand, with regard to the desirability of regulating these two questions under the form of a single Convention or under the form of two separate Conventions.

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

Question 3

Governments were consulted on the question whether provision should be made to accord to employers and workers the right to establish or join organisations, according to either of the formulae proposed by Question 3 *(a)* and *(b)*. Affirmative replies were received, supporting one formula or the other, from Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, United Kingdom and United States.

The only other reply received, that of the Union of South Africa, expresses a desire to see some qualification of the text proposed which would take account of the situation in that country.

The South African Government wishes the word "inviolable" to be omitted, because of the possibility of its misinterpretation, *e.g.*, in relation to the question of compulsory membership of any particular organisation. It also considers that the phrase "establish organisations" requires some descriptive addition, as in the Government's proposed text given below, to show that the right dealt with in the Convention applies only to employers' and workers' occupational organisations for the purpose of regulating their industrial relations, whereas their right to form organisations for other purposes should be the the same as that of other citizens. The phrase "of their own choosing" is considered inadvisable, as it does not correspond fully with actual practice.

Moreover, the Union of South Africa feels that some "orderly regulation" is needed and that it is not practicable to allow employers and workers the complete freedom of establishing organisations just as they choose. Such orderly regulation would take account of differences existing in certain countries, with regard to the race, customs, stage of social and economic development and education of various groups of the population, and would prevent an inexperienced majority, before they have reached a sufficient stage of development, from taking over control of organisations from the more experienced minority. Further, the freedom of choice should be restricted to organisations established according to the industrial pattern of a country, especially if jurisdictional disputes are to be avoided.

In view of the foregoing considerations, the Union of South Africa expresses a desire that any such provision as is set forth in Question 3 *(a)* and *(b)*, if it is to be included in a Convention, should be redrafted as follows:

Employers and workers shall have the right, without previous authorisation, to establish or join organisations for the furtherance of their interests as such and for membership of which they are eligible subject only to such compulsory statutory requirements of the national authority as will ensure:

(a) adequate adaptation to the pattern of the legislative system of wage regulation and collective bargaining and industrial regulation; and

(b) protection of the organisation's assets against misappropriation and misapplication to non-lawful or non-constitutional purposes ; and

(c) non-participation of the organisation in fields of activity not sufficiently closely connected with the purpose for which such organisation was primarily established, for example, compulsory political activities.

Leaving aside for the moment the question whether the formula *(a)* or *(b)* is preferred, certain reservations are expressed in the replies of some of these countries.

Austria, China, Ecuador, Hungary and India wish to see the right qualified to a certain degree in accordance with national legislation.

Austria considers that the right should not, in principle, be made subject to previous authorisation, but that, when associations are being formed, the administrative formalities prescribed in certain countries should be observed. In the case of Austria, an organisation, prior to its formation, must comply with the provisions of the Associations Act with regard to the notification of the intention to form the organisation and submission of the proposed rules to the administrative authority. Austria points out that if the administrative authority then prohibits the formation of the organisation, the persons concerned have a right of appeal, and the Austrian Government states that this protects the right against any unconstitutional restriction. The Government proposes that, if the words " without previous authorisation " would free organisations from the obligation to comply even with administrative formalities of the kind described, there would need to be included supplementary clauses to take account of the situation in Austria and in countries possessing similar regulations.

China considers that organisations should be set up in conformity with national laws and regulations, while India declares that the right to establish or join organisations should be in conformity with national constitutional provisions regarding freedom of speech and combination, the right to form associations and the right of assembly.

Ecuador considers that the Convention should not refuse the right to establish or join organisations to public employees, but that their rights to do so should be decided by national legislation.

Hungary expresses two reservations—first, that the organisations concerned must be truly democratic, and secondly, that

a workers' organisation may benefit from the right only if it will be representative of a sufficient proportion of workers in the occupation concerned, as fixed by national legislation.

The Governments of Finland, the United Kingdom and Switzerland wish for certain other points to be made clear in the provision. In the first place, Finland considers that the State and municipal authorities, in the rôle of employers, should not be members of the same organisations as private employers. Secondly, the United Kingdom wishes to ensure that the right of organisations to accept or refuse applications for membership shall be safeguarded. Thirdly, both Finland and Switzerland, and also the Union of South Africa, wish expression to be given to the right of employers and workers, not only to establish or join organisations, but to refrain from membership of organisations if they choose.

On the question whether the right should be accorded under the general terms suggested in Question 3 *(a)* or in the more specific terminology of Question 3 *(b)*, the majority of the countries favour the former alternative.

Subject to the general reservations referred to in certain cases, the following countries are in favour of *(a)*: Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland and United Kingdom. Austria favours alternative *(b)*, and the United States proposes a draft similar to this alternative but with one slight deletion and one addition designed to prevent the enumeration from being limitative.

Of those in favour of the former alternative, the United Kingdom considers that it is preferable to have a general formula, for the reasons given on pages 7 and 8 of the Questionnaire. Switzerland considers that any attempt to enumerate, as under *(b)*, could only be limitative and might give rise to controversy.

Austria, however, consider the words "without distinction whatsoever", as under *(a)*, are too general in character and might, therefore, come to be interpreted in a restrictive sense in certain countries, whereas alternative *(b)*, having the advantage of specifying clearly the categories to whom the Convention should apply, would avoid this possibility.

The United States would accept formula *(b)* with the omission of the words "public or private" and the addition, after the enumeration, of the words "and without any other distinction". The United States Government considers that the

term " employers and workers " itself includes employers and workers both public and private, whereas the words " public and private ", if included, might raise doubts as to which persons fell under either of these two categories. The United States, while it does not consider it advisable to try to enumerate the various types of discrimination, feels that ambiguity might be avoided by the adoption of formula *(b)* with the modifications referred to above.

The large majority of the countries which have replied, therefore, are in favour of the principle that employers and workers, without distinction whatsoever, should have the right to establish or join organisations of their own choosing without previous authorisation, and almost all these countries prefer the provision to be drawn up in general terms rather than as a descriptive enumeration.

To the question whether the provision should be included to the effect that the recognition of the right of association of public officials does not prejudge the question of their right to strike—Question 3 *(c)*—Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Switzerland, Union of South Africa and United States reply in the affirmative, while the United Kingdom states that it does not object if it is thought to be necessary. China's reply omits any answer to this particular question, and Mexico answers in the negative. Both the Netherlands and Sweden consider that this Convention should not be concerned with questions relating to the right to strike, and the United States, while replying in the affirmative, considers that it would be undesirable to attempt to resolve this problem under this Convention.

Most countries, therefore, implicitly recognise the right of association of public officials without prejudice to the question of the right to strike, which latter question, many countries point out, is not relevant to the present proposed Convention.

III. Functioning of Organisations

Question 4

To the question whether it would be desirable to provide that employers' and workers' organisations should have the right to draw up their constitution and rules, to organise their administration and activities and to formulate their programmes

—Question 4 *(a)*—affirmative replies were received from Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, Union of South Africa, United Kingdom and United States.

The Union of South Africa qualifies its reply. The Government agrees to the right in principle, provided that the administration, activities and programmes fall within the constitution and rules of the organisation and conform to legitimate activities for organisations of this kind, but could not accept the principle if it meant that organisations would be free to include in their constitutions provisions unrelated to the main purpose of such organisations. Further, under South African legislation, an occupational organisation, in order to obtain registration, must provide in its constitution for certain matters such as qualification for membership, keeping and audit of accounts, etc. The Union of South Africa therefore answers the question in the affirmative, provided that the words " in conformity with national law " are inserted in the clause.

Austria agrees, provided that the clause shall not relieve organisations of the obligation to observe the administrative formalities prescribed by national legislation, for example, matters which must be covered by the rules in any event, communication of the names of the executive officers and notification of general meetings.

Finland, too, agrees, with the reservation that it assumes that the word " lawful " in 4 *(b)* is also implied in 4 *(a)* and means that occupational organisations, when exercising their rights, must observe the general law of the country.

France replies in the affirmative, provided that occupational organisations undertake to respect the fundamental rules of public law.

India stipulates that her affirmative reply is dependent on the methods followed by the organisations being open, peaceful and within the law and not in any way calculated to interfere with the exercise of similar rights by other people and organisations.

Switzerland observes that the right is guaranteed by the Federal Constitution, provided that the objects and methods of associations are not unlawful or dangerous to the State.

The affirmative replies of the other countries mentioned contain no reservations. The United States, in fact, states that the rights specified are inherent aspects of the right of association

and that their absence would render the right of association of little value.

All the nineteen countries which have replied, therefore, are in favour of the principle that employers' and workers' organisations should have the right to draw up their constitutions and rules, etc., six of these countries stressing that the right must be exercised in accordance with the national law or constitution, or, in the case of Austria, the administrative formalities prescribed by law.

The question whether it would be desirable to provide that the public authorities should refrain from any interference which would restrict the right (*i.e.* of organisations to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes) or would impede the organisations in the lawful exercise of this right —Question 4 *(b)*—was answered in the affirmative by Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, Union of South Africa, United Kingdom and United States.

Similar reservations as in the case of the replies to Question 4 *(a)* attach to the replies of Austria, Finland and the Union of South Africa.

Ecuador stipulates that her answer is in the affirmative, provided that the organisations exercising their rights do not endanger the security of the State and do not pursue their objects by unlawful means or by means contrary to the national Constitution or public morals.

China points out that in her case, where there is any restriction of the rights enumerated, employers and workers have the right to request the public authorities to intervene.

The United States stresses the importance of the word " lawful " inasmuch as democratic organisations are, like individuals, subject to the general law of the community, and Switzerland attaches a very similar interpretation to this word.

The other countries mentioned do not qualify their affirmative reply, while Sweden suggests the strengthening of the guarantee afforded. The Swedish Government considers that the words " lawful exercise " are vague, and that there should be some redrafting so as to exclude the possibility of the adoption of special legislation under which public authorities might interfere with the functioning of organisations.

All the nineteen countries, therefore, have declared themselves to be in favour of the principle that the public authorities should refrain from any interference which would restrict the rights of organisations accorded under 4 *(a)*. Again, a number of countries stress the importance of the word " lawful " in the sense that the exercise of these rights must be in accordance with the law of the land.

IV. Dissolution and Suspension of Organisations

Question 5

Question 5 asked whether it would be desirable for the international regulations to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

Denmark points out that under its Constitution associations having a legal object may be freely formed without preliminary authority and may not be dissolved by governmental action. An association may, however, be temporarily prohibited, but in such a case judicial proceedings against it should be undertaken at once. Accordingly, Denmark deems it necessary to reserve its position on the question whether under Danish conditions trade associations should be afforded a protection going beyond that of the constitutional provision.

Austria replies that it must be possible for employers' and workers' organisations, like any other association of individuals, to be dissolved or suspended when they contravene the national law in force, and states that its national legislation recognises certain conditions under which associations may be dissolved or suspended by administrative authority. The answer explains, however, that the decision of the administrative authority in a case of this character may be appealed against to the Constitutional Court. It suggests, therefore, that the provision in a Convention should provide that organisations are not subject to dissolution or suspension by administrative authority " except when their activities are contrary to the national laws in force ".

Switzerland considers that dissolution or suspension should not be permitted except where the existence of the State is imperilled, where associations seek to obtain an unlawful end, and in such cases as are provided for by the Swiss Civil Code.

The Union of South Africa replies in the affirmative, but excludes instances where the action of the administrative authority is taken pursuant to specific legislative authority under statutes that set forth the grounds for dissolution or suspension and provide for the right of appeal to the Courts of Justice. The process of " de-registration " is also excluded from the scope of the affirmative answer.

China replies in the affirmative, but states that " special cases " should be exempt from this provision.

India replies that organisations should not be liable to dissolution or to the suspension of their activities " except by a due process of law ".

The Netherlands answers in the affirmative, upon the understanding that in this context " administrative authority " means any authority other than the legislative and judicial authorities.

France likewise answers in the affirmative, noting that the provision implies that organisations may not be dissolved except by judicial procedure.

The remaining countries, Australia, Belgium, Bulgaria, Canada, Ecuador, Finland, Hungary, Mexico, Sweden, United Kingdom and United States, reply in the affirmative without qualification other than a reference in the Australian answer to the understanding contained in the report of the Committee on freedom of association to the 30th Session of the Conference.

As disclosed by the Committee's report, an organisation having as its object the commission of criminal or immoral acts, or seeking to undermine the security of the State, would be unlawful and could not invoke the guarantee of the principle of freedom of association, for this freedom—like every other freedom—is bound by national laws, as is envisaged in the Constitution of the International Labour Organisation. The proposal contained in Question 5 was intended to exclude the possibility of dissolution or suspension of organisations by mere administrative authority. It did not cover the case of dissolution or suspension by judicial process.

Viewed in the light of this interpretation, the overwhelming majority of the replies clearly support the principle that organisations should not be liable to dissolution or suspension by mere administrative authority.

V. Federations, Confederations and International Organisations of Employers and Workers

Question 6

Question 6 asked whether it would be desirable to provide that employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers. No country replies in the negative, and only four countries, Ecuador, India, Switzerland and the Union of South Africa, qualify their affirmative answers.

The Union of South Africa considers that the character of the organisation the employers' and workers' organisations might join should be clarified. To this end it suggests an addition to the text as proposed, tending to restrict the federation, confederation or international organisation with which a trade association might affiliate to those approved by the national authority. The granting of the proposed right, the answer suggests, would be acceptable " provided such federation or affiliation in no way imposes upon such organisation any limit as to freedom of action in terms of its own constitution or in determining its programme and provided that such organisations exist substantially for the purpose of furthering the same objects as such organisations themselves ". Where such conditions do not prevail the Government would reserve the right to require cancellation of the affiliation, or failing such cancellation, to withdraw statutory recognition of the organisation concerned.

The affirmative answer of Ecuador is somewhat similarly qualified, in that it considers that the right to affiliation with international organisations should be subjected to safeguards for the sovereignty, security and dignity of the State and would not apply in any instance where the organisations are bound to follow instructions of the international organisations which might be of a character to injure the State. A conflict arising between the international and affiliated organisation should be adjudicated by an international tribunal.

India states that the proposed right should be granted provided the exercise thereof does not in any way injure the security of the State. Switzerland considers that such right should be granted provided always that employers' and workers' organisations do not exceed the limits prescribed by law.

Fifteen countries reply to this question in the affirmative, without qualification : Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Finland, France, Hungary, Mexico, Netherlands, Sweden, United Kingdom and United States.

VI. Guarantees relating to Federations and Confederations

Question 7

This question asked whether it would be desirable to provide that the guarantees with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations. The Union of South Africa replies in the negative, three countries (Austria, Switzerland and France) qualify their affirmative answers, and the replies of the remaining fifteen countries are in the affirmative.

The negative reply of the Union of South Africa to this question is not explained. Austria answers in the affirmative, but with reservations referred to in its replies to Questions 3 and 4 regarding the necessity of observing administrative formalities prescribed by national law. Switzerland considers that such guarantees should apply to federations and confederations " except where this is contrary to national legislation ". France replies in the affirmative, subject to the reservations, expressed in reply to Questions 4 *(a)* and 5, that occupational organisations undertake to respect the fundamental rules of public law and should not be subject to dissolution except by judicial procedure.

The principle contained in this proposal has been accepted without qualification by all other responding countries, namely, Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, Hungary, India, Mexico, Netherlands, Sweden, United Kingdom and United States.

VII. Legal Personality of Organisations

Question 8

Question 8 asked whether it would be desirable to include in the international regulations a clause providing that 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 defined in the foregoing provisions.

Only China and the Union of South Africa give a negative reply to this question. China does not accompany its reply with any further observations, while the South African Government declares that only an association established in accordance with the law should be able to enjoy legal personality; it is only in this way, says that Government, that jurisdictional disputes between organisations can be avoided and the exploitation of a majority by an organised minority be prevented.

In contrast to this view, Belgium considers that " the authority which would make the acquisition of legal personality subject to any condition of such a character as to restrict freedom of association—even if free organisations retained the right not to acquire legal personality—would be acting in a manner contrary to the principle of freedom of association by conferring on those organisations which agreed to conform to the conditions prescribed the benefit of the advantages resulting from civil personality ". The Government declares itself, therefore, to be in favour of the proposed provision, in order that States may thus " prevent any possibility of permitting any inequality to arise between employers' and workers' organisations, which must remain entirely free and the sole arbiters of their destiny ".

The majority of the States reply in the affirmative without further observations (Australia, Bulgaria, Canada, China, Denmark, France, Hungary, India, Mexico, Netherlands and Sweden) ; a few Governments, however, have stated briefly the reasons for their replies.

Ecuador considers that " the enjoyment of legal personality should not be limited except under conditions determined by each State in order to protect its own security and the well-being of its citizens ".

Finland considers that account should also be taken of those provisions in national legislation which impose conditions by which the acquisition of legal personality by organisations is governed.

Switzerland wonders whether it would not be preferable, in view of the fact that the interpretation of legal personality varies so much from one country to another, for the international regulation to omit this question or for it to be dealt

with only in a Recommendation. It points out, moreover, that under Article 60 *et seq.* of the Swiss Civil Code " associations . . . whose aims are not of an economic character, acquire legal personality as soon as the intention to organise themselves on a corporate basis has been explicitly expressed in their constitution ".

Austria explains that, under Austrian law, employers' and workers' organisations automatically acquire legal personality when they are legally and effectively established.

While not giving a clearly affirmative reply, the United Kingdom sees " no objection . . . to the inclusion of such a provision, if this is felt to be generally desirable ".

Finally, the United States Government observes that this provision appears to be a natural corollary to any affirmative reply to Question 4 *(a)*.

The analysis of the replies to this question reveals that, by a very large majority, the Governments consider that the conditions to which the law may subject the acquisition of legal personality by employers' and workers' organisations should not be such as in any way to restrict freedom of association.

VIII. Responsibilities of Organisations

Question 9

Question 9 suggested two alternatives. The Governments were asked :

(a) whether they considered that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined in the first part of the regulations should not exempt employers' and workers' organisations from their full share of responsibilities and obligations ; or, alternatively,

(b) whether they considered that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

The replies to this question are not unanimous, although they show a clear majority in favour of the solution proposed under 9 *(b)*.

Mexico considers that it would be preferable that this matter should not be dealt with in the international regulations, but that the States should be left to take such measures as they consider appropriate. Canada, Denmark, Ecuador, Finland, Hungary, India and the United Kingdom favour the solution proposed under 9 *(a)*. In their observations, Hungary and India point out that, as every right has its counterpart in obligations, occupational organisations have to assume certain responsibilities as a direct result of the rights accorded to them. It should be noted that the replies of these two Governments refer to the moral basis for responsibility and not to the desirability of including such a provision in the international regulations concerning freedom of association.

On the other hand, the replies of the Governments which declare themselves to be in favour of the solution proposed under 9 *(b)* (Australia, Austria, Belgium, Bulgaria, China, France, Netherlands, Sweden, Switzerland, Union of South Africa and United States) indicate, for the most part, not that the Governments are opposed to the responsibilities and obligations of employers' and workers' organisations being defined, but that they consider it more desirable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

The United States points out that paragraph 9 *(a)* as it exists is not sufficiently clear for inclusion in a Convention, and that any attempt to render its meaning exact and definite would involve the Conference prematurely in the detailed study of problems relating to international regulations concerning collective agreements or conciliation and arbitration.

Australia, Belgium, the Netherlands, Sweden and Switzerland accompany their replies with similar remarks ; the last-mentioned country points out, however, that certain influential circles in Switzerland are rather inclined to the solution proposed under 9 *(a)*, as the regulation contemplated under 9 *(b)* would exclude from its scope many associations which are not covered either by collective agreements or by provisions concerning conciliation and arbitration.

Austria considers that the Convention should be limited to the international regulation of those questions which are fundamental to freedom of association and the protection of the right to organise, that is to say, to questions of a purely organisational character.

From this short analysis, it becomes clear that the majority of the Governments consider that it would be preferable to reserve, for inclusion in international regulations concerning collective agreements or conciliation and arbitration, any provision concerning the respective responsibilities and obligations of employers' and workers' organisations.

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

X. Establishment of Agencies for the Purpose of Ensuring Respect of the Right to Organise

Questions 10-13

Question 10 asked whether international regulations should guarantee the exercise of the right to organise.

The Danish Government, considering that this is a question of the guarantee of the right to organise by an international agency supervising freedom of association, reserves its opinion, while awaiting fuller information as regards the particulars of the international guarantee. The central organisations of Danish employers and workers, consulted beforehand by the Government, also declared themselves to be against an international guarantee, to which they attribute no practical value. The use of the term " international guarantee ", both by the Danish Government and by the central organisations concerned, appears to indicate, however, that the Danish Government has in view the problem of international supervision, a question which is not contemplated under the present regulations. It is, therefore, permissible not to attribute a negative sense to the reply of the Danish Government, especially in view of the fact that affirmative replies are given to the subsequent questions, which are dependent on Question 10.

The replies of all the other Governments are clearly in the affirmative. It should be noted, however, that the United Kingdom Government points out once again that the international regulations should not impose on a State Member the obligation to enact legislation in cases where the right to organise

is already adequately protected by existing legislation or in other ways.

There is, therefore, almost complete unanimity as to the need to embody the protection of the right to organise in the international regulations.

Question 11 dealt with the consideration whether the protection of the right to organise could be effectively assured by means of mutual agreement between organised employers and workers.

The Governments of Austria, Hungary, Mexico, Sweden and the Union of South Africa reply in the negative. They consider indeed that only the law offers effective guarantees.

In the opinion of the French Government, the international regulations should take into account all collective agreements, but should not entrust the protection of the right to organise solely to such agreements. This obligation falls in the last resort on the State. The law should lay down general principles, and collective agreements should prescribe the conditions of their application.

On the other hand, the replies of the remaining countries are in the affirmative (Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, India, Netherlands, Switzerland, United Kingdom and United States). The Canadian Government specifies, however, that the protection of the right to organise by means of collective agreements should depend on the existence of an established practice and of organisations which are sufficiently developed.

The Government of Ecuador emphasises that the two parties must act together in a sincere intention to co-operate in order to put an end to disputes.

Question 12 asked whether, in the absence of full and effective guarantee by means of mutual agreements, the States Members should take appropriate measures to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

The Governments of Austria, Mexico, Sweden and the Union of South Africa, in accordance with the replies given to Question 11, consider that legislative measures are indispensable for ensuring the exercise of the right to organise. The Governments of Belgium and Ecuador are of the same opinion.

The Swedish Government specifies, in this connection, that such legislation should be limited to guaranteeing the right

to establish and join organisations; it should not regulate, on the other hand, either the right not to associate or the right of occupational organisations to conclude mutual agreements.

The Governments of Belgium and Ecuador consider that the State should take protective measures, even where agreements have been concluded in due and proper form. The Government of Belgium calls special attention to the importance of protecting staff delegates against discriminatory dismissal.

The other Governments (Austria, Bulgaria, Canada, China, Denmark, Finland, France, Hungary, India, Netherlands, Switzerland, United Kingdom and United States) approve the text suggested in Question 12. In the view of the French Government, appropriate measures should be taken especially in order to guarantee to wage-earners that the question of membership or non-membership of a trade union may not be taken into account in relation to engagement, maintenance in employment or dismissal.

Lastly, the Swiss Government points out that the adoption and application of protective measures might encounter difficulties.

Finally, Question 13 dealt with the establishment of appropriate agencies for the purpose of ensuring the respect of the right to organise.

The United Kingdom and South African Governments reply in the negative.

The Government of Finland does not express any view as yet, on the ground that neither the structure nor the duties of these agencies would be defined in the regulations.

For the Swiss Government, the provision would not be acceptable if it should result in the creation of international machinery to supervise the right to organise.

On the other hand, the Belgian Government is of the opinion that the establishment, under the auspices of the International Labour Organisation, of an appropriate agency of supervision, should be prescribed by the international regulations. Likewise, the French Government feels that consideration should be given to the question whether effect might be given to this proposal within the framework of the International Labour Organisation. It is desirable, however, once more to point out that Question 13 related, not to the establishment of international supervision, but only to the establishment of appropriate national agencies.

In the opinion of the Swedish Government, the adoption of this provision should not involve any modification of existing national systems which give complete satisfaction to everyone.

In a similar manner, the Mexican Government considers that it is for the countries which guarantee the right to organise by legislation to take appropriate measures where such legislation is contravened.

The Governments of Australia and the United States answer in the affirmative in principle, but would like to see the words " if necessary " embodied in the provision.

The other replies are clearly affirmative (Austria, Bulgaria, Canada, China, Denmark, Ecuador, Hungary, India and Netherlands).

It becomes clear from the survey of the replies that the opinions of the Governments are divided as regards the desirability of a provision which would impose a strict obligation on States Members to establish supervisory agencies.

Proposals by the Governments

Question 14

Question 14 asked whether the Governments had any proposal or suggestion to make on any point to which no reference had been made in the Questionnaire.

An analysis follows of the proposals made to include in the text provisions not covered in the Questionnaire.

The Governments of France, India, the Union of South Africa and the United States suggest that certain provisions should be included in the Convention which, although varying in form, are intended to define directly or indirectly the scope of the Convention.

The South African Government urges that Conventions adopted earlier include provisions granting exemption in the case of non-metropolitan territories, or of certain States the mass of whose population has not yet reached the same economic and social level as in more advanced countries, or again in the case of States whose territories include sparsely populated regions. In the South African view, account should also be taken of the fact that a fourth type of State exists, among which is the Union of South Africa, in which certain elements of the population, while sharing in the general industrial life,

have not attained the same degree of development as the rest of the community. The Government of South Africa proposes, therefore, that there should be embodied in the text of the Convention, as in the Resolution adopted at the 30th Session of the Conference, the provision contained in Part V of the Declaration of Philadelphia, according to which due account should be taken of the stage of social and economic development of each people in relation to the realisation of the programme set forth in the Declaration.

In the opinion of the Indian Government, the benefit of the rights provided by the Convention should be available only to those organisations of employers and workers which fulfil the three following conditions :

(a) the organisations must not exclude from membership any individuals or group of individuals who may otherwise be eligible, merely on grounds of sex, colour, race, creed or nationality ;

(b) the organisations must not interfere in any way with the right of any individual or group of individuals to pursue peacefully his or their trade or vocation and to exercise the right of citizenship ;

(c) the organisations must conduct their activities according to democratic procedure.

The Government of the United States declares that it is in favour of the adoption of a Convention concerning freedom of association of workers and employers, on the understanding that the Convention deals exclusively with trade union affairs and employer-employee relations, and not with other activities of organisations extraneous to these fields. In order to give more clarity to the proposed text, it suggests that a definition of the words " employers' and workers' organisations " should be included, a definition which, in the spirit of the Constitution of the International Labour Organisation and of the Convention itself, might be drafted as follows :

" Employers' and workers' organisations " as used in this Convention means organisations of employers and workers with respect to their participation in all matters relating to trade union affairs and employer-employee relations.

The French Government calls attention to the fact that it is not so much the legal status of the organisations concerned,

but their very object, which calls for the measures of protection contemplated in the present text. That object is the defence of the occupational and social interests of their members.

The French Government points out, in this connection, that it may appear reasonable enough theoretically to desire to establish a constant parallel between organisations of workers and employers, whereas the objects pursued and the conditions under which those rights are exercised by workers and employers may present very appreciable differences, and workers' organisations, in particular, are far more exposed to acts of intimidation, coercion or restraint.

Further, the French Government asks the International Labour Office to study more intensively the question of the representative character of trade union organisations. It raises in particular the following questions :

(a) whether it is not contrary to freedom of association to accord by law to certain organisations deemed to be the most representative a privilege entitling them to represent the whole of the wage-earners concerned for the purpose of concluding collective agreements which, according to a specified procedure, may become generally binding ;

(b) in the negative, what would be the criteria not contrary to freedom of association which would enable the most representative organisations to be determined ?

It should be pointed out that this problem has been examined by the Office in its report on industrial relations, which question is Item VIII on the agenda of the present session of the Conference. [1] It appeared to the Office that this problem arose essentially in connection with industrial relations and, more particularly, as the French Government itself refers to it, in connection with collective agreements, and might, therefore, be more suitably dealt with in relation to that question.

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[1] International Labour Conference, 31st Session, Report VIII (1): *Industrial Relations*, Geneva (I.L.O.), 1947.

CHAPTER III

CONCLUSIONS

On the basis of the replies analysed in the preceding chapter, the Office submits for the consideration of the Conference a proposed Convention concerning freedom of association and protection of the right to organise, prefaced by a short Preamble. These texts will be found in Chapter IV.

Preamble to the Proposed Convention

The Office has considered it necessary to include a short Preamble stating the reasons for the text of the proposed Convention.

In the first place, it appears desirable to refer to the provisions of the Constitution of the International Labour Organisation and of the Declaration of Philadelphia, which determine the competence of the Organisation in respect of the question of freedom of association and give prominence to the importance of this problem in relation to the improvement of conditions of labour, social progress and maintenance of peace.

It seems no less desirable to emphasise that the Assembly of the United Nations has endorsed the principles concerning trade union questions adopted unanimously at the last session of the Conference and has, therefore, requested the International Labour Organisation to make every effort to translate these principles into formal undertakings by means of one or several international labour Conventions.

Finally, it appears necessary to recall that if workers, employers and their respective organisations must not be subject, as they often have been in the past, to discriminatory treatment, as compared with other persons or organisations, they are no less obliged, when exercising their rights, to observe the laws concerning public order laid down by national

Constitutions, penal codes or civil codes which, by definition, are binding upon everyone.

The Office thus takes into account the reservations relating to " legality " and " public order " reaffirmed by a number of Governments in their replies. It may be recalled in this connection that such reservations, even if they are not expressly declared, are nevertheless implicitly included in any text, national or international, giving sanction to a right or a freedom. But, in order to avoid any ambiguity, it is necessary to state specifically that the laws relating to public order in various countries, whatever they may be, must be compatible with the provisions of any Convention which may be adopted concerning freedom of association. The same holds good, of course, with regard to national legislation concerning occupational organisasations. Indeed, if the position should be otherwise, the Convention itself would no longer have any object. And it is for this reason that account can hardly be taken of any reservation relating to public order in the actual text of the Convention, because this would enable the States, according to their interpretation of this concept, to bring into question once again the principles to which they had subscribed.

Proposed Convention concerning Freedom of Association and Protection of the Right to Organise

Before considering the significance of the various provisions of the proposed Convention concerning freedom of association and protection of the right to organise, it is important to recall in a few words the spirit in which this proposed text has been prepared.

The Office, in full accord with the decisions of the last session of the International Labour Conference, has endeavoured to define as concisely as possible the principles determining the rules governing freedom of association, principles which, be it remembered, are expressly sanctioned by the legislation and practice of the great majority of countries.

In other words, all these countries are in a position to ratify the Convention without having first to amend their legislation concerning occupational organisations.

On the other hand, any proposed regulation purporting to regulate even the smallest problems which might arise in

practice in each country would have obliged the majority of countries first to amend their national legislation, frequently with regard to points of detail, before they would be in a position to ratify the international Convention. And it is for this reason that the Office has purposely refrained from proposing to the Conference any kind of " code or model regulations " concerning freedom of association.

In the second place, it is important to remember that, in accordance with the decisions taken by the 30th Session of the Conference, the Convention concerning freedom of association should be considered only as a first stage in the programme for the international regulation of trade union rights. In fact, the 31st Session of the Conference also has before it, for first discussion, several texts relating, *inter alia*, to the rôle of workers' and employers' organisations in the field of industrial relations and in that of social and economic regulation (Item VIII on the agenda of the Conference).

Moreover, a number of suggestions made in the replies of the Governments, which relate to the wider problems of industrial relations and co-operation between public authorities and employers' and workers' organisations, might more usefully be discussed in connection with the texts referred to above.

Desirability and Form of International Regulation

The Conference will need to decide in the first place whether the international regulations should take the form of a Convention and, if the decision is in the affirmative, whether there shall be a single Convention relating both to freedom of association and the protection of the right to organise, or two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise.

The Governments have expressed themselves almost unanimously to be in favour of prompt international regulation by means of a Convention, and the majority prefer a single Convention.

However, a number of Governments have given preference to regulation by means of two separate Conventions, for the reason especially that a text relating to both questions at the same time might risk entailing delay in the adoption of a Convention on freedom of association, which should be the first task of the Conference. It has also been urged that it

might be undesirable to seek to regulate separately, on the one hand, the principle of the protection of the right to organise by the procedure of single discussion, and the methods of application of the principle by the double-discussion procedure.

The Office has endeavoured to reconcile these opinions by dividing the proposed regulations into two parts, the first being concerned with freedom of association and the second with the protection of the right to organise.

The Conference will thus be in a position to give its decisions separately on each of the two parts of the proposed Convention.

Part I. Freedom of Association

Article 1 of the proposed Convention provides that each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the provisions laid down in the following articles. This text does not call for any further observations.

Establishment of Organisations

Article 2 of the proposed Convention consists of a definition of freedom of association of workers and employers as individuals. It provides accordingly that workers and employers, without distinction whatsoever, shall have the inalienable right to establish or join organisations of their own choosing without previous authorisation.

The observations of the Governments have related to several points in this definition which it is necessary now to consider briefly.

The Principle of Non-discrimination.

It may be recalled in the first place that the Governments were asked to choose between two formulae. The first, that which has been retained in the proposed Convention, defines the principle of non-discrimination in quite general terms: "without distinction whatsoever". The second, on the other hand, enumerates certain typical examples of organisational discrimination: "without distinction as to occupation, sex, colour, race, creed, nationality or political opinion".

The majority of the replies expressed a preference for the first formula, for the reason especially that a clause in quite

general terms was actually more comprehensive than a formula enumerating the different types of discrimination, which always entails the risk of certain types being omitted.

Hence, in keeping with the spirit of the replies, the general provision included in the text of the proposed Convention should be interpreted in the widest sense as meaning that freedom of association should be recognised without distinction whatsoever as to occupation, sex, colour, race, creed, nationality, political opinion, etc., not only for workers and employers in private industry, but also for officials or employees of the public service.

It may be observed, in this latter connection, that the Governments were also consulted on the question whether it would be desirable to provide in the international regulations that the recognition of the right of association of public officials should in no way prejudge the question of the right of such officials to strike. Several Governments, while giving their approval to the formula, have nevertheless emphasised, 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.

In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association.

Guarantee of Freedom of Association without Previous Authorisation.

The real guarantee of freedom of association flows from the words : " inalienable right of workers and employers to establish or join organisations . . . without previous authorisation ".

None of the replies have expressly questioned this fundamental principle, but some Governments have urged nevertheless that, in the interests of the smooth functioning of the organisations, they should be obliged to comply, in regard to their establishment, with the legal formalities prescribed by their national legislation.

It should be stressed in this connection that Article 2 merely lays down a principle and simply places a limit on the intervention of the State. Therefore, it leaves a certain latitude to countries to regulate as they wish the conditions under which

organisations may be established, with the express proviso, of course, that these conditions shall not be such as to restrict the right which workers and employers should have to establish their organisations in full freedom.

The words " without previous authorisation " are sufficiently explicit to enable countries to distinguish between measures which are compatible with the principle of the free establishment of organisations and those which would not be so.

The Right to Associate and the Right Not to Associate.

Article 2 lays down, in positive terms, the right of workers and employers to establish and join organisations.

The very large majority of the replies have unreservedly given approval to this principle, but a few Governments have also expressed the wish that the international guarantee should refer not only to the positive right to associate but also to the purely negative right not to associate.

It should be observed in this connection that the very object of the international regulation is to guarantee freedom of association as a measure of social protection of outstanding importance. But the protection of the purely negative right not to associate could naturally not be viewed as coming under this head.

Moreover, Article 2 merely lays down a right and not, as certain countries seem to fear, an obligation. It follows, therefore, that workers and employers remain completely free either to make use of this right or not to do so. But the voluntary renunciation of the positive right to associate could not be treated on the same basis as the formal guarantee of the purely negative right not to associate.

Freedom of Choice of Organisations.

By including the words " organisations of their own choosing " in Article 2, the Office intended to take account of the fact that, in a number of countries, there exist several organisations representative of workers and employers among which the persons concerned may choose which they shall join, on either religious or political grounds.

And it is in this sense that the very large majority of replies have interpreted these words. However, to allay certain apprehensions which have been expressed in a few replies, it is

important to point out that such a provision leaves the organisations concerned entirely free to lay down in their rules the conditions of membership or withdrawal from membership, subject only to the reservation that such conditions shall not bring into question the principle of non-discrimination in relation to organisational rights.

Autonomy of Organisations

Article 3 of the proposed Convention consists of two paragraphs which supplement each other.

The first provides that 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.

It will be observed that to the formula which was included in the Questionnaire have been added the words : " to elect their representatives in full freedom ", which gives precise detail to the definition of the right of free functioning of organisations.

The second paragraph of Article 3 lays an obligation on the public authorities to refrain from any interference which would restrict this right or impede the lawful exercise thereof.

The majority of the replies to this question are not merely affirmative but emphasise further the fact that the freedom to establish organisations guaranteed by Article 2 of the proposed Convention would not be of great value if it was not completed by the freedom for organisations to administer themselves according to their wishes.

But here again, certain reservations have been made by some Governments with regard especially to the definition of organisations and the limits to be placed on administrative autonomy.

Definition of Occupational Organisations.

In using the words " workers' and employers' organisations ", the Office intended to emphasise that the proposed Convention refers only to occupational organisations whose essential mission consists in ensuring the defence of the occupational, social and economic interests of their members. It follows that organisations of a purely political or purely commercial character, or

public agencies (State agencies, municipalities, etc.), do not fall within this definition and cannot, therefore, claim to benefit from the application of the Convention.

But by reason of the very great difference in the definitions of occupational organisations which is met with in the various national legislations, it seems impossible to hope to bring all these definitions down to one formula which would suit all countries. The words " workers' and employers' organisations " appear to be sufficiently definite to distinguish occupational organisations from other organisations.

In reply to another observation made by certain Governments on the " representative character of organisations ", it will be sufficient to point out here that the proposed Convention concerning freedom of association can hardly discriminate between organisations according to their numerical importance, but that this problem will come before the Conference in connection with the question of industrial relations, which is Item VIII on its agenda.

Regulation of the Functioning of Organisations.

Some Governments have accompanied their affirmative reply relating to the administrative autonomy of organisations by reservations similar to those made in connection with the preceding article and which relate to certain formalities prescribed by their national regulations.

But here again, the text under review goes only so far as to fix a limit to the interference of authorities, and in no way pretends, therefore, to prohibit legal requirements having as their exclusive object the assurance of the normal functioning of organisations.

Thus, for instance, national legislation frequently provides that organisations must be endowed with rules regulating, in the interests of the members themselves, such questions as, for example, the conditions for obtaining or withdrawing from membership, the organisation of the administration and executive, trade union contributions, management and supervision of funds, submission of the balance-sheet to the members, and other similar questions.

Provisions of this kind, which, moreover, are always included in the rules which organisations draw up on a voluntary basis, cannot be considered as being contrary to the principle of

freedom of association if they do not bring into question the autonomy of organisations as defined by Article 3 of the proposed Convention.

But if the national authorities possess in this way a fairly considerable latitude to regulate the functioning of organisations, it would appear, nevertheless, that the insertion in Article 3 of the words " in conformity with national laws " (an insertion asked for by certain Governments) would be incompatible with the principle of autonomy of occupational organisations, as this would give the national public authorities a free hand, so to speak, to regulate the functioning of the organisations as they wished.

On somewhat similar considerations the Conference may wish to discuss the desirability of deleting, at the end of the second paragraph of Article 3, the word " lawful ", since a general reservation regarding legality is already included in the Preamble and applies, therefore, to all the articles of the proposed Convention.

Dissolution and Suspension of Organisations

Article 4 of the proposed Convention provides that workers' and employers' organisations shall not be liable to be dissolved or have their activities suspended by administrative authority.

The object of this clause is to complete the guarantees relating to the free establishment and free functioning of organisations, prescribed by Articles 2 and 3 of the proposed text, by a guarantee against dissolution or arbitrary suspension of organisations by administrative authority. In other words, workers' and employers' organisations should benefit from all the guarantees offered by the judicial procedure if the dissolution or suspension is prescribed in national regulations as a penalty for breach of the law.

The very great majority of the replies unreservedly endorse this principle, for the reason, above all, that it should be for the judiciary and not for the administrative authorities to hear cases of alleged breaches of the law and, where appropriate, to apply the penalties prescribed.

The Conference will, however, wish to take account of the fact that, in several countries, the dissolution or suspension of organisations arises out of an administrative jurisdiction which offers the parties the same guarantees as judicial procedure

properly speaking. It seems, therefore, that such administrative procedure could be assimilated, in the terms of the Convention, to judicial procedure.

Federations, Confederations and International Organisations of Employers and Workers

Article 5 provides that workers' and employers' organisations shall have the right to establish federations and confederations and to affiliate with international organisations of workers and employers.

This provision is simply the corollary to the right provided under Article 2 to establish organisations. It is based on the recognition of the fact that the solidarity of interests which unites workers and employers is not limited to one undertaking, nor to one trade or industry, nor even to one country, but extends to all countries. It may be recalled in this connection that both the United Nations and the International Labour Organisation have formally recognised the status of international organisations of workers and employers by associating them directly with their own activities.

The very great majority of the countries have given their unqualified approval to this provision. Three countries once more qualify their agreement by general reservations concerning public order and security of the State, reservations which have been considered in connection with the Preamble to the Convention. A single reply raises the problem of the administrative and financial autonomy of organisations affiliated either to national federations and confederations or to international organisations. It may be pointed out, in this latter connection, that, in fact, the rules of national federations and confederations, like those of international organisations of workers and employers, safeguard to the largest possible degree the autonomy of the organisations which are affiliated to them. But this problem, indeed, is related to the sovereignty of national and international congresses of workers and employers and could not, therefore, be dealt with by an international document.

Guarantees relating to Federations and Confederations

Article 6 is intended to make applicable to federations and confederations the guarantees relating to establishment, functioning and dissolution, provided under Articles 2, 3 and

4 of the proposed Convention in respect of workers' and employers' organisations.

Except for the formal reservations with regard to " legality " made by three countries, the other replies are in the affirmative without further observations. One country only replied in the negative, without giving any reasons for its answer.

This text, therefore, does not call for further remark.

Acquisition of Legal Personality

Article 7 provides that 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 laid down in Articles 2, 3 and 4 analysed above.

While the majority of the countries, in this case also, gave an affirmative reply without comment, a few countries nevertheless wish to make the acquisition of legal personality subject to the formalities prescribed by their national legislation.

In order to avoid any misunderstanding of this provision, it should be pointed out that Article 7 is in no way intended to impose an obligation on States to confer legal personality on organisations.

In fact, in very many countries, organisations occupy a rôle of outstanding importance without, at the same time, being endowed with legal personality. In other countries, organisations are free to acquire or not to acquire legal personality. In yet others, legal personality is acquired as a right after mere registration.

In a very few countries, the accordance of legal personality to organisations is deemed to be a condition *sine qua non* of their existence and operation. Now if, in this last type of case, the legislator was entirely free to make recognition subject to the conditions which it pleased him to impose (such as, for instance, previous authorisation, supervision by the authorities of the internal and external activities of organisations, etc.), he could in this way nullify all the guarantees relating to freedom of association provided in the proposed Convention.

And it is for the sole purpose of preventing the accordance of legal personality from serving as a pretext for a reintroduction, by this means, of a restrictive régime with regard to

occupational organisation that the Office felt obliged to include Article 7 in the proposed Convention.

This clause, therefore, is inserted purely as a safeguard, but it in no way prejudges the question whether countries shall decide to confer or not to confer legal personality on occupational organisations.

Responsibilities of Organisations

The Governments were consulted also on the two following questions :

1. Would it be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined above should not exempt workers' and employers' organisations from their full share of responsibilities and obligations ?

Or, alternatively,

2. Would it be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration ?

The majority of Governments declared themselves to be in favour of the solution indicated by the latter formula, urging, in particular, that the obligation laid down in the first formula was far too indefinite to be included usefully in an international Convention.

For the purposes of this question, it would appear that only two kinds of responsibility can be visualised : (1) a responsibility of a general kind in respect of breach of the law ; (2) a specific responsibility resulting, for instance, from the violation either of a law specially applicable to occupational organisations or of a contractual undertaking.

The case of general responsibility is covered by the general reservation relating to legality, included in the Preamble to the proposed Convention, while the question of specific responsibility will only arise when the Conference is considering the questions included in Item VIII of its agenda and, in particular, those relating to collective agreements and conciliation and arbitration.

And it is for these reasons that the Office, in accordance with the suggestions made by the majority of the countries, did not feel that it should retain a special provision concerning the responsibility of organisations in the proposed Convention.

Part II. Protection of the Right to Organise

It will be remembered that the Conference, at its 30th Session, reserved for possible regulation in 1948, under the single-discussion procedure, only the question relating to the guarantee of the principle of the protection of the right to organise, but referred the question relating to the application of the principle of the right to organise and to bargain collectively to its 31st Session, for consideration under the double-discussion procedure (Item VIII on the agenda of the Conference).

On the basis of the list of points adopted by the last session of the Conference in this connection, the Office Questionnaire consulted the Governments on the following matters :

1. Should international regulations guarantee the exercise of the right to organise ?

2. Should the protection of the right to organise be effectually assured by means of mutual agreement between organised workers and employers ?

3. In the absence of full and effective guarantee by means of mutual agreements, should appropriate measures be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source ? And finally,

4. Should the international regulations include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise ?

It is evident from the analysis made in the preceding chapter, that the very large majority of the replies of the Governments are clearly in the affirmative with regard to the need to guarantee the exercise of the right to organise, but reveal fairly considerable differences as regards both the methods to be followed in giving effect to this protection (guarantee by legal means or guarantee under agreement), and as regards the measures of supervision which might be contemplated for the purpose of ensuring protection of the right to organise (establishment of national supervisory agencies).

Faced by this divergence in the points of view expressed, it appeared desirable to the Office to submit to the Conference, in accordance, moreover, with the wish expressed at the 30th Session, a text concerned only with the guarantee of the principle of the protection of the right to organise.

This appears to be the only possible procedure for the further reason that the Conference also has before it, for first discussion, as indicated earlier, a far more detailed text concerning the application of the principle of the right to organise and to bargain collectively, a text which takes due account of all the aspects of the problem.

Article 8 of the proposed Convention provides for the guarantee of the principle of the protection of the right to organise in the following terms :

> Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure the exercise of the right to organise of workers and employers.

It results from this text that, while the Members ratifying the Convention are of course obliged to ensure in all circumstances the protection of the right to organise, they are nevertheless free to choose the methods—legal guarantee or guarantee by means of mutual agreements—by which this obligation may be carried out.

It results also from the words " all necessary and appropriate measures " that those States which already possess an adequate system of protection of the right to organise, either by virtue of their national legislation or by virtue of other means, are not bound to take further measures before being able to ratify the Convention.

Part III. Miscellaneous Provisions

Articles 9 and 10 of the proposed Convention contain the usual provisions with regard to the application to non-metropolitan territories of any Convention concerning freedom of association and protection of the right to organise which may be adopted.

Article 9 is in accordance with the provisions of Article 35, paragraphs 1-3, of the Constitution, as amended by the Conference at its 1946 Session. It concerns the application of the Convention to those non-metropolitan territories for whose international relations Members of the Organisation are responsible.

Article 10 takes account of the situation—defined in paragraphs 4-8 of Article 35 of the Constitution as amended in 1946—of the authorities for non-metropolitan territories com-

petent in respect of the matters included in the Convention and of territories placed under the joint authority of two or more Members or an international authority.

The Conference, bearing in mind the fact that a Convention concerning the right of association and the settlement of labour disputes in non-metropolitan territories was adopted in 1947 [1], will decide whether or not it appears desirable to include provisions relating to non-metropolitan territories in the present Convention.

Finally, the Conference will wish, perhaps, to consider whether it is desirable to include—in accordance with the suggestion made by the Government of the Union of South Africa—either in the Preamble or in the actual text of the Convention, the clause contained in Part V of the Declaration of Philadelphia according to which due account must be taken of the stage of social and economic development reached by each people in relation to the progressive application of the programme laid down in the Declaration.

The Conference will recall that, on the proposal of the South African Employers' member of the Committee on freedom of association, a clause based on Part V of the Declaration was also included in the Preamble to the Resolution concerning freedom of association unanimously adopted at the last session of the Conference.

Establishment of International Machinery for Supervising the Exercise of Freedom of Association

In the Introduction, reference was made to the various Resolutions adopted by the Conference at its 30th Session, by the Economic and Social Council at its Fifth Session and by the Assembly of the United Nations at its Second Session, concerning the establishment of international machinery for safeguarding freedom of association.

It is sufficient to mention here that the Conference will no doubt have before it a special report on this question from the Governing Body.

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[1] See *Official Bulletin*, 31 July 1947, Vol. XXX, No. 1, p. 47.

CHAPTER IV

PROPOSED TEXTS

Proposed Convention 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 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 ;

Considering that the principle of equality before the law implies that, in the exercise of their right of association, workers and employers and their respective organisations, like other persons or organised collectivities, are under an obligation to respect the law,

CHAPITRE IV

TEXTES PROPOSÉS

Projet de convention 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 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 ;

Considérant que le principe de l'égalité devant la loi implique qu'à l'instar des autres personnes ou collectivités organisées, les travailleurs, les employeurs et leurs organisations respectives sont tenus, dans l'exercice de leur droit syndical, au respect de la légalité,

adopts this 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 Convention, 1948 :

Part I. Freedom of Association

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the inalienable right to establish or 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 have their activities suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish federations and confederations and 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 laid down in Articles 2, 3 and 4 hereof.

adopte, ce jour de juillet 1948, la convention ci-après, qui sera dénommée «Convention sur la liberté syndicale, 1948 ».

Partie I. Liberté syndicale

Article 1er

Tout Membre de l'Organisation internationale du Travail pour lequel la présente 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 inaliénable de constituer des organisations de leur choix, sans autorisation préalable, ainsi que celui de s'affilier à ces organisations.

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'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 être subordonnée à des conditions de nature à mettre en cause l'application des dispositions prévues aux articles 2, 3 et 4 ci-dessus.

Part II. Protection of the Right to Organise

Article 8

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure the exercise of the right to organise of workers and employers.

Part III. Miscellaneous Provisions

Article 9

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 ;
(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 sub-paragraphs *(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 sub-paragraphs *(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 *x*, 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.

Partie II. Protection du droit syndical

Article 8

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 l'exercice du droit syndical des travailleurs et des employeurs.

Partie III. Mesures diverses

Article 9

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) 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 *x*, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation en ce qui concerne les territoires déterminés.

Article 10

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 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 *x*, 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.

Article 10

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 modifications ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle devra spécifier en quoi consistent lesdites modifications.

4. Le Membre ou les Membres ou l'autorité internationale intéressée pourront renoncer entièrement ou partiellement par une déclaration ultérieure au droit d'invoquer une modification indiquée dans une déclaration antérieure.

5. Le Membre ou les Membres ou l'autorité internationale intéressée pourront, pendant les périodes au cours desquelles la convention peut être dénoncée conformément aux dispositions de l'article *x*, communiquer au Directeur général du Bureau international du Travail une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure en faisant connaître la situation en ce qui concerne l'application de cette convention.

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ILC, 31st Session, 1948, Report VII (Supplement), Freedom of Association and Protection of the Right to Organise

REPORT VII
(Supplement)

International Labour Conference

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

Seventh Item on the Agenda

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INTRODUCTION

This supplementary report contains replies to the questionnaire concerning freedom of association and protection of the right to organise from the thirteen following countries: Bolivia, Chile, Cuba, Egypt, Greece, Iceland, Italy, Luxembourg, New Zealand, Norway, Pakistan, Poland and Uruguay. These communications were received by the Office after the date by which replies were requested and on which the original report [1] had to be considered closed.

The replies included in the supplementary report are presented in a manner similar to that used in Chapter I of the original report. Thus, the general observations or introductory remarks in the replies are found below in the section entitled, "General Observations". The remainder of this supplementary report contains the replies to questions 1-14, arranged in groups of questions dealing with the same problem.

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[1] International Labour Conference, 31st Session, San Francisco, 1948, Report VII: *Freedom of Association and Protection of the Right to Organise* (Geneva, I.L.O., 1948).

REPLIES OF THE GOVERNMENTS

General Observations

Luxembourg

Under the terms of Article 26 of the Constitution of the Grand Duchy of Luxembourg, dated 17 October 1868, Luxembourg citizens have the right to associate, and this right may not be made subject to any preliminary authorisation. On the basis of this fundamental provision, employers and workers for many decades have been able to combine in full freedom in occupational and trade union organisations.

Social evolution between the two world wars, however, revealed the desirability of defining by legal enactment the principle of liberty embodied in the Constitutional Charter. It revealed also the need for legal rules governing the application of this principle, both with regard to the recognition of freedom of association by the State and to the recognition of workers' trade unions by employers and their organisations.

This effort on the part of the Luxembourg legislature was first manifested by the approval of the Right of Association (Agriculture) Convention. This Convention was ratified by the Grand Duchy by virtue of the Act of 5 March 1928.

The same efforts were continued later in a more incisive manner in the field of national legislation properly speaking by reforms embodying most important principles. By the Grand-Ducal Order of 23 January 1936 providing for the establishment of a National Labour Council, a system of conciliation was established embodying the principle of recognition of trade unions by employers on the basis of joint co-operation for the prevention of all collective labour disputes. Shortly afterwards, the Act of 11 May 1936 to

guarantee freedom of association and the repeal of Article 310 of the Penal Code proclaimed the legal recognition of trade associations.

Thus, after the freedom to work, already provided under Luxembourg legislation, freedom of association was fully and generally secured by these reforms. The Luxembourg Government could not therefore do otherwise than approve the drawing up of international regulations concerning this question.

In view of the scope of the Office questionnaire on Item VII, the Luxembourg Government considered it desirable to obtain the opinions both of the trade chambers concerned and of the representative organisations of employers and wage-earners. It is glad to be able to state that all these opinions, both of employers and wage-earners, were favourable to international regulation in accordance with the principles recommended by the International Labour Office.

Thus, the Chamber of Commerce, which is the representative body elected by industrial and commercial employers, expressed the opinion that in the present state of Luxembourg legislation there is no substantial reason preventing the Grand Duchy from giving approval, subject to certain minor reservations, to the principles set forth in the said questionnaire. Likewise, the Chamber of Handicrafts, representing the employers in such trades, approved in principle the proposals made by the Office.

Fortified by the support of all the organisations concerned, therefore, the Luxembourg Government can declare itself without hesitation to be in favour of the adoption of international regulations under the form of Conventions. With regard to the provisions of these regulations, it is able to reply in the affirmative to the majority of the questions set forth in pages 15 to 17 of Report VII, subject to the observations contained in the separate answers.

POLAND

According to the Preamble to the Constitution of the International Labour Organisation, and to Parts I, II and III of the Philadelphia Declaration, the aim of the Organisation is to protect the rights of workers ; the specific structure of the Organisation gives to the employers a right to express their opinions on matters in which they are interested, and to co-operate in the

realisation of the aim of the International Labour Organisation; this aim, however, is not the protection of the rights of employers, who, moreover, are not exposed to any danger.

The above remark applies to all the questions of the questionnaire; as a consequence, all replies apply to the problem of freedom of association and the protection of the right to organise in a strict and appropriate sense, *i.e.*, the protection of the right to organise of workers, while disregarding this question in regard to the employers.

Uruguay

Article 57 of the Constitution of the Republic provides that legislation shall encourage the establishment of occupational organisations by according rights to them and enacting regulations to ensure the recognition of their legal personality. In 1936, 1939 and recently in 1947, the executive authorities submitted several proposed laws dealing with this question for the consideration of Parliament. Moreover, as a consequence of the Act of 12 November 1943, No. 10449 (concerning wages councils), recognition has already been given in Uruguay, for certain purposes, to *de facto* organisations.

I. Desirability and Form of International Regulation

1. *Do you consider that the Conference should adopt international regulations concerning freedom of association and the protection of the right to organise in the form of one or several Conventions?*

2. *If the answer to Question 1 is in the affirmative, do you consider that the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise?*

Bolivia

1. Yes.

2. Two Conventions, as freedom of association and protection of the right to organise are two distinct questions.

Chile

1. Yes. Freedom of association and the protection of the right to organise should be regulated by an international Convention; these questions concern principles fundamental to the labour law which the International Labour Conference recognised at its 30th Session when it adopted, on 11 July 1947, the Resolution on which this questionnaire is based.

2. As these two questions are so closely related to each other it does not appear desirable to regulate them by separate Conventions.

Cuba

1. The Conference should adopt a Convention guaranteeing freedom of association.

2. A single Convention would be sufficient.

Egypt

1. Yes.

2. Yes.

Greece

1. The Greek Government is of the opinion that the International Labour Conference should adopt international regulations concerning freedom of association and the protection of the right to organise.

2. It is considered that it would be more desirable to deal with the question by the adoption of a single international Convention, in view of the fact that the second question completes the system of freedom of association which it is proposed to ensure by explicit guarantees. The recognition of the principle of freedom of association necessitates, in the opinion of the Greek Government, a guarantee of the strict application of the right to organise. In this connection, it should be added that the principle of freedom of association is recognised in Greece by a provision contained in

the Constitution (Article 11 of the Constitution of 1911 which is still in force today) the terms of which are as follows : "The Greeks possess the right of association conforming with the laws of the State and in no case can the laws subject this right to previous permission on the part of the Government."

Acts No. 281/1914 (respecting associations) and No. 2151 (respecting industrial associations) prescribe the legislative measures governing associations and trade unions and constitute the basic text of Greek legislation concerning industrial associations as amended and completed by the Civil Code which recently came into force (Articles 78-107).

ICELAND

1. Yes.

2. One Convention.

ITALY

1. The Italian Government considers it desirable that international regulations concerning freedom of association and the protection of the right to organise should be adopted in the form of a Convention.

2. In view of the close relationship existing between these two questions and, particularly, of the fact that "protection of the right to organise" supplements the guarantee of "freedom of association", the Italian Government considers it preferable for the question of regulation to be dealt with in a single Convention.

LUXEMBOURG

1. International regulations are to be recommended. This is indispensable to ensure the rights of workers in less advanced countries, but it is equally valuable in other countries in order to extend or to guarantee more effectively the rights which they recognise.

2. The adoption of two separate Conventions appears to be preferable in order to clarify fully the regulations contemplated.

New Zealand

1. Yes.

2. Although the two subjects are so intimately connected that one Convention would be appropriate, the New Zealand Government is in favour of the adoption of two separate Conventions if by this means general ratification is better facilitated.

Norway

1. Yes.

2. Yes.

Pakistan

1. Yes.

2. The two aspects of the question are closely related to each other and should therefore be covered by one and the same Convention.

Poland

1. The Government is in favour of adopting international regulations concerning freedom of association and the protection of the right to organise in the form of a Convention.

2. The Conference should adopt one Convention; to cover freedom of association by the Convention without at the same time including the protection of the right to organise would be devoid of any practical meaning.

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

3. (a) *Do you consider that it would be desirable to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation ?*

or, alternatively,

(b) *Do you consider that it would be preferable to enumerate descriptively the persons to whom the right of association should apply and, therefore, to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation ?*

(c) *Do you consider that 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 ?*

Bolivia

3. *(a)* and *(b)* Article 104 of the Labour Code prohibits public employees from establishing trade unions in Bolivia.

(c) It would be indispensable to provide, in the international regulations, that the recognition of the right of association of officials of the public services does not imply recognition of their right to strike.

Chile

3. *(a)-(c)* Recognition should be given to the inviolable right of employers and workers to establish and join organisations without making any distinctions which might be deemed to be a restriction of freedom of association.

In laying down this right it would be preferable to use a general formula rather than to enumerate the persons benefiting from its application, as any enumeration entails the risk of omissions.

Without prejudice to what has been said above, and in order to prevent any limitative interpretation from resulting in derogations from the terms of the Convention, it might be stressed, in accordance with the suggestion made in the Introduction, on page 8 of the Questionnaire, that the enjoyment of the right of association should not be made subject to any discrimination whatsoever on the grounds of occupation, sex, colour, race, creed, nationality or political opinion.

Public officials should be accorded the right to form occupational organisations by virtue of the right of association sanctioned by the Constitutions of democratic States, but their associations should not possess the right to strike, which it would be undesirable to extend to them in view of the nature of the duties which they perform and which cannot be allowed to be suspended or interrupted.

Cuba

3. *(a)* It is indispensable that employers and workers, without distinction whatsoever, should have the right to establish or join organisations without previous authorisation.

(b) No. The right of organisation should be general and absolute in relations between employers and workers.

(c) Public officials are in a unique position, as the State does not operate on a profit-making basis and must, for that precise reason, set an example with regard to conditions of employment. However, public officials should be free to establish associations of such a character as not to emphasise class distinctions.

Egypt

3. *(a)* No.

(b) No.

(c) No. The Egyptian Penal Code prohibits public officials from striking.

Greece

3. *(a)* and *(b)* The Greek Government considers that it is necessary to provide that employers' and workers' organisations should have the inviolable right to establish organisations to safeguard the occupational and economic interests of their members, without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, which would operate within the limits of national law and without the previous authorisation of the administrative authorities.

(c) The foregoing observations should apply to all categories of workers with the exception of officials or employees of the public services, in the case of whom it should be specifically provided that, even where they may have gained the right to establish organisations, this should in no way prejudge the question of their right to strike. This question should be left to be settled by the authorities and legislation of each country. The Government considers that any provision in an international Convention recognising the right to strike of public officials would result in impeding the ratification of the proposed Convention by several countries.

Iceland

3. *(a)* Yes.

(b) Yes.

(c) The Government is of the opinion that it is well to make some distinction in the right to strike in the case of public officials and civil servants, and, though it is considered that their right to organise should be absolute, it is also considered that, for social reasons, their right to strike should be restricted. In Iceland public officials and civil servants are forbidden to strike.

Italy

3. *(a)* The Italian Government considers that the right to establish organisations should be affirmed in as broad terms as possible and, consequently, it is of the opinion that the formula set forth under *(a)* is the most appropriate.

(c) Whichever formula may eventually be preferred, the Italian Government feels that it is desirable not to stipulate expressly that recognition of the right of association of public officials should in no way prejudge the question of the right of such officials to strike. The course just suggested appears to be the best method of not prejudging the question, and at the same time it avoids any express reference which might distort the conception of freedom of association, which is fundamentally separate from this issue.

LUXEMBOURG

3. *(a)* In principle, the right of association should be general.

(b) In practice, a descriptive enumeration appears to be preferable and should also cover political opinions. Moreover, special regulations should make provision with regard to young workers under the age of eighteen years.

(c) 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.

NEW ZEALAND

3. *(a)* Yes, but it is thought desirable that there should be safeguards against multiplicity.

(b) Yes.

NORWAY

3. *(a)* Yes.

(b) —.

(c) From the Norwegian point of view, the question of the right to strike must be kept strictly apart from the question of freedom of association. It is maintained that the right to strike, not only of public officials, but of all employees, has no bearing on the question of freedom of association. In Norway, where freedom of association has always (apart from the period of the German

occupation, 1940-1945) been recognised, a system of compulsory arbitration has thus been periodically practised, and is also at present in operation for labour disputes. The question of the right to strike should be dealt with in connection with a Convention concerning conciliation and arbitration.

PAKISTAN

3. *(a)* Yes.

(c) Yes, but the recognition of the right of freedom of association of public officials should not give the impression that it carries with it the right to strike.

POLAND

3. *(a)* and *(b)* The Government is in favour of the alternative *(b)*.

(c) Yes. The evolution of legal forms tends towards the adjustment of the status of workers and public officials. The right to strike cannot be an exception.

III. Functioning of Organisations

4. (a) *Do you consider that it would be desirable 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 ?*

(b) *Do you consider that it would be desirable to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right ?*

BOLIVIA

4. *(a)* Yes, but subject always to national laws and regulations.

(b) Yes, except for the supervision exercised by the labour

inspectorate over financial administration, in order to prevent misappropriation. Bolivian legislation provides for such supervision.

Chile

4. *(a)* It would be desirable to provide that the organisations in question, in respect of their administration, rules and programmes, should conform to the legislation of each country, subject to the guarantees referred to in the reply to the previous question.

(b) The interference of the public authorities should be limited to ensuring that the organisations in question observe the legal provisions relating to their establishment and functioning.

Cuba

4. *(a)* It is an indispensable corollary of the right of association to be able to draw up constitutions and rules in full freedom and without any limitations other than those imposed by law.

(b) The interference of the authorities should be confined to ensuring the observance of constitutions and rules, the will of the majority of the members and legal provisions governing the question.

Egypt

4. *(a)* No.

(b) No.

Greece

4. *(a)* The Government considers 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 in full freedom and without any

interference on the part of the authorities. In any event, the courts should have the right to adjudicate, where necessary, as to the lawfulness of their acts.

ICELAND

4. *(a)* Yes.

(b) Yes.

ITALY

4. *(a)* In order to complete the guarantees relating to the establishment of organisations by means of a guarantee of the free functioning of such organisations, the Italian Government considers it desirable 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.

(b) The Italian Government considers it desirable to provide further that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, on the understanding that the organisations are, of course, bound to observe general and constitutional law.

LUXEMBOURG

4. *(a)* Yes.

(b) The regulations contemplated should prohibit any restrictive action on the part of the public authorities, except in the public interest.

NEW ZEALAND

4. *(a)* Yes, for limited purposes, namely, dealing with industrial matters.

(b) Yes.

NORWAY

4. *(a)* Yes.

(b) Yes.

PAKISTAN

4. *(a)* Yes, provided the methods followed are in conformity with the national law of the country.

(b) Yes.

POLAND

4. *(a)* Yes.

(b) Yes.

IV. Dissolution and Suspension of Organisations

5. *Do you consider that it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority ?*

BOLIVIA

5. No. Bolivian legislation permits the dissolution of an organisation by administrative authority in the following cases: (1) when it is shown that there has been a contravention of the provisions of the Labour Code, of the regulations governing its application, or of the rules of the organisation; (2) where the organisation has ceased to carry on its activities for a period exceeding one year.

CHILE

5. Articles 399 and 412 of the Labour Code of Chile, in certain cases prescribed thereby, enable the President of the Republic

to dissolve an occupational organisation by Decree. It would be desirable to leave this question to be determined by the legislation of each country.

Cuba

5. The administrative authorities should have the power to suspend organisations temporarily, subject to this decision being confirmed by the judicial authorities.

Egypt

5. No.

Greece

5. It is considered that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority. Nevertheless, the judicial authorities should have the right to dissolve or suspend the activities of an organisation. This is the principle applied in Greece in accordance with national legislation and, it is believed, in other countries, as the judicial authorities are independent and concerned only with the observation of the law and its general application.

Iceland

5. Yes ; in Iceland this can only be done by judicial order.

Italy

5. The Italian Government considers that it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

LUXEMBOURG

5. Yes. The dissolution or suspension of organisations by administrative authority would in fact nullify freedom of association. Any dissolution or suspension might be contemplated only in the public interest.

NEW ZEALAND

5. Yes.

NORWAY

5. Yes.

PAKISTAN

5. Yes. But should these organisations fail to comply with the provisions of the national law having a bearing on the constitution and functions of such organisations, it should be open to the administrative authority to take such action against these organisations as is provided for in the law.

POLAND

5. Yes.

V. Federations, Confederations and International Organisations of Employers and Workers

6. *Do you consider that it would be desirable to provide that employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers ?*

Bolivia

6. Yes. This is established practice.

Chile

6. Yes, as the right to establish federations and confederations and to affiliate with international organisations of employers and workers is merely the application of the right of occupational association on the national level and on the international level.

Cuba

6. The logical development of the trade union movement leads from the works union to the occupational organisation, from the federation to the confederation and thence to international organisation and co-operation.

Egypt

6. Yes, so far as federations are concerned. No, with regard to the remainder.

Greece

6. It is considered that the regulations should provide that employers' and workers' organisations have the right to establish federations and confederations and to affiliate with international organisations of employers and workers without previous authorisation by the authorities. Greece has always respected this principle, which is a necessary corollary to any system of complete freedom of association.

Iceland

6. Yes.

ITALY

6. While considering that the broad terminology used under II (Establishment of Organisations) may make it appear unnecessary to include a clause providing for the right to establish federations and confederations, the Italian Government nevertheless considers it desirable for a reference to be made to it.

In any event, it does appear necessary to provide for the right of organisations to affiliate with international organisations of employers and workers.

LUXEMBOURG

6. The right to establish central organisations is indispensable for the effective assurance of the exercise of the right of association, both nationally and internationally.

NEW ZEALAND

6. Yes.

NORWAY

6. Yes.

PAKISTAN

6. Yes.

POLAND

6. Yes.

VI. Guarantees relating to Federations and Confederations

7. Do you consider that it would be desirable to provide that the guarantees with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations ?

Bolivia

7. Yes, subject to the observations made in answering Question 5.

Chile

7. For the reason indicated in the preceding reply, the guarantees with regard to the establishment, functioning, dissolution and suspension of organisations referred to in Questions 3, 4 and 5 should apply to federations and confederations.

Cuba

7. Federations and confederations should have the same rights and obligations as employers' and workers' organisations.

Egypt

7. No.

Greece

7. The Greek Government considers that what has been stated above with regard to employers' and workers' organisations should apply to federations and confederations of employers and workers. Federations and confederations constitute institutions which are a natural extension of trade associations, being of the utmost value in the realisation of the objects and aims of syndicalism.

Iceland

7. Yes.

Italy

7. The Italian Government considers that it would be desirable

to provide that the guarantees with regard to the establishment, functioning and dissolution of employers' and workers' organisations, referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations.

LUXEMBOURG

7. Yes. There is no ground for making any exception.

NEW ZEALAND

7. Yes.

NORWAY

7. Yes.

PAKISTAN

7. Yes.

POLAND

7. Yes.

VII. Legal Personality of Organisations

8. *Do you consider that it would be desirable to provide that 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 ?*

BOLIVIA

8. The acquisition of legal personality in Bolivia depends on certain conditions laid down by law, as follows : (1) an occupational

organisation may be established only if it includes at least twenty-five workers ; (2) a works union may be established only if it includes at least 50 per cent. of the workers in the undertaking concerned.

Chile

8. The acquisition of legal personality by these organisations should not be made subject to conditions entailing any restrictions of the principle of freedom of association which have not been authorised under the foregoing provisions.

Cuba

8. Legal personality should be subject only to the fulfilment of legal conditions prescribed in advance. The conditions laid down may not be used as a pretext for any obstruction, delay or restriction on the part of the authorities.

Egypt

8. No.

Greece

8. It is considered that the recognition and guarantee of the right to organise of employers and workers, which Greece admits, necessarily implies the acquisition of legal personality by employers' and workers' organisations without such acquisition being made subject to conditions of such a character as to restrict freedom of association.

Iceland

8. Yes.

ITALY

8. The Italian Government considers that it would be desirable to provide that 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. The Government points out, in this connection, that the Constitution of the Italian Republic, provides that the recognition of the legal personality of occupational organisations is subject to the condition that their constitutions and rules provide for their internal organisation on a democratic basis.

LUXEMBOURG

8. The acquisition of legal personality by organisations should not be made subject to conditions of such a character as to restrict freedom of association. The recognition of occupational organisations by the State implies logically that such organisations may exercise the rights accorded to them free from any legal or administrative restriction.

NEW ZEALAND

8. Yes, subject to earlier comment under 4 *(a)*.

NORWAY

8. Yes.

PAKISTAN

8. Yes.

POLAND

8. Yes.

VIII. Responsibilities of Organisations

9. (a) *Do you consider that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their full share of responsibilities and obligations ?*

or, alternatively,

(b) *Do you consider that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration ?*

Bolivia

9. *(a)* Yes.
(b) No.

Chile

9. *(a)* and *(b)*. In accordance with the general principles of law, legal personality is always accompanied by responsibility ; every person is responsible for his own acts, except those persons deemed incapable of acting who, under specified circumstances, are represented by the persons who have charge of them.

The associations in question should be endowed with legal personality and thereby become capable of assuming rights and obligations ; they are responsible both for acts which they perform legally and for breaches which they commit. Consequently, the guarantees ensuring freedom of association can in no way exempt employers' and workers' organisations from their responsibility in respect of the acts or omissions entailing such responsibility in accordance with the principles mentioned.

This responsibility results not only from collective agreements or from rules relating to the exercise of the right of combination and strike alone, but also from obligations having another origin. What has been said above certainly does not deny that international

regulations concerning collective agreements or conciliation and arbitration may be particularly appropriate for defining the responsibilities of occupational organisations in this connection.

CUBA

9. *(a)* Employers' and workers' organisations, by reason of their strength and of the interests which they represent, implicitly assume great collective responsibilities in respect of both civil and penal law.

EGYPT

9. *(a)* No.

(b) Yes.

GREECE

9. *(a)* It is considered that the acquisition and exercise of the rights defined above should in no way exempt employers' and workers' organisations from their respective responsibilities and obligations to which reference should be made in the proposed international Convention. These responsibilities and obligations should be defined by the law of each country and adjudicated upon by its courts.

ICELAND

9. *(a)* It is considered essential that all authorised organisations should obey the laws in operation, and that they should accept full responsibility for their actions and obligations.

(b) Yes.

ITALY

9. *(b)* The Italian Government considers that it would be preferable to reserve the provision concerning the respective

responsibilities and obligations of employers' and workers' organisations for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

Luxembourg

9. *(a)* A responsibility clause is necessary. But it would be preferable for it to be included in international regulations concerning collective agreements or conciliation and arbitration, as suggested under *(b)*.

New Zealand

9. *(a)* Yes.

Norway

9. *(a)* The recognition of freedom of association does not involve any changes in the responsibilities and obligations shouldered by members of society or by any organisation. In Norway, where freedom of association has always been recognised, the organisations are thus fully responsible for any actions contrary to the law. In this connection, reference is made to the general Boycott Act, which was passed in December 1947. The Act confers responsibilities and obligations on employers' and workers' organisations as well as on other organisations. Subject to its not being intended to regulate such conditions, no objections are offered to a consideration of these questions in connection with a Convention on conciliation and arbitration.

Pakistan

9. *(a)* Yes.

Poland

9. *(a)* and *(b)* The Government is in favour of accepting the alternative *(b)*.

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

10. *Do you consider that international regulations should guarantee the exercise of the right to organise ?*

11. *If the answer to Question 10 is in the affirmative, do you consider that the protection of the right to organise should be effectively assured by means of mutual agreement between organised employers and workers ?*

12. *Do you consider that, in the absence of full and effective guarantee by means of mutual agreements, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source ?*

BOLIVIA

10. Yes.

11. Yes.

12. Bolivian legislation provides for this.

CHILE

10. Yes, as it would serve no useful purpose to accord a right without protecting its exercise.

11 and 12. The exercise of the right to organise should be protected by law, as protection based on agreement between the parties would be inadequate.

CUBA

10. Yes. A Convention should guarantee the right to organise.

11. The protection of this right should be ensured by the State

under the Constitution and laws which organised employers and workers must apply in practice to the full extent as provided.

12. It is for national legislation to protect the right to organise without fear of intimidation, coercion or restraint from any source.

Egypt

10. Yes, within the limits prescribed by Act No. 85 of 1942 respecting trade unions of employees and by Act No. 73 of 1947 respecting industrial chambers.

11. Yes, always within the limits of the laws referred to above.

12. The Penal Code, Act No. 85 of 1942 and Act No. 73 of 1947 regulate this matter.

Greece

10. Yes. It is considered indispensable that the international regulations should guarantee the exercise of the right to organise.

11 and 12. The protection of the right to organise by means of mutual agreement would not always be possible in Greece, where such protection has been ensured for a long period by means of legislation. However, the proposed international regulations should provide also for a system of guarantee of this kind if it conforms with practice in certain countries. The Greek Government also considers that all appropriate measures should be taken in order to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

Iceland

10. Yes.

11 and 12. It is considered that the only practical means of ensuring the people's freedom of association is by legislation. In Iceland the Constitution of the Republic provides for this, and in addition special labour legislation contains provisions with regard to the co-operation of trade unions and employers' organisations

in disputes concerning wages and working conditions. This legislation has given satisfactory results.

ITALY

10. The Italian Government considers that it is desirable that the international regulations should guarantee the exercise of the right to organise, even though such guarantee be confined to a simple affirmation of principle.

11. The Italian Government considers that in a general way the protection of the right to organise might be effectively assured by means of mutual agreements between employers' and workers' organisations.

12. In the absence of such agreements, or in the absence of full and effective guarantee by means of such agreements, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

LUXEMBOURG

10. Yes.

11. Guarantees concerning the exercise of the right to organise should be provided under collective agreements. However, mutual agreements between employers and workers are not sufficient to ensure the protection of the right to organise as effectively as is desired.

12. The reply to Question 11 implies the need for appropriate legal measures to protect the exercise of the right to organise without fear of intimidation, coercion or restraint. Without appropriate guarantees the Convention could hardly be of value, and it is therefore desirable to prescribe certain sanctions.

NEW ZEALAND

10. Yes.

11. Yes.

12. Yes.

NORWAY

10. Yes.

11. Yes.

12. Yes.

PAKISTAN

10-12. Yes.

POLAND

10-12. The Government considers that the protection of the right to organise could be really effective when regulated by legislation. Rights of this type cannot be guaranteed by a private understanding ; it is necessary to give by legislation the guarantee of effective protection of the right to organise without fear of intimidation, coercion or restraint from any source.

X. Establishment of Agencies for the Purpose of Ensuring Respect of the Right to Organise

13. *Do you consider that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise ?*

BOLIVIA

13. Yes ; the labour inspectorate.

CHILE

13. Yes, provided that it is left to national legislation to determine the structure and functions of these agencies.

Cuba

13. It does not appear necessary to establish any new agency, because if the administrative and judicial authorities are not sufficient to safeguard the right to organise, any other effort to do so would not succeed.

Egypt

13. Yes, the Trade Union Department in the Labour Administration has this function.

Greece

13. Whenever any doubt or question has arisen concerning respect of the right to organise, which, as observed above, is guaranteed under the Greek Constitution, the Government itself has demanded an enquiry and has sought evidence of the facts from representatives of foreign countries or international organisations able to establish the truth of the matter. The Government will confine itself to recalling that recently it requested the International Labour Office to send a mission to study Greek labour legislation. Moreover, the Greek General Confederation of Labour, when announcing the Pan-Hellenic Trade Union Congress, opening on 28 March 1948 for the purpose of electing an executive, invited representatives to be sent as observers from the International Labour Office and from the trade union organisations of the United States, the United Kingdom and France.

Nevertheless, the Government considers that the establishment of international agencies for the purpose of supervising the application of the principles of freedom of association would require either direct intervention, or intervention through the medium of the International Labour Office, in the domestic affairs of States Members, which course it is considered would not be agreeable to the Office itself.

Iceland

13. Yes. Obviously the main method of ensuring the respect of freedom of association is to see that the right to organise shall

be unrestricted and that the organisations themselves shall realise their social responsibility. In Iceland the associations of both workers and employers are protected by the labour legislation and by the Social Court, which gives decisions in disputes between the two parties, without, however, being a court of arbitration in wages disputes.

Italy

13. The Italian Government considers that international regulations should include the obligation of establishing agencies for the purpose of ensuring the respect of the right to organise.

Luxembourg

13. The international regulations should oblige every country to establish appropriate agencies for the purpose of ensuring the respect of the right to organise. This function of supervision and control could be entrusted to the labour inspectorate. In the event of duly proven contraventions, the judicial authorities, which have to ensure the observance of the law, would have to intervene according to the provisions contained in national legislation dealing with the matter. From the international point of view, the application of Conventions is a matter within the constitutional competence of the Governing Body of the International Labour Office.

New Zealand

13. Yes.

Norway

13. It is understood that international organisations for the purpose of securing the right to organise are not here implied. Regarding the question of establishing national agencies for such a purpose, it is maintained that an inclusion in the Convention of such a provision would be of no real avail. Where conditions are

similar to those in Norway such a provision will be superfluous, and where any Government feels disinclined—in spite of ratification of the Convention by its country—to encourage organisational activities, it would seem easy for it to make the work of such supervising agencies difficult.

PAKISTAN

13. Yes, where they are found to be necessary.

POLAND

13. Yes.

14. *Have you any proposal or suggestion to make on any point relating to the questions of freedom of association and of protection of the right to organise, to which no reference has been made in this questionnaire ?*

BOLIVIA

14. The protection of the right to organise should follow from the recognition of legal personality by the State ; it does in fact happen, in practice, that pseudo organisations claim to enjoy the right of representation for trade union purposes in order to provoke, for political reasons, disputes which cannot easily be settled.

CUBA

14. It would be necessary to take account both of systems of freedom of association and collective guarantee and of those which concern the individual wishes of the worker. Consequently, trade union organisation must be founded on a voluntary basis without any coercion being exercised against those who do not desire to organise, and all workers must benefit on equal terms from the advantages of the collective agreement and must not be declared to be excluded from its application.

Egypt

14. For reasons of a purely domestic kind, the provisions of Act No. 85 of 1942 respecting trade unions of employees, including the restrictions contained therein, are indispensable at the present time. It will not be possible for a number of years to advance any further towards the adoption of the points specified in the Questionnaire. The same is true with regard to employers' organisations, which are regulated by Act No. 73, recently enacted in July 1947.

Luxembourg

14. It might perhaps be made clear that the International Labour Office was contemplating the drawing up of an international legal charter applicable to all trade associations in the countries which become signatories of the Freedom of Association Convention.

Norway

14. The question regarding the right of an employer to demand that, without prejudice to the principle of freedom of association, persons employed in a leading or responsible capacity must not be members of the same trade unions or trade union affiliations as those working under them. It is understood that the Convention constitutes no impediment to any discussion within the different countries of the above question.

Pakistan

14. It should be made clear that the Convention, declaring the right of freedom of association of employees and workers, relates exclusively to trade union affairs and employer-worker relations and to no other activities of these organisations.

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ILC, 31st Session, 1948, Report VII (Appendix), Freedom of Association and Protection of the Right to Organise

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REPORT VII
(Appendix)

International Labour Conference

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

APPENDIX

Report of the Governing Body on the Effect to be given to the Resolution concerning International Machinery for Safeguarding Freedom of Association adopted by the International Labour Conference at its Thirtieth Session (Geneva, 1947)

Seventh Item on the Agenda

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appendix
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Report of the Governing Body to the Conference

Effect to be given to the Resolution concerning International Machinery for Safeguarding Freedom of Association

(Resolution No. III adopted by the Conference at its 30th Session)

The Conference will remember that, at its 30th Session (Geneva, June-July 1947), it adopted a Resolution concerning international machinery for safeguarding freedom of association. On that occasion, the Conference expressed the opinion that the question required detailed and careful examination and, accordingly, requested the Governing Body to examine it in all its aspects and to report back to the Conference at the 31st Session in 1948.

The Governing Body, examining the question at its 104th Session (Geneva, 15-20 March 1948), unanimously adopted the annexed report, which it submits for consideration by the Conference.

INTRODUCTION

The Resolution adopted by the Conference at its 30th Session is as follows :

The Conference,

(1) Recalling the references to freedom of association in the Declaration of Philadelphia and the Constitution of the International Labour Organisation, re-affirms 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 of speech, 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.

It is evident from the text of this Resolution, to which further reference will be made below, that the International Labour Conference was fully aware both of the importance of the problem of international supervision of freedom of association and of the extremely complicated nature of that problem.

The same problem was raised before the Economic and Social Council at its 5th Session (August 1947) and before the Assembly of the United Nations at its 2nd Session (September-October 1947).

In its Resolution, the Economic and Social Council declared that :

The Economic and Social Council... notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organisation ;

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation ; and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

For its part, the Assembly of the United Nations :

Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

Thus, the Economic and Social Council, and later the Assembly of the United Nations, while endorsing the Resolution of the Conference, nevertheless expressed the opinion that the practical application of these rights raises problems common to the two organisations, and should, therefore, be dealt with by collaboration between the International Labour Organisation and the United Nations.

In order that all necessary information shall be available to the Conference, a brief reference will be made in the following pages to the circumstances in which the question of international supervision of freedom of association came before the International Labour Organisation, followed by a survey of the supervisory machinery established by the Constitution of the International Labour Organisation and the possible methods of supervision provided by the Charter of the United Nations or contemplated at the present time by the Human Rights Commission.

In the light of this analysis, the Conference will be able to judge whether and under what conditions it will be possible to establish international machinery for safeguarding freedom of association, either under the auspices of the International Labour Organisation in consultation with the United Nations, or under the auspices both of the United Nations and of the International Labour Organisation.

The Proposals of the World Federation of Trade Unions and of the American Federation of Labor

The Conference will recall that the problem of international supervision of freedom of association was raised in the memoranda submitted to the Economic and Social Council at its 4th Session (February-March 1947) both by the World Federation of Trade Unions and the American Federation of Labor.[1]

[1] See International Labour Conference, 30th Session, Report VII, *Freedom of Association and Industrial Relations*, Geneva (I.L.O.), 1947, Appendices A and B, pp. 136 *et seq.*

The memorandum of the World Federation of Trade Unions contains the following statement concerning the international supervision of freedom of association :

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.

Consequently, the World Federation of Trade Unions had submitted to the Economic and Social Council a resolution, paragraph V of which was in the following terms :

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.

The American Federation of Labor, in the memorandum submitted to the Economic and Social Council at the same time, requested that the International Labour Organisation, as the competent agency for dealing with the question, should be asked to undertake an enquiry into the conditions under which trade unions rights are effectively secured in the various countries of the world and to draft

on the basis of the survey recommended above, for the purpose of ultimate submission to the various States, proposals for :

. . . .

(b) protecting the workers and their organisations against the violation of basic labour or trade unions' rights, and

(c) providing proper measures for the enforcement of such rights.

As will be remembered, the proposals put forward by the World Federation of Trade Unions and by the American Federation of Labor were examined at the 30th Session of the Conference, and the discussion resulted in the unanimous adoption of the Resolution concerning international machinery for safeguarding freedom of association which has been quoted above.

Before considering the question whether it is necessary or desirable to establish new international supervisory machinery, it appears advisable, in the first place, to note what international methods of supervision already exist either under the International Labour Organisation or under the United Nations.

Supervisory Machinery provided by the International Labour Organisation

When making this examination, it is vital to distinguish between the powers available to the International Labour Organisation in the absence of an international Convention and those which it possesses in the case where a Convention has been adopted and ratified and has actually entered into force.

By virtue of the Constitution itself, and in order to carry out the programme outlined in the Preamble to the Constitution and the Declaration of Philadelphia, the various organs of the International Labour Organisation and, in particular, the Governing Body in its administrative capacity, possess considerable powers with regard to study and enquiry.

The Governing Body may, *inter alia*, regularly review the social and economic position of all the countries in the world, make or cause the Office to make any studies, enquiries or investigations which it considers necessary, establish for this purpose committees for the more detailed examination of a particular problem, etc.

For its part, the Conference may raise and discuss in full freedom any problem of social and economic policy which falls within the competence of the International Labour Organisation.

However, in the absence of an international Convention which has actually entered into force, the powers of investigation and supervision of the International Labour Organisation are restricted within certain limits.

The International Labour Organisation was faced with just this problem with regard to freedom of association. The Conference will remember that in 1920, at the request and with the consent of the Hungarian Government, the Governing Body was able to appoint a Committee of Enquiry in that country in order to examine on the spot the conditions under which the freedom of association of Hungarian workers was ensured.

On the other hand, it was not able to intervene when the International Labour Office had received a complaint from the General Federation of Spanish Workers accusing their Government of having taken measures which were contrary to the principle of freedom of association. The Governing Body was obliged to refrain from taking action on the complaint because, in that particular case, it was not the Government but a private organisation which communicated with the International Labour Orga-

nisation. It appeared to the Governing Body that any intervention under the terms of Article 23 of the Constitution was not possible without the consent of the Government concerned in the absence of any international Convention regulating freedom of association.

This situation would be radically changed if the Conference, in June 1948, adopted the Convention concerning freedom of association which is on its agenda. In that event, indeed, the supervisory procedures provided by the Constitution would automatically apply.

It is on this hypothesis that the ensuing observations are founded. Consideration will be based on the text of the Constitution as amended in 1946, as this new text will shortly enter into force.

The Conference is thoroughly acquainted with the nature of this supervisory machinery and it will be sufficient to recall here, very shortly, the principal guarantees which it offers.

1. *Measures provided for Ensuring the Ratification of a Convention*

As the Conference is aware, each Member is under an obligation, by virtue of paragraph 5 *(b)* of Article 19, to bring a Convention adopted by the Conference before the competent authority within a maximum period of eighteen months with a view to its ratification, or, in the case of a federal State, to follow the procedure prescribed by paragraph 7 of the same Article. In the event of the Member failing to observe these provisions, any other Member is entitled, under Article 30, to refer the matter to the Governing Body which, in its turn, may refer it to the Conference.

2. *Reports to be submitted in the Event of Non-Ratification*

Under the provisions of paragraph 5 *(e)* of Article 19, a State Member which has not ratified a Convention must report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, and showing : *(a)* the extent to which effect has been given or is proposed to be given to any of the provisions of the Convention ; *(b)* the methods adopted to this end : by legislation, administrative action, collective agreement or otherwise ; *(c)* the difficulties which prevent or delay the ratification.

3. *Reports on the Application of Ratified Conventions*

In the case where a Convention is ratified, a State Member has to forward annual reports on the measures which it has taken to give effect to the Convention. These reports are to be made in such form and to contain such particulars as the Governing Body may request (Article 22).

These reports are in the first place submitted for examination by a Committee of Experts and then, in summary form, to the next session of the Conference, when they are re-examined, firstly by the Committee on the application of Conventions and Recommendations, and subsequently by the Conference in plenary session (Article 23, paragraph 1). Finally, and it is important to lay particular stress on this provision, each Member has to communicate to the representative organisations of employers and workers copies of the information and reports communicated to the Director-General in pursuance of Articles 19 and 22 referred to above.

4. *Measures provided in the Event of an Alleged Violation of a Convention*

The Constitution lays down two different kinds of procedure, depending on whether a representation is made to the International Labour Office by an industrial association (Article 24), or whether a complaint is filed in accordance with the conditions prescribed by Article 26 to which reference will be made later.

(a) *Representations.*

Under the provisions of Article 24, an industrial association of employers or workers may make a representation to the International Labour Office in the event of any of the Members having failed "to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".

This right to make representations is accorded to any organisation, even though it may not be a representative organisation recognised as such in the terms of Article 3 of the Constitution, including even an international organisation (Article 24 of the Constitution ; Article 3 of the Standing Orders concerning the Procedure for the Discussion of Representations, adopted by the Governing Body on 8 April 1932 and amended on 5 February 1938).

On the receipt of such a representation, the Governing Body may communicate it to the Government concerned and may invite that Government to make such statement on the subject as it may think fit. If no statement has been received within a reasonable time, or if the statement is not deemed to be satisfactory, the Governing Body has the right to publish the representation and the statement, if any, made in reply to it (Article 25).

The Governing Body is thus called upon to make a thorough examination of representations which are made to it by any industrial association concerned. The importance which the authors of the Constitution attached to this procedure is emphasised by paragraph 5 of Article 26, under the terms of which the Government in question is entitled to send a representative to take part in the proceedings of the Governing Body if it is not already regularly represented thereon.

The application of these provisions of the Constitution is governed by special Standing Orders adopted for that purpose by the Governing Body. Particular reference may be made to the following points :

All the steps in the procedure concerning a representation shall be confidential until such time as the matter is finally disposed of by the Governing Body. The meetings of the Governing Body at which these steps are discussed shall be held in private.

The Governing Body shall first examine the receivability of the representation. If the representation satisfies the formal conditions required, the Governing Body shall examine the representation as regards substance.

When a representation is submitted to the Governing Body, it shall set up a committee composed of three persons which shall, before any decision is reached, lay before the Governing Body proposals concerning the steps to be taken at each of the stages of the procedure. The Committee is composed of three members of the Governing Body, chosen respectively from the Government, Employers' and Workers' groups. No representative or national of the State against which the representation has been made and no person occupying an official position in the association of employers or workers which has made the representation may be a member of this Committee.

(b) *Complaints.*

The procedure laid down in Article 26 of the Constitution relating to complaints may be invoked in the three following eventualities:

(1) In the first place, any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified.

(2) Secondly, the Governing Body, where the case has been referred to it by one of its members or by a third party—for instance, an industrial association—may adopt the procedure of its own motion. It will be observed, in this event, that the procedure under Article 26 may supplement that laid down by Articles 24 and 25 considered above.

(3) Finally, the Governing Body may adopt the procedure on the receipt of a complaint from a delegate to the Conference. It should be stressed in this connection that any Government, Workers' or Employers' delegate, from whatever country he may come, possesses this right to make a complaint.

The complaint procedure passes through the following stages:

In the first place, the Governing Body may consider the matter according to the method prescribed by Article 24, that is to say, communicate the complaint to the Government against which it is made and invite a statement in reply. Where no statement in reply is received, or where the statement is not considered to be satisfactory, or where at the outset the Governing Body does not think it necessary to communicate the complaint to the Government in question, the Governing Body may appoint a Commission of Enquiry to consider the complaint and to report thereon. In this case, also, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body.

Under the provisions of the Constitution as amended in 1946, the Governing Body is entirely free to constitute the Commission of Enquiry as it deems proper. The Commission of Enquiry will have to consider the matter and every Government, whether directly concerned in the complaint or not, must place at the disposal of the Commission all the information in its possession which bears upon the subject matter of the complaint (Article 27).

When the Commission of Enquiry has fully considered the complaint, it shall prepare 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 and the time within which they should be taken (Article 28).

The Director-General of the International Labour Office shall communicate the report of the Commission of Enquiry to the Governing Body and to each of the Governments concerned in the complaint, and shall cause it to be published (Article 29, paragraph 1).

Each of these Governments shall within three months declare whether or not it accepts the recommendations contained in the report of the Commission ; and if not, whether it proposes to refer the complaint to the International Court of Justice (Article 29, paragraph 2). The Court may affirm, vary, or reverse any of the findings or recommendations of the Commission of Enquiry ; its decision shall be final (Articles 31 and 32).

In the event of any Member failing to carry out within the time specified the recommendations of the Commission of Enquiry or the decision of the Court, the Governing Body may recommend such action as it may deem wise and expedient to secure compliance therewith (Article 33).

A final clause relates to the procedure which the defaulting Government may adopt in order to establish that it has complied with the provisions of the Convention after having taken the steps necessary to rectify the position and to report, as required, the steps taken in accordance with Article 33.

* * *

It has appeared necessary to begin by reminding the Conference of the principal provisions of the Constitution, in order that it may be in a position to judge to what extent they satisfy the requests embodied in the proposals made by the World Federation of Trade Unions and the American Federation of Labor as well as the considerations referred to in the Resolution adopted by the Conference at its 30th Session.

The Conference will recall that one of the principal demands made by the World Federation of Trade Unions referred to the

establishment of permanent machinery for supervising the exercise of trade union rights.

As already pointed out, always assuming that an international Convention was adopted by the Conference and actually came into force, the International Labour Organisation itself, to a certain extent, constitutes this permanent supervisory machinery. All its organs take part directly in that machinery : the Governing Body, which is the focal point of the supervisory procedure, the Committee of Experts which examines the reports on the application of Conventions submitted by the States Members, the Commission of Enquiry prescribed by Article 26 and, finally, the International Labour Conference, which subjects the reports made by the Governments to a strict and public examination. Moreover, the International Court of Justice may intervene if a State has recourse to it.

Secondly, the World Federation of Trade Unions, in the resolution submitted to the Economic and Social Council, requested that the Committee for Trade Union Rights should be given two essential functions : (1) that of making enquiries, and (2) that of submitting recommendations to the Economic and Social Council.

Here again, the supervisory machinery established by the Constitution includes not only these two powers, but also lays down a balanced and flexible procedure for giving practical effect to them, and at the same time takes account of the interests of all parties involved.

Indeed, by placing the Governments under an obligation to make regular reports on the application of Conventions, the International Labour Organisation is able to exercise continuous and permanent supervision over the position in law and in practice in the countries bound by the Convention.

Moreover, by virtue of the representation and complaint procedures prescribed by Articles 23 and 26, the International Labour Organisation is enabled to undertake enquiries in the event of alleged violations of an international Convention and, in a necessary case, to take steps to rectify the position. It is true that until now these provisions have hardly ever been invoked, the reason no doubt being that the other supervisory measures have, in the aggregate, shown themselves to be sufficiently effective to ensure the respect of undertakings entered into by the States. But there is nothing to prevent their invocation in the future. It has been mentioned above that it was actually in connection with the question of freedom of association that industrial associations

have, in the past, asked for enquiries to be made on the spot. If the International Labour Organisation has not been able to respond to these requests, it was not because of any incompleteness in the text of the Constitution, but because there did not exist at that time any international Convention concerning freedom of association.

It is necessary to emphasise yet again, in this connection, that the setting in motion of the supervisory procedure depends to a very large degree on employers' and workers' organisations themselves, which play a part of outstanding importance in this matter. It should be remembered that, thanks to the tripartite structure of the International Labour Organisation, the workers' and employers' organisations take part as of right in all stages of the procedure ; they are represented on all supervisory bodies ; they receive copies of the reports of the Governments ; they are enabled to invoke the procedure of representation and, through the medium of their representatives on the Governing Body or at the Conference, the procedure of complaint. In short, it is for these organisations to render effective the provisions of the Constitution relating to the supervision and application of Conventions.

But the chief merit of the supervision established by the Constitution of the International Labour Organisation lies in the fact that it represents a system of supervision accepted by the States Members of the International Labour Organisation. Consequently, it affords a satisfactory solution to the problem of State sovereignty, the importance of which was most properly emphasised in the Resolution adopted by the Conference at its 30th Session. The Constitution of the International Labour Organisation, which is a legally binding instrument, binds all the States Members which have accepted it. Consequently, no State can free itself from the obligations imposed upon it by the text to which it has subscribed, an undertaking which does not interfere with national sovereignty, but which, as many decisions of the Permanent Court of International Justice have made abundantly clear, is a result of the normal exercise of sovereignty in an organised international community.

Moreover, it is the Constitution of the International Labour Organisation which accords authority to the various organs entrusted with supervision, regulates their competence, delimits their functions and powers, and defines the rights and obligations of the States and those of workers' and employers' organisations.

In other words, the principal difficulties referred to in the Resolution adopted by the Conference at its 30th Session can be disposed of at the outset by adhering to the supervisory machinery provided under the Constitution.

It is important, however, to recall in this connection the reservation which has already been made, namely, that in order that the supervisory machinery provided by the Constitution may come into operation, the Conference must have actually adopted an international Convention guaranteeing freedom of association and this Convention must have been ratified by the States Members and must have finally come into force.

Clearly this last condition limits the extent of the supervision to those States which have voluntarily adopted and ratified a Convention concerning freedom of association. Now, the speed with which Conventions are ratified may be relatively slow, and certain countries which do not accord full freedom of association to workers and employers may hesitate to ratify the Convention for the very purpose of avoiding international supervision. It is in the case of those countries that the real importance of supervision would be demonstrated.

Moreover, as was also emphasised by the Resolution adopted by the Conference at its 30th Session, certain States are not Members of the International Labour Organisation, although they are Members of the United Nations. It is clear that States which are not members of the International Labour Organisation are not bound by the obligations imposed by its Constitution nor by those resulting from an international Convention concerning freedom of association.

A question arises, therefore, whether the establishment of machinery under the auspices of both the International Labour Organisation and the United Nations would not afford a more efficient method of supervision of the application of the principle of freedom of association. In order to be able to reply to this question, it is necessary to examine briefly the powers relating to these matters which are possessed by the various organs of the United Nations.

The Powers of the United Nations

In the consideration of the means of intervention possessed by the various organs of the United Nations, attention will of course be confined to those provisions of the Charter which relate directly

to the question under review. No reference will be made, therefore, as they are entirely inapplicable in this case, to the powers of the Security Council in relation to the maintenance of international peace.

It is Article 55 of the Charter of the United Nations which particularly defines the competence of the United Nations both in the field of economic and social policy and in that of the protection of human rights.

Under the provisions of this Article, the United Nations shall promote, *inter alia* :

(a) higher standards of living, full employment and conditions of economic and social progress and development ;

(b) solutions of international economic and social problems; and

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56 further provides :

> All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

The General Assembly of the United Nations and, under its authority, the Economic and Social Council are made responsible for the discharge of these functions (Article 60). The Economic and Social Council, applying Article 68 of the Charter, set up the Human Rights Commission to assist it in the carrying out of part of these functions.

1. *Powers of the General Assembly*

Under the provisions of Article 10, the General Assembly may discuss any questions within the scope of the Charter and may make recommendations thereon.

Under the provisions of Article 13, the General Assembly shall initiate studies and make recommendations for the purpose, *inter alia*, of promoting international co-operation in the economic and social fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Under the provisions of Article 14,

> ... the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations.

Moreover, it may be observed that the General Assembly is also able to adopt Conventions.

2. *Powers of the Economic and Social Council*

The competence of the Economic and Social Council is defined in similar terms.

By virtue of paragraph 1 of Article 62 of the Charter, the Economic and Social Council may make or initiate studies and reports with respect to international economic and social matters and may make recommendations with respect to any such matters to the Assembly, to the Members and to the specialised agencies. In particular, it may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms. Finally, with respect to matters falling within its competence, the Council may prepare draft Conventions for submission to the Assembly.

Under paragraph 1 of Article 64, the Council may also take appropriate steps to obtain regular reports from the specialised agencies. It may make arrangements with the Members of the United Nations and with the specialised agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

It may be noted in this connection that the General Assembly, at its Second Session (September-October 1947), recommended that the Secretary-General should make each year a report to the Economic and Social Council, which, in its turn, should make a report to the General Assembly, on the steps taken by the Governments of the States Members to give effect to these recommendations. Moreover, the Secretary-General announced his intention of taking the necessary steps in order to receive each year from the Government of the States Members the information requested.

It ensues from those provisions of the Charter that, in the economic and social field, the United Nations possess, in addition to the powers of study and co-ordination of the activities of the

specialised agencies, two principal means of action : (1) the adoption of Recommendations, and (2) the adoption of Conventions.

With regard to Recommendations, it should be observed that they do not place States under legal obligations. They cannot be assimilated to the Recommendations adopted by the International Labour Conference, which, under the terms of Article 19, paragraph 6, of the Constitution of the International Labour Organisation, as amended, must be communicated to all Members for their consideration with a view to effect being given to them by national legislation or otherwise. The Members of the International Labour Organisation must submit these Recommendations to the authorities within whose competence the matter lies for the enactment of legislation or other action. They must also inform the Director-General of the International Labour Office of the position of the law and practice in their countries in regard to the matters dealt with in the Recommendations, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendations and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

With regard to the Conventions which the Economic and Social Council may draw up and submit for adoption to the Assembly, it is important to emphasise once again that the Charter of the United Nations, unlike the Constitution of the International Labour Organisation, does not lay down a special procedure for the adoption of Conventions which have to be submitted to the States Members.

The Charter does not lay upon the States Members, as does the Constitution of the International Labour Organisation, the obligation to submit international agreements which have been adopted to the competent authorities for ratification. Finally, the Charter, unlike the Constitution, does not make provision for any international supervisory machinery which may come into operation when a Convention has entered into force.

3. *The Proceedings of the Human Rights Commission*

The legal position which has been briefly summed up above became fully evident during the discussions of the Human Rights Commission, to which was assigned the task of drawing up the Bill of Human Rights. The proceedings of the Human Rights

Commission are still continuing at the present time, and it would be premature, therefore, to draw any final conclusions from them.

However, it appeared to the Commission, which met in its second session in December 1947 at Geneva, that it would not be sufficient to draw up a simple Declaration on Human Rights, but that it would be equally necessary to draft a Convention concerning human rights, which alone could create specific international obligations. Moreover, it is only in connection with such an international Convention that any international machinery to supervise its application could be established.

It was with this triple mission in mind that the Commission submitted to the Economic and Social Council as well as to the States Members a report [1] containing three distinct proposals :

(1) A draft International Declaration on Human Rights [2],

(2) A draft International Covenant (International Convention) on Human Rights [3],

(3) A report of the Working Group of the Commission on the implementation of the Covenant.[4]

The Working Group, which had the task of putting forward suggestions as to the implementation of the Covenant (Convention), was asked most particularly to consider machinery for supervising the application of a possible Convention concerning human rights. It defined its task in the following terms :

> The Group considered that its mandate undoubtedly extended to study of the implementation of one or more possible Conventions. It even arrived at the conclusion that the question of implementation had much more to do with the Convention than with the Declaration. The latter indeed was in the last analysis to take the form of a recommendation by the General Assembly of the United Nations, and was consequently not legally binding in the strict sense of the term. It therefore appeared to the Working Group a manifest impossibility to contemplate measures for the fulfilment of an obligation that was not one.[5]

Without being able in these pages to make a detailed analysis of the very substantial report of the Working Group on implementation, it is nevertheless important to make reference to the two problems which particularly engaged its attention, namely : (1) the establishment of a Permanent Committee for Petitions ; (2) the establishment of international jurisdiction over human rights.

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[1] United Nations, Economic and Social Council, E/600, 17 December 1947.

[2] *Ibid.*, Annex A.

[3] *Ibid.*, Annex B.

[4] *Ibid.*, Annex C.

[5] *Ibid.*, p. 41.

(a) *Permanent Committee for Petitions.*

One of the chief problems of implementation of human rights is, in the view of the Working Group, that of "petitions". It appeared to the Group that a fundamental liberty can be effectively guaranteed only where the person enjoying it is afforded a means of bringing before an independent authority any violation of his rights and of making representations where necessary to an international authority in the event of this violation not having been rectified by the national authorities. The Working Group came to the conclusion that a genuine right of petition (leaving aside the question of unofficial communications) could only be possible in connection with an international Convention ratified by the different countries. "It would be limited", it is stated in the report, "in geographical scope to States that had ratified the Convention setting it up... Relating as it does to contractual obligations, the new system would, by definition, only be binding on the parties to the Convention." The report continues : "Various members of the Working Group expressed their regret at this situation, but had to yield to the force of this elementary yet imperative judicial concept."[1]

But within these limits the right to present petitions should be granted not only to States, but also to associations, individuals and groups of individuals, nationals of the States parties to the Convention. The word "associations" should include, in the opinion of the Working Group, both national and international organisations "if they originate in a country or countries whose Government or Governments have ratified the Convention".

In order to ensure the effective application of the provisions of the Convention on Human Rights, the Economic and Social Council should set up a permanent committee, a "Committee for Petitions", composed of qualified and independent persons chosen by the Council from lists submitted by the States parties to the Convention. This Committee should collect the necessary information, follow the international evolution of the problem, receive petitions—a subcommittee should examine the receivability of the petitions—and endeavour to remedy any violation through negotiations.

The report emphasises that the function of the Committee should be essentially one of conciliation, not of arbitration, and

[1] United Nations, Economic and Social Council *op. cit.*, p. 51.

still less of final decision. The examination of petitions should be made in private session, but the Committee should have the right to submit reports to the Human Rights Commission which, if it deemed it advisable, could make public the reports which it received.

(b) *Establishment of International Jurisdiction over Human Rights.*

The Working Group of the Human Rights Commission also examined various proposals submitted to it in order that the general machinery for the protection of human rights should be supplemented and rounded off, so to speak, by the institution of a right of appeal to an international court. These proposals gave rise to many divergencies of opinion, not only with regard to the form which the international court should take (should the Commission entrust this task to the International Court of Justice by setting up under its Statute a special Chamber to deal with human rights or should it make provision for setting up a new international legal court ?) and the nature of its decisions (mere advisory opinion or final legal decision enforceable by sanctions), but also with regard to the actual principle of establishing an international court.

The principal merit of this proposal is that the problem has been thoroughly considered, emphasising that a system of international protection of fundamental rights logically requires, in addition to an agency for conciliation in the first instance (Committee for Petitions), a court, properly so-called, endowed with the power of giving binding and enforceable judgments, leaving aside for the moment the practical difficulties standing in the way of the effective realisation of such a system.

The representative of the United States observed that such a proposal must be considered very seriously and that it could not be put into effect in the foreseeable future. She further had grave doubts regarding the desirability of making it more difficult for States to ratify the Convention concerning Human Rights by inserting in it provisions regarding an international tribunal.[1]

CONCLUSIONS

It will be seen from the foregoing analysis that preliminary measures — *i.e.*, the adoption of international Conventions and

[1] United Nations, Economic and Social Council, *op. cit.*, p. 58.

their ratification — are indispensable to the establishment of an international system for the protection of human rights, including freedom of association, which in turn includes freedom of association of workers aud employers.

As regards freedom of association of workers and employers, in particular, the International Labour Conference is called upon to adopt a Convention (or Conventions). Once the Convention (or Conventions) had entered into force, the system of supervision provided by the Constitution of the International Labour Organisation would automatically become applicable.

It could therefore be argued that the desire expressed by the World Federation of Trade Unions and the American Federation of Labor and also figuring in the Resolution adopted by the International Labour Conference at its 30th Session that there should be permanent machinery to secure that freedom of association is effectively respected will be automatically met, and that accordingly no special collaboration between the International Labour Organisation and the United Nations, such as was suggested by the Economic and Social Council and by the General Assembly, would be necessary for the purpose of devising special international machinery which would fulfil this function.

While it is true that the provisions of the Constitution of the International Labour Organisation may give effective guarantees for the application of ratified Conventions setting international standards, it is open for consideration whether as regards a Convention or Conventions dealing with freedom of association of workers and employers some supplementary machinery might not be desirable and indeed necessary if freedom of association is to be fully protected.

In the case of what may be called the ordinary Conventions of the International Labour Organisation, it is comparatively easy to determine whether an alleged infraction of the obligations of the Convention is something which comes fully within the scope of the Convention or not. Although freedom of association of workers and employers can be defined in an International Labour Organisation Convention, the practical possibilities of its effective exercise will be affected by the possibility of the exercise of other rights of a more general character. For instance, the exercise of freedom of association might be made ineffective by interference with the right to hold public meetings, the right of free speech, the right to circulate published material, etc. There might there-

fore be a considerable advantage in elaborating some machinery, in consultation with the Human Rights Commission, for dealing with cases in which several elements were involved. At all events, it seems clear that the question merits exploration, and the Governing Body proposes, if the Conference agrees, to undertake the consultations with the United Nations which were envisaged in the resolutions of the Economic and Social Council and the General Assembly, and in the Resolution adopted at the last session of the International Labour Conference.

Since, as stated above, the first essential step is the adoption of a Convention on the substance of freedom of association of workers and employers and its ratification, and since a certain interval must necessarily elapse before any large number of ratifications is obtained for the Convention which it is anticipated the Conference will adopt at its present session, there will be no loss of time if the procedure just suggested is approved. And, moreover, it should be remembered that, even if some special machinery were evolved in collaboration with the United Nations, the existence of any such machinery would not annul the guarantees for the effective operation of the International Labour Organisation Convention which are provided by the Constitution of the International Labour Organisation and which cannot be abrogated or suspended. Any new machinery would be particularly valuable where real interference with freedom of association of workers and employers resulted indirectly from interferences with other rights in the absence of the effective exercise of which the International Labour Organisation Convention might become a dead letter. Such joint machinery would also have the advantage that it would institute a particularly valuable form of co-operation between the International Labour Organisation and the United Nations, would manifest in a practical way the determination of the United Nations to strengthen the fabric of international obligations, and would put behind the effort of the International Labour Organisation the great moral authority which the United Nations can exercise.

* * *

If the Conference adopts these proposals, it will no doubt wish to request the Governing Body to take all necessary steps to give effect to them.

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ILC, 31st Session, 1948, Record of Proceedings, First Report of the Committee on Freedom of Association and Industrial Relations, pp. 229–235

INTERNATIONAL LABOUR CONFERENCE

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1950

09616

proposals made in the report are what the Committee considered to be the best arrangements that could be made in the circumstances.

I should, however, like to draw attention to the fact that there are now five States whose arrears exceed two full years' contributions. According to our Constitution, they are not entitled to vote unless especially authorised to do so by a two-thirds majority of the vote of the Conference. The decision to allow a country in such default to vote is, as stated in the report, a very serious matter.

The Committee examined the whole question very carefully in the case of Bulgaria, which is the only country in default which is represented at this session of the Conference ; and it recommends that Bulgaria should be permitted to vote, because the Committee was satisfied that Bulgaria was making real efforts to clear off her arrears and to place herself in good financial standing with the Organisation. If the report is adopted, it will be necessary to take a record vote in this matter and, as stated, a two-thirds majority vote will be necessary.

The only other point to which I should like to draw attention is the position regarding the Working Capital Fund, which is given in the appendix to the report. The Working Capital Fund is required to enable the International Labour Organisation to carry on its work pending the receipt of contributions from States Members. As will be seen from the appendix, there were only eighteen countries which had placed a deposit in this Working Capital Fund. This year the United States of America has also placed a deposit ; but it is to be hoped that other Member States will also come forward and help to build up the Working Capital Fund, which is very necessary to enable the International Labour Organisation to carry on pending the receipt of contributions which are sometimes delayed.

With these words, I commend the report to the consideration of the Conference.

Interpretation : The PRESIDENT — Does anyone wish to speak on this report ?

As no one has asked to speak, I consider the report to have been adopted, subject to the record vote — which will be taken later — concerning Bulgaria's right to vote at this session of the Conference.

First Report of the Committee on Freedom of Association and Industrial Relations [1]

Interpretation : The PRESIDENT — The next item on the agenda is the first report of the Committee on freedom of association and industrial relations.

[1] See Third Part, Appendix X.

Interpretation : Mr. JOUHAUX *(Workers' delegate, France ; Reporter of the Committee on Freedom of Association and Industrial Relations)* — It is as Reporter for the Workers' members that I speak on this matter. I should like to say that the Workers' representatives will vote in favour of the Convention now before you, but we shall not vote without certain reservations.

It is quite certain that the present Convention does not correspond to the situation as regards the development of the right to organise in the world today and particularly in our countries. There is no doubt that it contains a number of gaps, a number of defects, and a number of points liable to misinterpretation. Nevertheless, as it was found that some countries were not applying freedom of association in their territories (or were applying it subject to restrictions), we considered it essential that the Conference should take positive action on a first Convention, so that freedom of association in its primary stage should be respected in all countries.

It is evident that the International Labour Organisation finds itself, in present circumstances, in a situation which it should have avoided. Since 1920, freedom of association has been embodied in the Constitution of the International Labour Organisation, and should have been applied in full ever since that date, and the work of the International Labour Office in this field at the present time should have been merely to follow the development of the right to organise in all the different countries so as to register the progress achieved by all countries in this respect.

What I have said did not take place ; and, when we examine this text and compare it with the existing situation in our own countries, we are struck by the very large gap between the text now before you and what our trade unions in our own countries have already obtained. We are no longer at the stage of primary claims. We are now claiming a share in the management of national economy. We have accepted obligations in the national community and, consequently, we have obtained a number of rights. These rights are far from being recognised in the present text. Nevertheless, in social legislation (both national and international), acquired rights remain undiminished if they are superior to those provided by a Convention, and there is therefore no risk for us in accepting the present text.

Still, we regret that, in present circumstances, so many sectional views and selfish interests, and so much lack of understanding were shown in the discussion on this matter. I should like to say to our employer friends that they are not in the International Labour Organisation in order to defend an attachment to a dead past. They are in the

Organisation to serve progress ; and they should not fear bold ideas, because it is only by bold thought that we can secure a future of progress. When they speak of the public interest, they should not merely mean their own interests, but those of the national community which they represent and of those of the international community in which they collaborate. I must tell them in all sincerity that, if their attachment to the past should continue as at present, their action might lead—and this would be to the detriment of their own interests—to the workers disinteresting themselves in the International Labour Organisation.

I should also like to say—because it is a matter of regret to me—that the Government representatives show, in their thought and action, too much attachment to national sovereignty. National sovereignty is of course a highly reputable conception, because it is an expression of independence.

But it is unusual to hear arguments regarding national sovereignty in 1948, nearly thirty years after the establishment of the International Labour Organisation, which presupposes the abandonment to some extent of national sovereignties. In order that the Organisation may play its part in developing labour legislation equally in all countries, it is absolutely necessary to make national sovereignty give way to international interests if we are to prevent the dumping of which Governments complain so often and if we wish to establish peace.

The present Convention on freedom of association contains all these defects ; and it is to be regretted that we have not before us a text which, by reflecting economic development, and consequently the development of the right to organise, would record it as a dynamic force which would support the International Labour Organisation in its work. If the International Labour Organisation is to remain —and it must remain—the motive force of social progress, it must boldly lead the way and not fear new ideas ; it must abandon outworn ideas and try to represent progress.

All these arguments are important to us workers. But I repeat that we shall vote in favour of this Convention because it is a first condition to the essential and continued progress on the road which the International Labour Organisation should follow.

It is the duty of the countries in which development is most advanced to help in the development of countries which are economically backward, for otherwise their own reforms will be endangered. In the International Labour Organisation, there is not a single country or group which can exclude itself from the prevailing atmosphere ; but there are countries which should help the others down the difficult path which they must follow in order to achieve an improved economy and the freedom of the workers. Who can say today whether the level reached by some countries will be typical of the future ? Who can say whether the social evolution of man, of which a great economic philosopher (whose name I need not tell you) spoke in the early days of industrialism, is not entering an intermediate stage, that of nationalisation? If the formulation of a theory must be absolute, he said, its application must take account of the changing realities of the social scene. We are today in the midst of an international economic revolution. We must hope that the efforts of all in the International Labour Organisation will be to assist the development of this peacemaking and emancipatory revolution, and that all will realise that it is based on the co-operation of labour, through its trade union organisations, in the exercise of freedom. For where there are duties there must be rights.

We consider that freedom is not only a human right; it is also, in the present circumstances, a collective right, a public right of organisation. If it is not respected even in the most highly developed countries, it may turn them from their path and lead to the opposite of the result hoped for.

The representatives of the workers will therefore vote in favour of the present Convention, with all its faults, because it is a first step in the application of a freedom which is indispensable to the development of humanity, and because it is a first recognition of the absolute necessity for the participation of the workers, through their organisations, in the whole of human development and particularly in economic development. We shall vote in favour of it because it is essential that those who have not yet those liberties should receive them. We shall vote, however, with the idea of giving this reform later on all the boldness needed in order that the International Labour Organisation may take its rightful place in the vanguard of progress.

Interpretation : Mr. CORNIL *(Employers' delegate, Belgium ; Reporter of the Committee on Freedom of Association and Protection of the Right to Organise)* — The text which you have before you summarises, as accurately as possible, the discussions in our Committee. As you have appointed three Reporters, I feel that I may follow the example of my colleague who spoke last, and depart a little from the strictly objective standpoint which should be adopted when there is only a single Reporter. I will therefore outline to you, in a few words, the spirit in which the employers participated in the drafting of this text of the Convention concerning freedom of association and protection of the right to organise.

First, I will ask my colleagues of the Employers' group to excuse me for the personal element which I shall inevitably introduce into my summary. It would really be impossible to present a point of view which would be perfectly in accordance with the opinions of all the employers here represented. Although we realise the necessity of organisation among the employers, we have too much respect for individual freedom to demand that we all conform to one average opinion which, through its very neutrality, would lose all point and all human value.

Albert Thomas often cited in his speeches what he called the simile of the train—the train which the employers reproached him with wanting to make go too fast and on which they wanted to assume the functions of brakesmen. Albert Thomas, the driver, protested against the zeal shown by the brakesmen—but he recognised their usefulness. I remind you of this comparison not only because it appeals to me, but especially because it will allow me to illustrate the progress of the International Labour Organisation since the days of its first illustrious Director. The train has made progress; too much, in the view of some, not enough, in the view of others. However, none can deny the greatness of its accomplishments. When it started, its crew were not accustomed to working in unison. The brakesmen, apprehensive of the unknown, sometimes applied their brakes too hard. On the other hand, the firemen and drivers, over-exalted by the thrill of getting under way, ignored the most obvious obstructions and would have been quite happy to shake off the brakesmen. Little by little, each one adapted himself to his own role and learned to appreciate and respect the role of others. The brakesmen acquired a taste for travelling, the firemen realised the necessity of controlling the pressure, and the drivers concentrated on the job of keeping the train on the rails. A spirit of team work came into being, and all the team, however contradictory their respective activities might seem, kept the common objective before them.

Of course, opinions are still very varied. There will always be some who reproach the brakesmen for over-caution and the firemen will threaten to blow up the boiler in revenge. These differences are inevitable and even necessary. They are not dangerous so long as everyone is determined to make the journey. Here, it seems to me, is the surest guarantee of the future of our Organisation. The common determination to make the journey together has never been more clearly shown than when we drafted the text of the proposed Convention on freedom of association.

The oratorical skirmishes of which the report submitted to you is an accurate summary were inspired by the usual, and necessary, tactics. Leaving aside certain passages of arms which do perhaps sometimes serve a useful purpose in making clear particular viewpoints, but which are also sometimes purely tactical measures, one is powerfully impressed by the unanimous desire shown to get results. Employers and workers have discussed this proposed Convention with a common desire to achieve something. The extent of the concessions made by all parties reveals a mutual trust which I do not think has ever before been so clearly shown.

For countries like mine, this Convention does not involve anything which has not already been admitted and given recognition to long ago. That does not, however, at all diminish the profound significance of this document, which is a faithful embodiment of the common will of workers' and employers' organisations to give each other recognition, to respect each other, and to help each other in promoting genuine social progress.

Interpretation: Mr. GUZMAN *(Government delegate, Mexico; Reporter of the Committee on Freedom of Association and Industrial Relations)* — I cannot hope to interpret faithfully all the different points of view of those who have done my country the honour of appointing me as Reporter for this Committee. But I want to point out that, as far as my Government is concerned, we have made every effort of good will in order to co-ordinate and take into account all the interests of those whom we represent.

There is no doubt of the good will of the Government representatives at this meeting. And if at any time a reference has been made to national sovereignty, this does not mean that we do not realise that, by coming to this Conference, a part of that sovereignty has to be set aside. However, there has been no need to set aside any of our national sovereignty in order to acknowledge the rights and privileges of the working class.

As a representative of my Government, I only want to point out that, before this Organisation was founded, the Mexican Constitution already recognised the rights upon which we have today agreed in the Committee on freedom of association. Having said this, I think that both employers and workers will recognise the good will of the Government representatives in this matter.

Interpretation: The PRESIDENT — The general discussion is now open.

Interpretation: Mr. VEIGA *(Government delegate, Portugal)* — The proposed Convention concerning freedom of association and protection of the right to organise, as adopted by the Committee on freedom of association and industrial relations,

calls for the following remarks on the part of the Government of Portugal.

Although Portugal was represented in the Committee, we were not, for reasons outside our control, able to take part in the actual work of the Committee. I must, therefore, take this opportunity of submitting my observations.

The Government of Portugal considers that the present draft sacrifices effectiveness of trade union action to an abstract conception of freedom of association, a conception which is political and not occupational, which my Government considers useless from the point of view of social progress. In their replies to the questionnaire on freedom of association, several Governments made very significant reservations on the matter. Austria, Chile, China, Ecuador, Hungary, Pakistan, Switzerland and the Union of South Africa stressed the necessity of taking account of the requirements of public order in each country, and of respecting national regulations concerning the establishment of occupational associations. Bolivia, Ecuador and the Union of South Africa were definitely in favour of excluding public servants from occupational associations. Austria, Belgium, Canada, Ecuador, Egypt, the Netherlands, Sweden, Switzerland, the Union of South Africa, the United Kingdom and the United States also stated more or less explicitly that we should avoid any drafting which might imply the idea that we were granting public servants the right to strike.

The Portuguese Government could not fail to associate itself with these reservations, even if it were not obliged to adopt the attitude to the problem which it desires to maintain.

The fundamental aspect of the problem lies in the confusion in the draft between freedom of association and multiplicity of trade unions. This arises from the formula which gives the employers and the workers the right to establish " organisations of their own choosing ", according to Article 2.

In our opinion, freedom of association does not necessarily involve the establishment of multiple organisations in one and the same occupation and for the same region. Freedom of association should mean the right granted to employers and workers to organise for the defence of their occupational interests in unions which can affiliate as they please, and with the power to do so. This does not at all imply multiplicity of unions, which is a very different thing, and which is really incompatible with the essential object of occupational organisation. Nevertheless, multiplicity of unions is what happens if one identifies freedom of association with the unlimited and unspecified right of workers and undertakings to form organisations of their own choosing, and to join the organisations which they prefer for political or religious reasons.

What is really important for the defence of occupational interests is not the formation of many small associations, but free establishment of associations which really represent the categories concerned, and which have the authority and prestige indispensable to progress in the regulation of industrial relations.

This is one of the cases in which political and social considerations contradict one another, in so far as they aim at different objectives. While the first object of political considerations is to guarantee freedom of opinion, the fundamental object of social policy cannot be other than to secure civil peace by justice in the relations between the different elements engaged in production.

The remarks of New Zealand and the Union of South Africa in reply to the questionnaire appear to us perfectly justified, when they draw attention to the necessity of preventing multiplicity of unions and the risks which such multiplicity carries with it. Pure trade union principles are undoubtedly opposed to the idea of multiplicity. Multiplicity distracts the associations in question from the pursuit of their occupational objects and introduces party spirit, thus involving them in the political machinery and often transforming them into factors of dangerous and sterile agitation. Unions should belong to occupations, to workers, to undertakings, and not to parties. And this is not possible when a type of freedom of association is proclaimed which involves dispersion of effort and of organisations.

We think that the constructive action of trade unions should apply particularly to collective agreements. It is easy to see what insurmountable difficulties arise when you have a multiplicity of organisations in the same occupation. The idea of plurality in trade organisation is, in fact, contrary to the very spirit of the collective agreement. The object of a collective agreement is to place the worker on a footing of equality with the employer, by freeing him from the economic weakness which is inevitable if he acts individually. Evidently this object is not achieved if you have many separate unions.

While, from the employers' side, we find a general tendency towards unitary organisation, the same is not true of the workers, who, under the influence of ideas which we regard as dangerous, have always a tendency to multiplicity in organisation. If this goes on, we shall have on one side strong, united employers' organisations, and on the other side numerous, weak workers' unions. The problem will merely have been shifted from the field of competition between individuals to the field of competition between organisations, at the expense of the real interests of the workers.

Observation of the results of trade union policy throughout the world and of experience in our own country has induced Por-

tugal to adopt a realistic system, which safeguards the true principle of freedom of association while avoiding the disadvantages of the abstract formula for occupational organisation.

This system is based essentially on three principles. First of all, the establishment of occupational organisations is based on the initiative of the persons concerned, that is to say, the employers and workers are free to establish or not to establish unions. However, once a union of employers or workers is established in a particular region and for a given occupation, then no other union for the same occupation and region can be legally recognised. In essence, a similar principle is applied in other countries like Australia, Mexico, New Zealand and the Union of South Africa, where registration is granted only to a single organisation representative in each industry for the purpose of concluding collective agreements.

Secondly, the Portuguese system embodies the principle of freedom of association, that is to say, it recognises the right of all employers and all workers to join or not to join the organisations established. Our law is opposed absolutely to any clause or action limiting this liberty or impeding its exercise.

Thirdly, Portuguese law recognises that organisations are entitled to be incorporated and to have autonomous management. They have the right to draft their own rules, elect their representatives and organise their business, provided they keep to the general rules laid down by law.

Thanks to this system, we have today strong and efficient occupational organisations, which cover the majority of the Portuguese workers, and which have done a very constructive and valuable job in the field of collective agreements, because the organisations have restricted themselves to studying and defending occupational interests, without any religious or political prejudices.

We do not, of course, want to impose our system on other nations. But we sincerely regret that the proposed Convention concerning freedom of association and protection of the right to organise which is now before the Conference is not sufficiently flexible and balanced to be accepted by the Government of Portugal.

Interpretation: Mr. ALTMAN *(Government delegate, Poland)* — The delegation of Poland regrets that it cannot vote in favour of this proposed Convention, although its reasons are very different from those put forward by the Portuguese delegate a moment ago.

I wish to say that the Polish delegation will abstain in the vote on this proposed Convention as a whole. We consider that the proposal does not satisfy the legitimate claims of the trade union movement as presented to the Economic and Social Council of the United Nations by the World Federation of Trade Unions, and we think that it was the duty of the International Labour Organisation to give full satisfaction to those claims.

During the work of the Committee, the Polish delegation put forward several amendments of principle. Most of these were rejected by a majority vote. In consequence of the work of the Committee, not only has the Office text, which seemed to us inadequate, not been improved, but, on the contrary, changes have been made in the original text which have very clearly resulted in restriction of the very principle of freedom of association.

The Polish Government delegation will therefore abstain. The Polish Workers' delegate and the Polish Employers' delegate have authorised me to say that they associate themselves with this statement.

Mr. MESTITZ *(Government adviser, Czechoslovakia)* — After consulting with the Employers' and Workers' delegates of my country, I wish to declare, on behalf of the Czechoslovak Government, that, for the very important reasons mentioned by my colleague from Poland, the Czechoslovak delegation has decided to abstain from voting on this Convention.

Interpretation : Mr. AGUIRRE *(Government delegate, Ecuador)* — I should like to make a slight clarification in connection with the declaration recently made by the Workers' delegate of Ecuador when he referred to the fact that the Government of Ecuador has made certain limitations to the right to organise of public employees. Actually, the Government which preceded the present one did, in a communication sent to the International Labour Office, notify certain limitations, but the present Government of Ecuador, which I represent at this Conference, has authorised me to defend and maintain freedom of association in all its aspects, because such rights are fully recognised by our Constitution and our labour laws.

This decision to defend freedom of association to the utmost I have maintained in the Committee dealing with the subject. I am sorry to have to say that there are omissions from and ambiguities in the proposed Convention on freedom of association which I should have liked to see rectified, because they are likely to prejudice the exercise of this right.

The delegation of Ecuador would have liked to vote for a better, or a more complete, draft, but since it has not been possible to obtain that, we will vote for the one which is presented. Our delegation is, moreover, interested in finding a proper method of application and control, so that freedom of association may become a full and living reality in all the countries of the world. For us, the right to freedom of association is as sacred as the right to live. I have said that before, and I repeat it. For that reason, we are ready to take whatever action may be necessary to bring about effective application of this right.

Interpretation: Mr. MONGE *(Workers' delegate, Costa Rica)* — The Workers' delegation of Costa Rica considers that the proposed Convention on freedom of association has some defects, but we shall vote for it because we think that it is a step towards guaranteeing the workers' right to organise freely and to defend their own interests.

We also want the workers to be given a more effective guarantee of this inalienable right. As regards limiting the right of association of public employees, we do not agree with this. We wish to guarantee the right to organise to mankind, as such, not merely to workers, to men of certain categories or religious beliefs, but to man himself.

Interpretation: The PRESIDENT — If no one else wishes to speak, I shall declare the general discussion closed.

We shall now approve the proposed Convention, article by article. We will begin with the Preamble. An amendment has been submitted by Mr. Gemmill, Employers' delegate of the Union of South Africa, which proposes that, in the fourth clause, for the words:

"Considering that the Declaration of Philadelphia reaffirms that 'freedom of expression and of association are essential to sustained progress' ",

there should be substituted the words:

"Considering that the Declaration of Philadelphia reaffirms that 'freedom of expression and of association are essential to sustained progress', and 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'."

Mr. GEMMILL *(Employers' delegate, Union of South Africa)*—You will observe that the fourth clause of the Preamble to the proposed Convention makes a brief reference to the Declaration of Philadelphia. The amendment I propose is that this clause should quote also the whole of Part V of the Declaration of Philadelphia.

I would point out, in the first place, that the wording proposed in this amendment, which was unanimously agreed to at the 1947 Session of the International Labour Conference, in Geneva, was embodied in the Resolution on freedom of association adopted by that Conference, which was forwarded to the Economic and Social Council of the United Nations, and adopted by the Economic and Social Council, which then forwarded it to the General Assembly of the United Nations, which also endorsed it. It also appeared in the introduction to the questionnaire on freedom of association and protection of the right to organise which was addressed to the Governments.

In the replies from the Governments, no objection to the inclusion of these words in the Preamble was made by any Government, although there was expressed a preference for the inclusion of Part V in the body of the Convention rather than in the Preamble; and yet, neither in the Preamble nor in the body of the Convention as submitted by the Office, was Part V included.

To say the least, such non-inclusion seems to me a very strange procedure by the Office, and my amendment is presented in order to remedy the matter by re-inserting Part V in the Preamble to the Convention. Without it, there would be absolutely nothing in the Convention to indicate that there are some peoples in so elementary a stage of development that industrial relations, freedom of association and so on, have little or no meaning to them, and the application of international measures in these questions must be determined progressively, with due regard to the stage of such development.

I ask that such conditions should be taken into consideration and provided for in the text—in this case in the Preamble. When I raised this matter in committee, it was suggested in some quarters that the matter of racial discrimination was involved and that Part V of the Declaration of Philadelphia was in conflict with the principles of the Convention. These arguments are difficult to follow, as the Declaration of Philadelphia, including Part V, is part and parcel of the Constitution of the International Labour Organisation, and no Convention can be contrary to that Constitution.

On the other hand, the very fact that Part V, after being unanimously included in the Preamble by the 1947 Session of the Conference and endorsed by the Economic and Social Council and the General Assembly of the United Nations, is subsequently deleted from the Preamble and not mentioned anywhere in the new Convention, must give the impression that the progressive application of the terms of the Convention to backward peoples is not authorised, and in that case the countries involved would have no alternative but to refuse to ratify the Convention.

I suggest that there is nothing unreasonable in this proposal. It is just a suggestion to embody in this Convention a provision in the Constitution which is peculiarly adapted to it, and for these reasons I move the amendment which is in your hands.

Interpretation: The PRESIDENT — Is the amendment seconded?

Interpretation: Mr. OERSTED *(Employers' delegate, Denmark)* — I second the amendment.

Interpretation : Mr. JOUHAUX *(Workers' delegate, France ; Reporter of the Committee on Freedom of Association and Industrial Relations)* — I would simply reply that this amendment was considered in the Committee and rejected. It was rejected because it is impossible, in an international Convention, to accept discrimination inside each country. In fact, a Convention would cease to operate if each Government could make discrimination on the basis of differences in development on the part of the population. It was because the amendment was contrary to the Constitution of the International Labour Organisation and because it would nullify the social value of the Convention that the Committee rejected it.

Interpretation : The PRESIDENT — I shall put Mr. Gemmill's amendment to the vote.

(A vote is taken by show of hands. The amendment is rejected by 23 votes to 85.)

Interpretation : The PRESIDENT — I shall now ask the Conference to vote upon the Preamble and the remainder of the Convention, article by article.

(The Preamble and Articles 1, 2, 3, 4, 5, 6 and 7 are adopted seriatim.*)*

Interpretation : The PRESIDENT — Are there any remarks on Article 8 ?

Interpretation : Mr. RAPPARD *(Government delegate, Switzerland)* — I do not wish to start a lengthy debate on this important article, but wish simply to make a statement to satisfy the members of my delegation and my Government.

The first paragraph of the article runs as follows : " 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. "

Of course, in a country like mine, workers and employers, like all other citizens, are always required to respect the law of the land, and the Government, the State, is the only judge of legality. I do not think that there is any misunderstanding on the subject, but if anyone chose to examine the proposed text critically, reservations could be made. Of course workers and employers and their respective organisations, like other persons or organised collectivities, are required to respect the law of the land. It is in this sense that Switzerland will vote for this provision with the rest of the Convention.

Interpretation : The PRESIDENT — If no one else wishes to speak, I shall declare Article 8 adopted.

(Article 8 is adopted.)

(Articles 9, 10, 11, 12 and 13 are adopted seriatim.*)*

Interpretation : The PRESIDENT — If there are no other speakers, I shall consider the proposed Convention on freedom of association and the right to organise to be accepted as a whole.

Mr. GEMMILL *(Employers' delegate, Union of South Africa)* — I wish to place my abstention on record.

Interpretation : Mr. VEIGA *(Government delegate, Portugal)* — The Portuguese Government delegation votes against the proposed Convention.

Interpretation : Mr. ALTMAN *(Government delegate, Poland)* — The Polish Government delegation abstains from voting.

Interpretation : Mr. KRAUS *(Government delegate, Czechoslovakia)* — The Czechoslovak Government delegation also abstains.

Interpretation : The PRESIDENT — We have recorded the abstentions and two votes against approval of the proposed Convention.

(The proposed Convention as a whole is approved.)

Interpretation : The PRESIDENT — The proposed Convention, being approved as a whole, will now be referred to the Drafting Committee of the Conference.

I wish to extend our sincere thanks, on behalf of the Conference, to the Chairman of the Committee and to the three Reporters.

Approval of Instrument of Amendment of the Constitution of the International Labour Organisation by the President of the United States

Interpretation : The PRESIDENT — I call upon Mr. Morse, who has an announcement to make.

Mr. MORSE *(Government delegate, United States)* — I simply want to take advantage of this opportunity to inform the Conference that the President of the United States has approved the Instrument of Amendment of the Constitution of the International Labour Organisation. This announcement gives me considerable pleasure, and I thought I would bring it to the attention of this body.

Record Vote on the Proposal to Permit Bulgaria to Vote at the Present Session of the Conference

Interpretation : The PRESIDENT — We shall now proceed to take a record vote on the question of authorising Bulgaria to take part in the voting.

Document No. 162

ILC, 31st Session, 1948, Record of Proceedings, Second Report of the Committee on Freedom of Association and Industrial Relations, p. 259

INTERNATIONAL LABOUR CONFERENCE

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1950

09616

EIGHTEENTH SITTING

Friday, 9 July 1948, 10 a.m.

President : Mr. Justin Godart

Anniversary of the Independence of the Argentine Republic

Interpretation : Mr. ALVARADO *(Government delegate, Peru ; Chairman of the Governing Body of the International Labour Office)* — The Argentine Republic today completes another year of independent existence. The emancipation of the countries of Latin America was one of the most important events in the history of the world, because, owing to its form and extent, it formed the basis of the movement of solidarity and co-operation between the American peoples, which is today one of the strongest ties which unite them.

Therefore, the anniversay of the independence of the Argentine Republic is not only a matter of national celebration for that great country, but a red-letter day for all the American peoples.

It is impossible to speak of the independence of the Argentine Republic without mentioning the great Captain, the soldier-saint, General José de San Martín, who raised the cry of emancipation in different American countries, and who is the true symbol of solidarity and democracy in all the nations of South America.

I therefore wished to open these proceedings by paying a tribute, not only in the name of Peru but, I believe, in the name of the other Latin American countries and of the Conference, to the great Argentine people.

Interpretation : The PRESIDENT — As the Chairman of the Governing Body has just said so well, the Conference is clearly unanimous in its desire to associate itself with what he has said and to pay a cordial tribute to the anniversary of the independence of the Argentine Republic.

Interpretation : Mr. VALENZUELA *(Government delegate, Argentine Republic)* — I wish to thank Mr. Alvarado most deeply for his sincere gesture on behalf of all the nations gathered together here, in expressing his joy on the occasion of the 132nd anniversary of the declaration of independence of the Argentine Republic. My country, today as always, united with all the countries of the world in the crusade for peace, pledging itself to the common destiny of the peoples of America, and calling for Christian feelings, is working for the happiness of mankind. I thank you in the name of my Government.

Second Report of the Committee on Freedom of Association and Industrial Relations [1]

Interpretation : The PRESIDENT — The first item on today's agenda is the second report of the Committee on Freedom of Association and Industrial Relations. This report has already been printed and circulated, and, as the Reporter has nothing to add to it, the general discussion is open.

As nobody wishes to speak, we shall proceed to vote on the proposed Resolution at the end of the report. If there is no opposition, I shall declare the proposed Resolution adopted.

(The Resolution is adopted.)

Interpretation : The PRESIDENT — If there is no opposition, I shall consider the report adopted.

(The report is adopted.)

[1] See Third Part, Appendix X.

Document No. 163

ILC, 31st Session, 1948, Record of Proceedings, Final record vote on the Convention concerning Freedom of Association and Protection of the Right to Organise, pp. 268-269

INTERNATIONAL LABOUR CONFERENCE

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

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our right to make a statement on the subject.

Interpretation: The PRESIDENT — Are there any other speakers in the general discussion? Then it is closed, and I shall ask the Conference to adopt the report, which was unanimously adopted by the Committee. As there is no opposition, the report is adopted.

(The report is adopted.)

Interpretation: The PRESIDENT — On behalf of the Conference I should like to thank the Reporter, whose competence and devotion are well known to all of us.

RECORD VOTES

Interpretation: The PRESIDENT — We will now proceed to the record votes which are announced in the *Daily Bulletin.*

FINAL RECORD VOTE ON THE CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

Interpretation: The PRESIDENT — The first record vote is the final vote on the Convention concerning freedom of association and protection of the right to organise. Those in favour of its adoption will reply "yes". Those against "no".

Final Record Vote on the Convention concerning Freedom of Association and Protection of the Right to Organise

For (127)

Argentine Republic:
Mr. Valenzuela (*G*)
Mr. Suárez (*G*)
Mr. Borgonovo (*E*)
Mr. Valerga (*W*)

Australia:
Mr. Makin (*G*)
Mr. Bland (*G*)
Mr. Drummond (*W*)

Austria:
Mr. Maisel (*G*)
Mr. Hammerl (*G*)
Mr. Hoynigg (*E*)
Mr. Boehm (*W*)

Belgium:
Mr. Mertens (*G*)
Mr. Van Den Daele (*G*)
Mr. Cornil (*E*)
Mr. Finet (*W*)

Brazil:
Mr. Bandeira de Mello (*G*)
Mr. Battendieri (*G*)
Mr. Galliez (*E*)
Mr. Parmigiani (*W*)

Burma:
Mr. Zaw (*G*)

Canada:
Mr. Mitchell (*G*)
Mr. MacNamara (*G*)
Mr. Taylor (*E*)
Mr. Bengough (*W*)

Chile:
Mr. Bustos (*G*)
Mr. Dahmen (*G*)
Mr. Díaz (*E*)

China:
Mr. Li (*G*)
Mr. Pao (*G*)
Mr. Lieu Ong-sung (*E*)
Mr. Liu (*W*)

Colombia:
Mr. Mariño (*G*)
Mr. Álvarez (*G*)
Mr. Sarta (*E*)

Costa Rica:
Mr. Hernández (*G*)
Mr. Monge (*W*)

Cuba:
Mr. Mederos (*G*)
Mr. Sandoval (*G*)
Mr. Fernández Pla (*E*)

Denmark:
Mr. Bramsnaes (*G*)
Mr. Koch (*G*)
Mr. Oersted (*E*)
Mr. Jensen (*W*)

Dominican Republic:
Mr. Rodríguez Lora (*G*)
Mr. Aybar (*G*)
Mr. Cocco (*E*)
Mr. Ballester (*W*)

Ecuador:
Mr. Aguirre (*G*)
Mr. Chaves (*W*)

Finland:
Miss Korpela (*G*)

France:
Mr. Hauck (*G*)
Mr. Lambert (*G*)
Mr. Waline (*E*)
Mr. Jouhaux (*W*)

Greece:
Mr. Pavlakis (*G*)
Mr. Chrysanthopoulos (*G*)
Mr. Eliopoulos (*E*)
Mr. Calomiris (*W*)

Iceland:
Mr. Olafsson (*G*)

India:
Mr. Sampurnanand (*G*)
Mr. Lall (*G*)
Mr. Mehta (*E*)
Mr. Shastri (*W*)

Iran:
Mr. Ardalan (*G*)

Iraq:
Mr. Bakr (*G*)

Italy:
Mr. Cingolani (*G*)
Mr. Mascia (*G*)
Mr. Campanella (*E*)
Mr. Di Vittorio (*W*)

Mexico:
Mr. de Alba (*G*)
Mr. Guzmán (*G*)
Mr. Chapa (*E*)
Mr. Amilpa (*W*)

Netherlands:
Fr. Stokman (*G*)
Mr. Krijger (*G*)
Mr. Fennema (*E*)
Mr. Fuykschot (*W*)

New Zealand:
Mr. Thorn (*G*)
Mr. Parsonage (*G*)
Mr. Butland (*E*)
Mr. Kilpatrick (*W*)

Norway:
Mr. Berg (*G*)
Mr. Frydenberg (*G*)
Mr. Östberg (*E*)
Mr. Nordahl (*W*)

Pakistan:
Mr. Malik (*G*)
Mr. Aslam (*G*)
Mr. Allana (*E*)
Mr. Ali (*W*)

Panama:
Mr. Alemán (*G*)

Peru:
Mr. Alvarado (*G*)
Mr. Navarro (*E*)
Mr. Docarmo (*W*)

Philippines:
Mr. Magsalin (*G*)
Mr. Lanting (*G*)
Mr. Benítez (*E*)
Mr. Muaña (*W*)

Sweden:
Mr. Björck (*G*)
Mr. Ohlsson (*G*)
Mr. Söderbäck (*E*)
Mr. Vahlberg (*W*)

Switzerland:
Mr. Rappard (*G*)
Mr. Kaufmann (*G*)
Mr. Kuntschen (*E*)
Mr. Möri (*W*)

Syria:
Mr. Sawwaf (*G*)

Turkey:
Mr. Sumer (*G*)
Mr. Fer (*G*)
Mr. Barlo (*E*)
Mr. Özkaner (*W*)

Union of South Africa:
Mr. Briggs (*W*)

United Kingdom:
Mr. Isaacs (*G*)
Sir Guildhaume Myrddin-Evans (*G*)
Sir John Forbes Watson (*E*)
Mr. Roberts (*W*)

United States:
Mr. Morse (*G*)
Mr. Thomas (*G*)
Mr. Zellerbach (*E*)
Mr. Fenton (*W*)

Uruguay:
Mr. Zubiría (*G*)
Mr. Lorenzi (*G*)
Mr. Pons (*E*)
Mr. López (*W*)

Venezuela:
Mr. Meoz (*G*)
Mr. Pifano (*G*)
Mr. Rojas (*E*)
Mr. Malavé (*W*)

Against (0)

Interpretation : The PRESIDENT — The result of the vote is as follows: 127 for, 0 against, and 11 abstentions. The Convention is adopted, and with it the first report of the Committee.

(The report is adopted.)

FINAL RECORD VOTE ON THE CONVENTION CONCERNING THE ORGANISATION OF THE EMPLOYMENT SERVICE

Interpretation : The PRESIDENT — We will now take the final vote on the Convention concerning the organisation of the employment service.

Final Record Vote on the Convention concerning the Organisation of the Employment Service

For (128)

Argentine Republic :
Mr. Suárez (*G*)
Mr. Borgonovo (*E*)
Mr. Valerga (*W*)

Australia :
Mr. Makin (*G*)
Mr. Bland (*G*)
Mr. Wilson (*E*)
Mr. Drummond (*W*)

Austria :
Mr. Maisel (*G*)
Mr. Hammerl (*G*)
Mr. Hoynigg (*E*)
Mr. Boehm (*W*)

Belgium :
Mr. Mertens (*G*)
Mr. Van Den Daele (*G*)
Mr. Cornil (*E*)
Mr. Finet (*W*)

Brazil :
Mr. Battendieri (*G*)
Mr. Parmigiani (*W*)

Burma :
Mr. Nyun (*G*)
Mr. Zaw (*G*)

Canada :
Mr. Mitchell (*G*)
Mr. MacNamara (*G*)
Mr. Taylor (*E*)
Mr. Bengough (*W*)

Chile :
Mr. Bustos (*G*)
Mr. Dahmen (*G*)
Mr. Díaz (*E*)

China :
Mr. Li (*G*)
Mr. Pao (*G*)
Mr. Lieu Ong-sung (*E*)
Mr. Liu (*W*)

Colombia :
Mr. Mariño (*G*)
Mr. Álvarez (*G*)
Mr. Sarta (*E*)

Costa Rica :
Mr. Hernández (*G*)
Mr. Monge (*W*)

Czechoslovakia :
Mr. Erban (*G*)

Denmark :
Mr. Bramsnaes (*G*)
Mr. Koch (*G*)
Mr. Oersted (*E*)
Mr. Jensen (*W*)

Dominican Republic :
Mr. Rodríguez Lora (*G*)
Mr. Aybar (*G*)
Mr. Ballester (*W*)

Ecuador :
Mr. Aguirre (*G*)
Mr. Chaves (*W*)

Finland :
Miss Korpela (*G*)

France :
Mr. Hauck (*G*)
Mr. Lambert (*G*)
Mr. Waline (*E*)
Mr. Jouhaux (*W*)

Greece :
Mr. Pavlakis (*G*)
Mr. Chrysanthopoulos (*G*)
Mr. Eliopoulos (*E*)
Mr. Calomiris (*W*)

Iceland :
Mr. Olafsson (*G*)

India :
Mr. Sampurnanand (*G*)
Mr. Lall (*G*)
Mr. Mehta (*E*)
Mr. Shastri (*W*)

Iraq :
Mr. Bakr (*G*)

Italy :
Mr. Cingolani (*G*)
Mr. Mascia (*G*)
Mr. Campanella (*E*)
Mr. Di Vittorio (*W*)

Mexico :
Mr. de Alba (*G*)
Mr. Guzmán (*G*)
Mr. Chapa (*E*)
Mr. Amilpa (*W*)

Netherlands :
Fr. Stokman (*G*)
Mr. Krijger (*G*)
Mr. Fennema (*E*)
Mr. Fuykschot (*W*)

New Zealand :
Mr. Thorn (*G*)
Mr. Parsonage (*G*)
Mr. Butland (*E*)
Mr. Kilpatrick (*W*)

Norway :
Mr. Berg (*G*)
Mr. Frydenberg (*G*)
Mr. Östberg (*E*)
Mr. Nordahl (*W*)

Pakistan :
Mr. Allana (*E*)
Mr. Ali (*W*)

Panama :
Mr. Alemán (*G*)

Peru :
Mr. Alvarado (*G*)
Mr. Navarro (*E*)
Mr. Docarmo (*W*)

Philippines :
Mr. Magsalin (*G*)
Mr. Lanting (*G*)
Mr. Benítez (*E*)
Mr. Muaña (*W*)

Poland :
Mr. Altman (*G*)
Mr. Licki (*G*)
Mr. Saper (*E*)
Mr. Zukowski (*W*)

Portugal :
Mr. Castro Fernandes (*G*)
Mr. Veiga (*G*)
Mr. Calheiros Lopes (*E*)
Mr. Ferraz (*W*)

Sweden :
Mr. Björck (*G*)
Mr. Ohlsson (*G*)
Mr. Söderbäck (*E*)
Mr. Vahlberg (*W*)

Switzerland :
Mr. Rappard (*G*)
Mr. Kaufmann (*G*)
Mr. Kuntschen (*E*)
Mr. Möri (*W*)

Turkey :
Mr. Sumer (*G*)
Mr. Fer (*G*)
Mr. Barlo (*E*)
Mr. Özkaner (*W*)

Union of South Africa :
Maj.-Gen. Buchanan (*G*)
Mr. Lee (*G*)
Mr. Gemmill (*E*)
Mr. Briggs (*W*)

United Kingdom :
Mr. Isaacs (*G*)
Sir Guildhaume Myrddin-Evans (*G*)
Sir John Forbes Watson (*E*)
Mr. Roberts (*W*)

United States :
Mr. Morse (*G*)
Mr. Thomas (*G*)
Mr. Zellerbach (*E*)
Mr. Fenton (*W*)

Uruguay :
Mr. Pons (*E*)
Mr. López (*W*)

Venezuela :
Mr. Meoz (*G*)
Mr. Pifano (*G*)
Mr. Rojas (*E*)
Mr. Malavé (*W*)

Against (0)

Interpretation : The PRESIDENT — The result of the vote is as follows: 128 for, 0 against, and 7 abstentions. The Convention is adopted.

Document No. 164

ILC, 31st Session, 1948, Record of Proceedings, Appendix X, Freedom of Association and Protection of the Right to Organise, pp. 473–488

INTERNATIONAL LABOUR CONFERENCE

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1950

09616

APPENDIX X

Seventh Item on the Agenda : Freedom of Association and Protection of the Right to Organise

(1) Text of the Proposed Convention concerning Freedom of Association and Protection of the Right to Organise, Prepared by the International Labour Office.

(The text of the proposed Convention is given, article by article, in the first report of the Committee on freedom of association and industrial relations—see below, item (2).)

(2) First Report of the Committee on Freedom of Association and Industrial Relations.[1]

PROPOSED CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

The Committee on freedom of association and industrial relations established by the Conference at its third sitting, on 18 June 1948, consisted of 80 members (40 Government members, 20 Employers' members, and 20 Workers' members). Each Government member had one vote and each Employers' and Workers' member had two votes.

The Officers of the Committee were as follows :

Chairman : Mr. Thorn, Government member, New Zealand.

Vice-Chairmen : Mr. Taylor, Employers' member, Canada, and Mr. Roberts, Workers' member, United Kingdom.

Reporters : Mr. Guzmán Neira, Government member, Mexico, Mr. Jouhaux, Workers' member, France, and Mr. Cornil, Employers' member, Belgium.

Representatives of the Secretary-General : Mr. Rens, Mr. Bessling and Mr. Herz.

Expert : Mr. Lawyer.

[1] See Second Part, pp. 229, 269.

Mr. Schweib, representing the United Nations, attended the sittings of the Committee.

The *Drafting Committee* consisted of the following members : the Chairman, the Vice-Chairmen and the Reporters, and, in addition, Sir Guildhaume Myrddin-Evans, United Kingdom Government member, and Mr. Hauck, French Government member.

The Committee was responsible for considering the following texts :

1. The proposed Convention concerning freedom of association and protection of the right to organise, contained in Chapter IV of Report VII ;

2. The report of the Governing Body on the effect to be given to the Resolution concerning international machinery for safeguarding freedom of association adopted by the International Labour Conference at its 30th Session (Appendix to Report VII) ;

3. The proposed conclusions regarding industrial relations, contained in Chapter III of Report VIII (2).

The Committee decided to consider first the proposed Convention on freedom of association and protection of the right to organise. It took as a basis for its discussion the text submitted by the Office, which it considered article by article.

Preamble

The Office text was as follows :

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 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 ;

Considering that the principle of equality before the law implies that, in the exercise of their right of association, workers and employers and their respective organisations, like other persons or organised collectivities, are under an obligation to respect the law,

adopts this 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 Convention, 1948 :

The 2nd and 5th Considerations as well as the final paragraph of the Preamble were the object of a number of amendments.

Second Consideration.

The South African Employers' member proposed that this clause be completed by adding Part V of the Declaration of Philadelphia. This amendment, according to its author, involved no racial or other discrimination but was intended to facilitate the ratifications of the Convention by those countries within whose territories there were population groups at a less advanced stage of cultural and social development than other groups of the population.

The Employers' members seconded this amendment. They recalled the fact that the text of the amendment had been included in the Resolution on freedom of association and protection of the right to organise which had been unanimously adopted by the 30th Session of the Conference. This Resolution was subsequently endorsed by the Economic and Social Council and by the Assembly of the United Nations. It also appeared in the introduction to the questionnaire on freedom of association and protection of the right to organise which was addressed to Governments. They pointed out, furthermore, that many Conventions, including that on freedom of association, can only be applied gradually. It was important to take into account the conditions prevailing in certain countries, and to adopt a text which would be likely to obtain the largest possible number of ratifications.

The Pakistan Employers' member, as well as the Burmese and Pakistan Government members and the Workers' members, opposed the amendment. If it were adopted, it would allow a Government acting in bad faith to endanger the guarantee of freedom of association. Furthermore, the amendment was unnecessary, as it merely reproduced Part V of the Declaration of Philadelphia, which was an integral part of the Constitution.

The Committee rejected the amendment by 55 votes to 63.

Fifth Consideration.

The problem of "legality" dealt with in this clause, which had been debated at length at the 30th Session of the International Labour Conference, was, in the opinion of the Committee, of vital importance.

Numerous amendments dealing with the problem of legality were submitted to the Committee, referring either directly to the last clause of the Preamble or to Articles 2, 3, 4, and 5 of the proposed Convention. With the exception of the amendment proposed by the Polish Government member, which treated any reference to this question as superfluous, since it was self-evident, all other amendments proposed the introduction of a reservation concerning legality in the body of the Convention itself.

The Indian Government member pointed out in particular, in connection with the amendment he had proposed on this question, that the reference to the principle of legality in the Preamble was useful only for purposes of interpretation.

The Workers' members, on the other hand, regarded as unacceptable a clause which would tend to place national legislation above international law. The French Workers' member stated he did not claim special rights or privileges but simply wanted the right to exercise freedom of association. He would not agree to the Convention becoming a paternal regulation, designed to limit the freedom of workers.

Several Government members similarly indicated their opposition to any provision likely to limit freedom of association.

As a compromise, the Indian Government member withdrew his amendment and proposed in its place the following new Article :

1. In exercising the rights provided for in this Convention, workers' and employers' organisations 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 interpreted as to impair, the guarantees provided for in this Convention.

The Workers' members proposed the following amendment to the first paragraph of this Article :

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.

The Employers' members accepted the change proposed by the Workers' members in the first paragraph, but proposed the

following rewording of the second paragraph :

2. The law of the land shall not be such as to impair ... the right to organise and lawful activities guaranteed in this Convention.

The Committee rejected the amendment proposed by the Employers' members by 48 votes to 72.

The United Kingdom Government member proposed to delete from paragraph 2 of the compromise text the words " nor shall it be so interpreted as to impair ". In his opinion, these words were not necessary, and it had to be recognised that the interpretation of laws was a function of the courts, which were independent of the Executive. If complete deletion of these words were not acceptable, he proposed the following : " . . . nor shall it be so interpreted by administrative actions as to impair . . .".

The Mexican Government member, considering this wording to be too restrictive, proposed the following : " The law of the land shall not . . . be so interpreted by the Government as to impair . . . ".

By 71 votes to 0, with 19 Employers' members abstaining, the Committee decided to delete the last Consideration in the Preamble of the Office text, and in lieu thereof to insert a new article, the wording of which was left to the Drafting Committee, on the understanding that it would take account of all the observations which had been made.

The Drafting Committee subsequently presented the following text to the Committee :

1. In exercising the rights provided for in this Convention the 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.

The Committee adopted the revised Article on the understanding that it could not be interpreted as involving any interference with the independence and authority of the judiciary. It became Article 8 of the Committee's text of the proposed Convention.

The amendments dealing with the question of legality had earlier been withdrawn in succession by their authors.

The Polish Government member proposed to substitute the following text in place of the fifth Consideration, which had been deleted by the Committee :

Considering the steadily increasing role of trade unions, which tend to assume responsibilities in various fields of the economic and social life of their respective countries, and to become a powerful factor for social progress, for the consolidation of world peace and for the development of world prosperity,

In support of his amendment, the Polish Government member pointed out that it would be appropriate to stress in the Preamble of the Convention the ever-increasing role that trade unions play in the economic and social life of many countries.

The Workers' members, while expressing their sympathy with the principle of this amendment, considered, however, that it hardly belonged in the Preamble, the primary purpose of which was to recall the historical background of the problem and that, in addition, it was not in harmony with the purpose of the Convention, which covered employers' organisations as well as workers' organisations. They considered the suggestion strange that freedom of association should be denied to any group in the national community, including employers.

The Committee rejected this amendment by 3 votes to 54.

Last Paragraph of the Preamble.

The Committee adopted by 52 votes to 41 an amendment, also proposed by the Polish Government member, to substitute for the words " Freedom of Association Convention, 1948 " the words " Freedom of Association and Protection of the Right to Organise Convention, 1948 ".

Part I. Freedom of Association

Article 1

The Office text was as follows :

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

This Article was adopted unchanged without discussion.

Article 2

The Office text was as follows :

Workers and employers, without distinction whatsoever, shall have the inalienable right to establish or join organisations of their own choosing without previous authorisation.

An amendment presented by the United Kingdom Government member proposed the following changes :

(1) delete " inalienable " ;
(2) delete " or ", substitute " and " ;
(3) before " join " insert the words " subject only to the rules of the organisations concerned to " ;
(4) after " choosing " insert the words " for the purpose of furthering their interests as workers and employers respectively ".

After discussion, point (1) of the amendment was adopted by 54 votes to 46. Point (2), involving only a correction of the English text, was adopted without discussion. Point (3) was adopted after discussion by 87 votes to 16.

Point (4) of the amendment was discussed at the same time as other proposals to insert in the text of the Convention a definition of workers' and employers' organisations. Some of these amendments

merely stated that workers and employers should have the right to organise "for the protection of their interests", others sought to provide that the guarantee of freedom of association should be limited to relations between employers and workers or to the defence of the social and economic interests of the two parties.

The Workers' members opposed any modification of the text which might limit trade union activity to the professional field alone.

Similarly, a number of Government members stated that they could not accept a definition which might be interpreted as restricting the right of trade union organisations to take part in political activities.

In an effort to reconcile the divergent points of view, the United Kingdom Government member proposed to substitute for the point in his amendment defining workers' and employers' organisations the following provision :

In this Convention, the term "organisation" means any organisation of workers or of employers for furthering or defending the interests of workers and employers respectively, except any trust or cartel as defined by national law or regulations.

The author of the amendment explained that, in view of existing legislation in the United States, it had appeared desirable to introduce a reference to trusts and cartels in the text of the Convention.

The Workers' members considered any definition superfluous, since the new Article concerning the principle of legality sets out the limits within which an organisation might exercise its activities. They agreed, however, to the compromise text with the following two reservations :

(1) that the words "of workers or of employers" after the words "any organisation" should be deleted, and

(2) that the phrase referring to trusts and cartels should be limited to employers' organisations only.

With regard to the first point, they observed that in certain countries workers did not have the right, either individually or through their unions, to join political organisations. With regard to the provision concerning trusts and cartels, they pointed out that trade union organisations have sometimes been accused—wrongfully, in their view—of forming monopolies.

The Employers' members stated that they were prepared to accept the first part of the United Kingdom Government member's amendment, but they opposed the part referring to trusts and cartels. They pointed out that such a reference was outside the competence of the International Labour Organisation, that it exceeded the scope of the Convention, and that it should not be limited to employers' organisations alone.

The United States Government member declared that he was not opposed to the deletion of the reference to trusts and cartels if it were clearly understood that trusts and cartels were outside the scope of the Convention.

The Workers' members agreed to the elimination of this clause and to the retention of the text in its original form if it were likewise understood that workers and employers, and their organisations, had the right, within the limits of legality provided for by the new Article, to join any political or other organisation.

The Committee agreed to eliminate this clause. In order to give a wider meaning to the provision under discussion, it also decided to delete the word "respectively".

The Committee adopted the revised amendment proposed by the United Kingdom Government member by 102 votes to 4.

All the other amendments concerning the definition of workers' and employers' organisations were thereafter withdrawn by their movers, the Chairman having repeated his statement that the text as adopted did not have a restrictive meaning.

The Polish Government member proposed an amendment, which was seconded by the Czechoslovak Government member, to delete the word "employers" from Articles 2 to 8 of the Office text.

In unanimously opposing this amendment, the Employers' members pointed out that it affected the whole tripartite basis of the International Labour Organisation. They further contended that if freedom of association is to be effective it cannot exclude such an important segment as employers. The Workers' members supported the Employers' view, emphasising the points that employers must be granted the same rights as workers, which in turn would strengthen the position of workers.

The amendment was defeated by 6 votes to 101, with one abstention.

The Committee adopted Article 2 by 99 votes to 3, with one abstention, in the following form :

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisations concerned, to join organisations of their own choosing without previous authorisation.

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.

It was agreed that the second paragraph of this Article might be inserted at whatever place in the text of the Convention the Drafting Committee considered most appropriate.

Article 3

The Office text was as follows :

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.

A number of amendments were presented to include in the text a reference to national legislation concerning industrial organisations, with a view to permitting States to promulgate certain rules which, without restricting the rights of these organisations, would, however, establish certain minimum conditions to be fulfilled by them in respect to their constitution and operation.

The Chairman stated that the Convention was not intended to be a "code of regulations" for the right to organise, but rather a concise statement of certain fundamental principles. The States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. It followed, therefore, that formalities provided for by national regulations concerning the constitution and operation of workers' and employers' organisations were in conformity with the provisions of the Convention, provided that these regulations did not impair the guarantees granted by the Convention.

Following this statement, all the amendments dealing with this question were withdrawn. An amendment proposed by the Argentine Government member was likewise withdrawn, it being understood that the proposer could bring it up again during the discussion on item VIII of the agenda.

Article 3 was adopted in the form proposed by the Office.

Article 4

The Office text, corrected to conform with the French wording of this Article, read as follows :

> Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Several Government members suggested amending the text so as to allow Governments to dissolve or suspend an organisation by administrative action when it engaged in illegal activity. The right of immediate appeal to the Courts should be expressly granted to the interested parties.

Both Workers' and Employers' members opposed this amendment. As it was pointed out, notably by the French Government member, such a provision would permit the dissolution of organisations by administrative action before the former had been prosecuted in the Courts, whereas under the normal procedure the organisations would first be prosecuted before being dissolved.

The Belgian Government member observed that no administrative procedure could in any way be assimilated to a judicial procedure.

The amendment was rejected by 5 votes to 101, and the text proposed by the Office was accepted without change.

Article 5

The Office text was as follows :

> Workers' and employers' organisations shall have the right to establish federations and confederations and to affiliate with international organisations of workers and employers.

An amendment proposed by the South African Government member suggested that the right to establish federations and confederations and to affiliate with them should be subject to the following conditions : (1) that these organisations should in no way limit the autonomy of the member associations ; and (2) that the international organisations, in particular, should have the same objects as the national organisations.

After discussion, this amendment was rejected by 5 votes to 60, with 19 abstentions by Employers' members.

After adopting by 100 votes to 0 an amendment by the United Kingdom Government member intended to give greater precision to the terms of this provision, the Committee unanimously adopted Article 5 in the following form :

> 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.

Articles 6 and 7

The Office text of these two Articles was as follows :

> *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 laid down in Articles 2, 3 and 4 hereof.

These Articles were adopted unchanged without discussion.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 8

The Office text was as follows :

> Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure the exercise of the right to organise of workers and employers.

The Polish Government member proposed to replace Article 8 by a text according to which each Member of the International Labour Organisation for which this Convention was in force should recognise all legislation restricting the principles stated in the Convention as contrary to the principles of economic and social co-

operation defined by the Charter of the United Nations.

The proposer of the amendment declared that the Convention, if so amended, would conform to one of the fundamental principles of the United Nations.

The Workers' members, while fully in agreement with the idea expressed in this amendment, felt, however, that such a provision would be of a declaratory nature, and would not carry any specific obligation.

The amendment was rejected by 5 votes to 70.

Another amendment dealing with the application of the principle of the right to organise and to bargain collectively was withdrawn by the proposer, the Uruguayan Workers' member, it being understood that it could be taken up again during the discussion of item VIII of the agenda.

Lastly, two other amendments, one proposed by the Australian Government member, and the other by the Employers' members, proposed to make the language of Article 8 more precise. The proposers agreed to entrust the task of finding more appropriate wording for the provision to the Drafting Committee.

The text adopted by the Drafting Committee and approved by the Committee was as follows :

> 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.

New Article

Two amendments had been proposed, one by the Indian Government member, the other by the United Kingdom Government member, seeking to exclude the armed forces and the police from the scope of the Convention. These amendments were advocated on the ground that most countries would not find it possible to ratify a Convention which required absolute freedom of association and organisation to be granted to members of the armed forces and the police, having regard to the responsibility of Governments for defending the law and assuring the maintenance of public order.

In order to take account of the fact, however, that in several countries members of the police and at times even members of the armed forces have the right to organise, the United Kingdom Government member proposed to complete the provision by a clause excluding those cases in which national law or established national practice had already granted freedom of association to those categories of persons.

As thus modified the amendment was as follows :

> The provisions of this Convention shall not apply to the armed forces or to the police, except to the extent already provided by national law or established national practice.

The French Workers' member announced that he would vote against the amendment, because the restrictive nature of this proviso might give rise to difficulties in its application. The Italian Workers' member opposed the amendment which, in his view, might have an unfavourable influence on the development of trade union legislation. However the majority of the Workers' members, although entertaining doubts regarding the usefulness of this new provision, were not opposed to the revised amendment, provided it was drafted more appropriately.

With this in view, it was proposed to redraft the clause as follows :

> The provisions of this Convention shall apply to the armed forces and the police in so far as national law or established national practice do not prevent it.

A number of Government members opposed this provision which, they felt, was likely to create uncertainty rather than to clarify matters. Some of them considered it superfluous because the Convention, applying as it did to employers and workers, could not apply to persons who were not bound by a labour contract.

The Committee approved the principle of the amendment by 78 votes to 22 with the proviso that the Drafting Committee should modify the text in order to take account of the various suggestions made during the debate on this question.

The new Article, as submitted by the Drafting Committee, was as follows :

> 1. The exent 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.

The Committee adopted the new Article, on the understanding that the term " national laws or regulations " refers to " national " as contrasted with " international " and includes, in the case of federal States Members, both federal legislation and the legislation of the constituent States.

Part III. Miscellaneous Provisions

Articles 9 and 10

The Office text of these two Articles was as follows :

Article 9

> 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 ;

(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 *x*, 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. 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 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 *x*, 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.

Two amendments were proposed to these two Articles. The first amendment, by the Argentine Government member, proposed to delete the two Articles altogether. He believed that they would involve a restriction of the scope of the rights, granted in the preceding articles, for a considerable number of workers living in non-metropolitan territories, and would thus create a condition of unjustifiable inequality, contrary to the essential principles of the International Labour Organisation. The second amendment, by the Venezuelan Workers' member, proposed to make it obligatory for each Member of the Organisation ratifying the Convention to put it immediately into force in the non-metropolitan territories under its authority. The International Labour Organisation, or any organ that it created for this purpose, should supervise the application of the provisions of the Convention.

The Legal Adviser of the International Labour Office explained that, according to the terms of the amended Constitution, Members enjoyed a certain liberty in deciding when and under what conditions they could apply an international labour Convention in non-metropolitan territories under their authority. No international labour Convention could be contrary to this constitutional provision.

On the other hand, Articles 9 and 10, which followed the corresponding provisions of the Constitution closely, specified certain details relating to the application of these provisions. This was the purpose of maintaining the Articles.

After discussion, the amendment proposed by the Argentine Government member was rejected by 13 votes to 88.

Following this vote, the amendment proposed by the Venezuelan Workers' member was withdrawn by the proposer.

Articles 9 and 10 were then adopted as proposed by the Office.

The South African Government member submitted a proposal to apply the principles of Article 35 of the Constitution relating to non-metropolitan territories to the metropolitan territory of a Member where population groups existed whose social and cultural institutions were analogous to those of the populations in non-metropolitan territories.

In support of this proposal, the South African Government member said that it was not inspired by a spirit of racial discrimination. He explained that it was impossible to apply the Convention completely and immediately to groups of people who by reason of their social and cultural level were not able to make full use of the freedom of association and especially to participate in collective bargaining. Being inexperienced, or even illiterate, these people easily became the victims of persons posing falsely as trade unionists who exploited them.

Moreover, the proposal was not directed against the principle of freedom of association. Employers' and workers' orga-

nisations in the Union of South Africa enjoyed full autonomy for regulating the conditions of admission of members, but the State should have the means of providing special rules for illiterate masses, precisely in order to protect them. It was just such a problem as had been envisaged by Part V of the Declaration of Philadelphia.

Other States Members met which the same difficulties in non-metropolitan territories under their authority, but Article 35 of the Constitution, to which Articles 9 and 10 of this Convention referred, allowed them to solve these difficulties. In South Africa the problem existed in exactly the same terms within a metropolitan territory itself. In this case Article 35 was not applicable. In order to prevent a very real discrimination between the different States Members of the Organisation, it was necessary to apply Article 35 of the Constitution to the present case.

A great many Government members, as well as Workers' members, opposed this proposal. The following arguments were advanced.

Freedom of association constituted a universal and indivisible principle. While certain institutions, as for example, social insurance or regulations concerning hours of work, could be introduced gradually in a country, this was not possible in the case of freedom of association. If the amendment were adopted, a State could determine freely to which group of the population the Convention would be applicable and under what conditions. The Convention would thus be deprived of all its value, and would even serve as a pretext for certain racial discrimination.

Part V of the Declaration of Philadelphia was not intended to impair fundamental principles which were the very basis of the International Labour Organisation. The proposal would thus have the effect of introducing indirectly an amendment into the Constitution.

Lastly, the cultural state of a group of the population could not be considered as a sufficient reason for restricting the freedom of association for them. On the contrary, trade unions played an important educative role. In several countries they contributed effectively to the raising of the cultural level of the masses.

The Committee rejected the proposal by 9 votes to 75.

The Committee adopted the proposal Convention *nem. con.*, the South African Government member and Employers' member abstaining.

San Francisco, 3 July 1948.

(*Signed*) JAMES THORN, *Chairman*.
ALFONSO GUZMÁN NEIRA, *Reporter*.
LÉON JOUHAUX, *Reporter*.
L. E. CORNIL, *Reporter*.

PROPOSED CONVENTION 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 ;

adopts this 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 Convention 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.

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 principles 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 ;
(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 *x*, 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 inter-

national 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 Conventions 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 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 x, 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.

(3) Second Report of the Committee on Freedom of Association and Industrial Relations.[1]

RESOLUTION CONCERNING INTERNATIONAL MACHINERY FOR SAFEGUARDING FREEDOM OF ASSOCIATION

As noted in the first report of the Committee on freedom of association and industrial relations, the Committee was responsible for considering three texts. Having completed discussion on the first—the proposed Convention concerning freedom of association and protection of the right to organise—the Committee decided to consider next the report of the Governing Body on the effect to be given to the Resolution concerning international machinery for safeguarding freedom of association adopted by the International Labour Conference at its 30th Session at Geneva (Appendix to Report VII).

The Workers' members submitted a proposed Resolution concerning international machinery for safeguarding freedom of association which read as follows :

The Conference,

Recalling the Resolution concerning international machinery for safeguarding freedom of association adopted by the Conference at its 30th Session (July 1947), requesting the Governing Body to examine this question in all its aspects and to report back to the Conference at its 31st Session,

Having taken note of the report presented by the Governing Body in conformity with the above-mentioned Resolution,

Having taken note also of the Resolution adopted by the Economic and Social Council of the United Nations at its 5th Session (August 1947), requesting the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights on the question of enforcement of trade unions rights,

Having taken note also of the resolution adopted by the Assembly of the United Nations at its 2nd Session (September-November 1947), recommending to the International Labour Organisation that it pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference, the study of the control of the application of trade union rights,

Considering that the Constitution of the International Labour Organisation provides adequate guarantees for the application of international labour Conventions in general,

Recognising, however, that exercise of the right of freedom of association by workers and employers could be endangered by interference with other fundamental rights, the safeguarding of which lies within the competence of the United Nations, especially that of the Commission on Human Rights,

Considers that international machinery for safeguarding freedom of association established in collaboration with the United Nations could effectively complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,

Requests the Governing Body, accordingly, to enter into consultation with the competent organs of the United Nations, for the purpose of making proposals with a view to establishing international machinery for ensuring the safeguarding of freedom of association, and to report back to the Conference at an early session.

When presenting the proposed Resolution, the Workers' members declared they did not share the apprehensions of some persons that it would result in a threat to the authority of the International Labour Organisation, as this was already clearly established by the existing Agreement between the International Labour Organisation and the United Nations. On the contrary, they considered consultation and collaboration with the United Nations as a necessary step. It might be argued, as

[1] See Second Part, p. 259.

noted in the report of the Governing Body, that once the Convention had come into force the system of supervision provided by the Constitution of the International Labour Organisation would automatically become applicable, and that no other machinery would be needed. They did not, however, believe this would be true in general, since some countries which were Members of the United Nations were not Members of the International Labour Organisation. To make the Convention a living reality, they deemed it necessary to have it applied as widely as possible. Moreover, the exercise of the right of freedom of association by employers and workers might be rendered ineffective by interference with other fundamental rights, such as the right to hold public meetings, the right of free speech, the right to circulate printed matter, etc. As emphasised by the French Workers' member, the safeguarding of these rights lies within the competence of the United Nations ; and it therefore seemed clear that there must be consultation and collaboration between the International Labour Organisation and the organs of the United Nations.

The Swiss Government member, on the other hand, directed the Committee's attention to the necessity of safeguarding the interests of countries who were Members of the International Labour Organisation but not of the United Nations, as was the case with his country.

Various amendments to the proposed Resolution were submitted.

The Italian Government member was of the opinion that the International Labour Organisation, by reason of its nature, was well qualified to handle any problems which might arise from the application of a Convention on freedom of association, and accordingly proposed to amend the Workers' Resolution by inserting before the last paragraph thereof a new paragraph, as follows :

> The action of the international machinery for safeguarding freedom of association shall be limited to those cases which are outside the competence of the International Labour Organisation or to those cases where its action should have proved ineffective.

The Italian Government member, however, withdrew his amendment on the understanding that the Governing Body would take account of his observations in its discussion with the United Nations.

The Employers' members, while in agreement with the report of the Governing Body, considered that the adoption of the text submitted by the Workers' members would involve at least a moral commitment on the part of the Conference as regards the proposition contained in the last paragraph thereof. This would be undesirable and premature in the absence of knowledge as to the kind of machinery that might be established. It would be preferable in their view simply to endorse the principle that the Governing Body should enter into consultation with the United Nations, without granting at this time specific authority to the Governing Body to commit itself to concrete proposals. The Conference would not then commit itself to final action until after it had received the report of the Governing Body on the result of its consultations. This report might be negative or it might contain suggestions for changes within the framework of the International Labour Organisation, but it would not be binding on the Conference. For these reasons the Employers' members proposed to replace the last three paragraphs of the Workers' Resolution by the following text :

> Recognising, however, that exercise of the right of the freedom of association as provided for in the Convention (adopted at the 31st Session of the Conference) might be endangered by interference with other fundamental rights, the safeguarding of which lies outside the competence of the International Labour Organisation but within the competence of the United Nations, especially that of the Commission on Human Rights,
>
> Endorses and adopts the recommendation of the Governing Body regarding consultation with the United Nations, contained in the report of the Governing Body adopted at its 104th Session, and requests the Governing Body to report back to the Conference at an early session.

The United Kingdom Government member emphasised the importance of obtaining complete unanimity on this matter, both in the Committee and in the Conference itself. He also considered the general substance of the question of such importance that every care should be taken to ensure that the proposals put to the Conference were correctly framed. In general, he agreed with the line of approach taken in the Resolution put forward by the Workers' members, but he had some sympathy with the apprehensions of the Employers' members. He felt that the impression should not be given that the International Labour Organisation was abandoning part of its functions. It was equally important, however, that the text should show no reluctance on the part of the International Labour Organisation to collaborate with the United Nations, since a pledge of collaboration was contained in the agreement in force between the two organisations.

With reference to the Employers' proposed amendment, he saw no essential difference between the two texts as far as the first paragraph was concerned, but expressed preference for the Employers' wording subject to a slight modification. He did not, however, consider the last paragraph of the Employers' proposal sufficiently precise, particularly when it simply referred to the recommendations and report of the Governing Body. This lack of precision might have arisen from the fact that perhaps the report of the Governing Body was itself a little imprecise in its conclusions. The Workers' members had attempted to remedy this, and in so doing may have given the appearance of

prejudging the issue. He therefore suggested the following amendment :

> To retain the first paragraph of the amendment proposed by the Employers' members with the exception of the words "adopted at the 31st Session of the Conference" and to continue with the last two paragraphs of the Resolution proposed by the Workers' members, modified as follows :
>
> "Considering that additional international machinery for safeguarding freedom of association in all its aspects, established in collaboration with the United Nations, may be necessary effectively to complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,
>
> Requests the Governing Body, accordingly, to enter into consultation with the competent organs of the United Nations for the purpose of examining what amendments and additions (if any) to existing international machinery are necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session."

The Mexican Government member stated that it would be difficult, if not impossible, for him to accept the Workers' Resolution in its present form, as it tended towards the creation of a third body. The powers given to him by his Government were insufficient to enable him to deal with the question since the creation of this international machinery might infringe on national sovereignty.

Mr. Egon Schwelb, representing the United Nations, told the Committee that he had followed the discussions for the purpose of preparing an international labour Convention on the right of association, which, in his opinion, was an event of considerable importance extending even beyond the scope of labour relations. He had refrained from availing himself of the possibility, which he had under the agreement between the two organisations, of taking part in the Committee's deliberations. However, in view of the discussion concerning the report of the Governing Body on international machinery, he had asked to speak in order to dispel some apprehensions and doubts felt by some members of the Committee and in this way to assist in reaching a satisfactory conclusion.

In his opinion, the admirable report of the Governing Body sufficiently outlined the powers and machinery both of the International Labour Organisation and of the different organs of the United Nations. There was no doubt that freedom of association and its international protection was within the jurisdiction of the International Labour Organisation. This had been recognised in two resolutions of the Economic and Social Council and in one resolution of the General Assembly of the United Nations. In fact, the present discussions were partly the result of the request made by the Economic and Social Council, acting on suggestions made by the World Federation of Trade Unions and the American Federation of Labor. There could be no doubt, then, about the competence of the International Labour Organisation.

However, there could be no further doubt that the right of association of workers and employers, like the right of association of all other persons, was one of the fundamental human freedoms. The United Nations had as one of its purposes the promotion and encouragement of respect for human rights and fundamental freedoms for all. All Members of the United Nations had pledged themselves to take joint and separate action, in co-operation with the organisation of the United Nations, for the achievement of universal respect for and observance of human rights. The problem of freedom of association was therefore obviously a legitimate concern of the United Nations and of the appropriate bodies which it had established, including the Commission on Human Rights.

He said that the Economic and Social Council and the Commission on Human Rights had proceeded cautiously in interpreting their powers under the Charter, so that the procedure at present in use was only in a rudimentary stage. Complaints concerning the alleged violation of human rights were summarised by the Secretariat and presented to the Commission in private meeting. The summaries were also sent to the Governments concerned, who had the right of reply and the right to have their replies brought to the notice of the Commission.

The machinery for dealing with complaints concerning human rights by the United Nations was still in the process of being built up, as regards the procedure under the Charter. This did not apply to the provisions for the international application of human rights envisaged in the proposals for implementation of the International Bill of Human Rights. In this respect, the Commission on Human Rights had decided at its session last month that it would continue its work on the important question of implementation at the forthcoming fourth session on the basis of the report of its Working Group on Implementation, a report very ably summarised in the Governing Body's report, taking into account other proposals submitted in the meantime by the Governments of several members.

Under the present procedure regulated by the Economic and Social Council by its resolution of August 1947, hundreds of communications concerning alleged violations of human rights, including the right of freedom of association, were being received and examined by the United Nations. Both under present arrangements and under the machinery planned for the future, complaints concerning the violation of the freedom of association were being received and would be received by the United Nations.

The speaker also stated that, under the Charter, the inhabitants of trust territories had the right to petition the Trusteeship

Council in respect, *inter alia,* of violations of human rights (which clearly included violation of freedom of association). The Trusteeship Council had jurisdiction to accept petitions and to examine them in consultation with the administering authority.

In view of the foregoing, the speaker considered that the Resolution before the Conference was clearly not such as to imply that powers of the International Labour Organisation could or should be delegated to the United Nations. Such delegation of powers was, he said, not necessary in order to give the United Nations the jurisdiction required. The United Nations was legitimately concerned with the problem under the Charter and its functions would be regulated in the International Bill of Human Rights, which it was hoped would contain provisions for its international application. What the International Labour Organisation had been invited to do, and what the Governing Body had proposed, was that the Conference should empower it to consider jointly with the appropriate organs of the United Nations the problems which arose for both organisations from their common jurisdiction in this field, and to consult with the United Nations as to ways and means of co-ordinating their activities.

The speaker therefore hoped that the Committee would reach a unanimous decision as to the action to be taken on the recommendation made to the International Labour Organisation by the General Assembly of the United Nations. There was no doubt that the Secretary-General of the United Nations would do everything in his power to assist in such consultations and in bringing about a successful conclusion of the joint enterprise.

Upon the completion of the above statement, the United Kingdom Government member pointed out to the Committee that there appeared to be complete agreement on the first two of the three paragraphs of his earlier amendment. He was of the opinion that the Governing Body would thoroughly examine the entire question with the United Nations. He then proposed modifying the third paragraph to take into consideration certain objections of the Workers' and Employers' members. The proposed text read as follows :

> Requests the Governing Body, accordingly, to enter into consultations with the competent organs of the United Nations, for the purpose of examining what developments to existing international machinery may be necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session.

The amendment as thus modified was accepted by both the Workers' and Employers' members.

The Mexican Government member withdrew his earlier reservation and likewise accepted the proposed text.

The Committee adopted unanimously the text of the Resolution proposed by the Workers' members, as amended by the proposals of the Employers' members and the United Kingdom Government member.

San Francisco, 7 July 1948.

(Signed) JAMES THORN, *Chairman.*
ALFONSO GUZMÁN NEIRA, *Reporter.*
LÉON JOUHAUX, *Reporter.*
L. E. CORNIL, *Reporter.*

PROPOSED RESOLUTION CONCERNING INTERNATIONAL MACHINERY FOR SAFEGUARDING FREEDOM OF ASSOCIATION

The Conference,

Recalling the Resolution concerning international machinery for safeguarding freedom of association adopted by the Conference at its 30th Session (July 1947), requesting the Governing Body to examine this question in all its aspects and to report back to the Conference at its 31st Session,

Having taken note of the report presented by the Governing Body in conformity with the above-mentioned Resolution,

Having taken note also of the resolution adopted by the Economic and Social Council of the United Nations at its 5th Session (August 1947), requesting the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights on the question of enforcement of trade union rights,

Having taken note also of the resolution adopted by the Assembly of the United Nations at its 2nd Session (September-November 1947), recommending to the International Labour Organisation that it pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference, the study of the control of the application of trade union rights,

Considering that the Constitution of the International Labour Organisation provides adequate guarantees for the application of international labour Conventions in general,

Recognising, however, that the exercise of the right of the freedom of association as provided for in the Convention might be endangered by interference with other fundamental rights, the safeguarding of which lies outside the competence of the International Labour Organisation but within the competence of the United Nations, especially that of the Commission on Human Rights,

Considering that additional international machinery for safeguarding freedom of

association in all its aspects, established in collaboration with the United Nations, may be necessary effectively to complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,

Requests the Governing Body, accordingly, to enter into consultations with the competent organs of the United Nations, for the purpose of examining what developments to existing international machinery may be necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session.

(4) Text of the Convention (No.) concerning Freedom of Association and Protection of the Right to Organise, Submitted by the Drafting Committee.[1]

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 ;

adopts this 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 :

[1] For final text of this Convention, see Appendix XIX, p. 547.

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention 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.

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 ;

(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 in 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 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 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.

Document No. 165

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 147-149 (German Democratic Republic)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

German Democratic Republic (ratification: 1975)

The Committee takes note of the report of the Government. It points out that its previous comments related to the right of workers to establish organisations of their own choosing, the right to organise of members of collective farms and the right to strike.

1. In the past, the Committee pointed out that section 44 of the Constitution and section 6 of the Labour Code expressly mention the Confederation of Free German Trade Unions (FDGB) as the only central organisation, recognised, with its affiliated unions, for the furthering and defence of the interests of workers. The Committee thus noted that a system of trade union unity is explicitly established by the legislation, in violation of Article 2 of the Convention, the principle of which, moreover, is not to favour either the thesis of trade union unity or that of trade union diversity.

In its report, the Government points out that all citizens, by virtue of section 29 of the Constitution, enjoy freedom of association in defence of their interests and that the unification of the trade union movement within the FDGB is a manifestation of the will of the workers themselves and the consequence of historical circumstances. The Government again mentions the participation of the unions at every level of social and economic life and emphasises that it does not interfere in their internal affairs. The Committee takes note of this information but points out that, in the General Survey it submitted to the 69th (1983) Session of the International Labour Conference, particularly paragraphs 136 to 138, it stresses that a system of trade union unity confirmed in the law is incompatible with the standards of the Convention. Where a de facto monopoly results from the voluntary grouping together of the workers, the legislation must not institutionalise this situation by referring by name to the single central organisation, and the workers must be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure. It would appear to the Committee that it is impossible for workers wishing to establish another trade union existing legally and carrying on the activities of furthering and defending the interests of its members to be able to do so.

The Committee requests the Government to reconsider the situation in the light of its comments and to ensure that the provisions establishing a monopolistic trade union system are amended in order to

enable workers so desiring to establish the organisations of their own choosing.

2. In its previous comments, the Committee pointed out that the members of collective farms are excluded from the scope of the Labour Code and thus from the provisions on trade union rights. It has taken note of the information provided by the Government that the interests of peasant co-operators are represented by the Peasants' Mutual Assistance Association (VDGB) in political, economic and cultural matters. The Committee then asked the Government whether the defence of these interests also affected the social aspect of the life of these workers, in particular conditions of employment.

The Committee notes that Orders of May 1984 confirmed and broadened the role of the VDGB in the social field and in respect of conditions of employment. Furthermore, it notes that workers employed by agricultural co-operatives (who come under the Labour Code), and are thus not members of the VDGB, may join the "Agricultural, Food and Forestry Union", which represents their political, economic, social and cultural interests, interests that are different from those of the above-mentioned category of workers.

It would appear to the Committee that agricultural workers, whether members of the co-operative or not, can belong to an organisation for the defence of their interests, but only to a single organisation. The situation prevailing in the other sectors has thus been established in agriculture in a modified form. The Committee refers to its above comments and draws the attention of the Government to the fact that compulsory trade union unity is in conflict with Article 2 of the Convention. It requests the Government to indicate any provisions enabling peasants, whether members of agricultural co-operatives or not, to establish trade unions outside the VDGB and the Agricultural Union and, if such provisions do not exist, to reconsider the situation with a view to guaranteeing them this right.

3. With regard to the right to strike, the Committee noted that it is not expressly provided for in the legislation and that possibilities have been created of resorting to mutual arrangements and court procedures to settle collective disputes.

The Committee points out that the Government is repeating its previous arguments on the constitutional right of the unions to participation and co-management, which ensures that their interests are protected and that, as a rule, either disputes cannot arise or collective disputes are settled by resorting to special forms of co-management. According to the Government, this system and the possibility open to the unions of drafting legislation, which ensures that no laws are adopted without their agreement, make the establishment by law of the right to strike superfluous.

The Committee takes note of the Government's point of view, in particular of the statement that no provision of the Convention expressly mentions the right to strike, but is bound to point out that it has stressed in paragraphs 199 to 206 of the General Survey that under Article 3 of the Convention workers' organisations should have a number of means of furthering and defending their economic and social interests and that the right to strike is an essential one of these means.

Since the law neither prohibits nor authorises the right to strike, the Committee requests the Government to state, in the event of the failure of conciliation or the dissatisfaction of the workers with its results, what means are available to them of asserting their interests.

Document No. 166

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 206-209 (Colombia)

International Labour Conference
79th Session 1992

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

Colombia (ratification: 1976)

The Committee notes the Government's report, the discussions at the Conference Committee in 1991 and the report of the direct contacts mission which visited Colombia from 16 to 20 September 1991.

The Committee notes with interest the provisions of the new Constitution (of 18 July 1991) respecting freedom of association, including the provision under which the cancellation or suspension of legal personality can only take place by judicial means.

The Committee notes with satisfaction the repeal of the following legal provisions restricting trade union rights, which results in a significant improvement in the application of the Convention:

- section 380 of the Labour Code (the dissolution, winding up and removal from the trade union register of trade unions by administrative authority in certain cases) (modified by Act No. 50 of 1990);

- Resolution No. 4 of 1952 (administrative interference in trade union independence) (abrogated by Decree No. 4734 of September 1991);
- Decree No. 1923 of 1978 (respecting national security, which prohibited any transitory occupation of public places with the objective of influencing a decision by the legitimate authorities which is not in force any more);
- Decree No. 1422 of 1989 (administrative intervention in trade unions' bookkeeping) (abrogated by Ministerial Decree of September 1991);
- Decrees Nos. 2655 of 1954, 85 of 1956 and 1469 (sections 14-26) of 1978 (restrictive regulations respecting trade union meetings) (abrogated by Decree No. 2293 of October 1991);
- section 379(a) of the Labour Code (prohibition of trade unions from taking part in political matters) (abrogated by Act No. 50 of 1990);
- Decrees Nos. 2200 and 2201 (prohibition of strikes, subject to administrative penalties and sentences of imprisonment, in cases where a state of emergency has been declared) (abrogated by Decree No. 2620 of December 1990).

Notwithstanding the amendments made by the Government, the Committee is bound to emphasise the provisions of the legislation which remain in force and are incompatible with the Convention. These include the following points:

1. The establishment of workers' organisations (Article 2 of the Convention)
   - the requirement that two-thirds of the members are Colombian to establish a trade union (section 384 of the Labour Code);
   - massive dismissals of workers in the public sector and the extended use of short-term contracts in the private sector aimed at weakening the trade union movement, which were brought to the attention of the direct contacts mission.
2. Interference in the internal administration of trade unions (Article 3 of the Convention)
   - the supervision of the internal management and meetings of unions by public servants (section 486 of the Labour Code and section 1 of Decree No. 672 of 1956);
   - the presence of the authorities at general assemblies convened to vote upon the calling of a strike (new section 444, last paragraph, of the Labour Code);
   - the requirement that persons be Colombian for election to trade union office (section 384 of the Labour Code);
   - the suspension for up to three years, with loss of trade union rights, of trade union officers who have been responsible for the dissolution of their unions (new section 380(3) of the Labour Code);
   - the requirement that persons belong to the trade or occupation in order to be considered eligible for election to trade union office (sections 388(1)(c) and 432(2) of the Labour Code and section 422(1)(c) of the Labour Code for federations).

3. Right of trade unions to further and defend the interests of the workers (Article 3 of the Convention)
   - the prohibition on federations and confederations from calling a strike (section 417(1) of the Labour Code);
   - the prohibition of strikes not only in the essential services in the strict sense of the term, but also in a very wide range of public services which are not necessarily essential (section 430 and new section 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967);
   - various restrictions on the right to strike and the power of the Minister of Labour and the President to intervene in the dispute (sections 448(3) and (4) and 450(1)(g) of the Labour Code, Decree No. 939 of 1966 as amended by Act No. 48 of 1968, and section 4 of Act No. 48 of 1968);
   - the possibility of dismissing trade union officers who have intervened or participated in an illegal strike (new section 450(2) of the Labour Code).

The Committee notes the Government's statement in its report that there is no ILO Convention in which an ILO position has been adopted on the right to strike, and that a reading of Article 3 of the Convention shows that the Article refers to the right of workers to formulate their programmes of activities, but that such a programme cannot transgress the Constitution and laws of a country. The Government adds that Article 2 of the Convention only enshrines the right of autonomy of trade unions but in no case the right to strike, which has its own specific characteristics. Finally, with reference to the prohibition of strikes in the public services, the Government notes that in the new political Constitution the right to strike is guaranteed except in the essential public services, as defined by the legislator.

The Committee emphasises that although it is clear that the provisions of the Convention do not specifically mention the right to strike, Article 3 of the Convention provides that workers' organisations shall have the right to organise their activities and formulate their programmes in full freedom. The Committee considers that this right includes recourse to strikes, which are one of the essential means through which workers and their organisations may promote and defend their economic and social interests. As an essential means in this respect, it should not be the object of excessive restrictions. The Committee has considered that the prohibition of strikes in the public services should be confined to public servants acting in their capacity as agents of the public authority or to essential services in the strict sense of the term, that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Moreover, if strikes are restricted or prohibited for public employees and persons who work in essential services, the Committee has considered that appropriate guarantees should be afforded such as impartial and speedy conciliation, mediation and arbitration procedures, in order to protect those workers who are denied one of the essential means of defending their occupational interests.

The Committee notes with interest that Minister of Labour and Social Security expressed to the direct contacts mission the desire formally to request the technical assistance of the ILO in the future process of reforming labour legislation.

The Committee requests the Government to continue taking measures to adjust its legislation to the requirements of the Convention and to supply information in this respect.

The Committee is also addressing a request directly to the Government.

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Document No. 167

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 146-147 (Chad)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Chad (ratification: 1960)

The Committee notes the Government's report.

1. *Right to establish organizations without previous authorization.* The Committee notes with interest the Government's statement to the effect that the establishment, organization and functioning of trade union organizations are not governed by Ordinance No. 27/INT/SUR of 28 July 1962 regulating associations, but by the Labour Code (Act No. 7/66 of 4 March 1966). The Government adds that occupational trade unions have henceforth only to submit their by-laws in order to commence functioning and that supervision by the authorities is carried out subsequently, without bringing into question the existence of the trade unions. Moreover, the trade unions do not need to comply with the requirements of declaration and authorization by the Ministry of the Interior for their operation. In order to dispel any ambiguity in this respect, the Committee requests the Government to amend Ordinance No. 27 of 28 July 1962 regulating associations in order to lay down specifically that it does not apply to trade unions. It requests the Government to provide information in its next report on the measures taken in this respect.

2. *Limitation of the right to strike.* With regard to the question of repealing Ordinance No. 30 of 36 November 1975 suspending all strike action and Ordinance No. 001 of 8 January 1976 prohibiting public employees and workers whose status is assimilated to theirs from exercising the right to strike, the Committee notes the Government's assurances that the texts to repeal these Ordinances have been prepared and that their adoption is only a matter of time. The Committee also notes that Decree No. 096/PR/MFPT/94 of 29 April 1994, issuing regulations governing the right to strike in the public service, has been submitted to the judgement of the competent authorities and that the Government undertook in a communiqué dated 2 June 1994 to comply with their judgement. The Decree establishes a conciliation and arbitration procedure prior to the calling of a strike, as well as compulsory minimum service in certain public

services, the interruption of which would result in extremely serious disruption of the life of the community, particularly in respect of financial services, hospital services, postal and telecommunication services, television and radio, the central services of the Ministry of Foreign Affairs and Cooperation and the inter-prefectoral labour inspection services.

Emphasizing that the right to strike is an intrinsic corollary of the right to organize that is protected by the Convention, the Committee wishes to recall that it can only be restricted in exceptional cases; restrictions, or even prohibition, should be limited to public servants exercising authority in the name of the State, to essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis (see General Survey on freedom of association and collective bargaining, 1994, paragraph 159). With regard to other services which are of public utility where an outright ban on strikes cannot be justified, the Committee is of the opinion that *a negotiated minimum* service may be established provided that it is genuinely and exclusively a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, and that workers' organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities (see the General Survey, op. cit., paragraph 161). The Committee trusts that all measures adopted to give effect to the right to strike will take into account the principles of freedom of association and requests the Government to provide it with a copy of any decision that is made concerning appeals brought before the competent authorities. In addition, the Committee once again urges the Government to transmit the texts repealing the above Ordinances of 1975 and 1976 as soon as they are adopted.

3. *Prohibition of any political activity by trade unions (section 36 of the Labour Code of 1966) and the obligation to have been resident in Chad for seven years in order to be elected to trade union office (section 41).* The Committee notes the Government's statement to the effect that a satisfactory response will be found in the draft Labour Code with regard to the prohibition of all political activity by trade unions. The Government adds that in the draft Labour Code it has lowered the period of residence required for foreigners to be able to take responsibility for the administration or direction of a trade union. On the first point, the Committee recalls that the development of the trade union movement and its broader recognition as a fully-fledged social partner make it necessary for workers' organizations to be able to express their views on political problems in the broad sense, and particularly to be able to make public their opinions on the Government's social and economic policy. On the second point, with regard to the possibility for foreigners to be able to accede to trade union office, the Committee considers that the national legislation should allow foreign workers to have access to these functions, at least after a reasonable period of residence in the host country. The Committee urges the Government to take the necessary measures to bring its legislation into full conformity with the requirements of the Convention and the principles of freedom of association by amending sections 36(2) and 41 of the Labour Code, so as to lift the ban on all political activity by tradc unions and to reduce the period of residence required before foreigners can have access to trade union office. It also requests the Government to transmit the text of the new Labour Code when it is adopted.

[The Government is asked to provide full particulars to the Conference at its 83rd Session.]

Document No. 168

ILC, 99th Session, 2010, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 56-58 (Australia)

International Labour Conference, 99th Session, 2010

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

Australia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) *(ratification: 1973)*

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2009, the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, the Australian Chamber of Commerce and Industry (ACCI) in a communication dated 14 October 2009 and the Australian Industry Group (AI) dated 14 October 2009 on the application of the Convention. The Committee also notes the passage of the Fair Work Act, 2009, and the creation of Fair Work Australia (FWA) to oversee the administration of the provisions of this Act. As a general consideration, the Committee notes with ***interest*** that the Fair Work Act was prepared in full consultation with the social partners and was aimed at resolving a number of issues that the Committee has been raising over recent years in relation to the application of the Convention.

The Committee notes with ***interest*** that the Government indicates that the development of the new system under the Fair Work Act benefited from a process of genuine and extensive consultation with the social partners and key stakeholders – the most comprehensive consultation process on workplace relations ever undertaken in Australia. According to the Government, this extensive consultation process ensured that all stakeholders had the opportunity for their concerns to be raised and addressed before the Bill was debated in Parliament and adopted in amended form as the Fair Work Act. The Government indicates that Australia's new system represents a significant move away from the fundamental elements of the previous Government's Work Choices regime and that the Fair Work Act has been designed to balance the needs of employees, unions and employers and to foster increased competitiveness and prosperity, at the same time as safeguarding workplace rights and guaranteeing minimum standards. The Government considers that the new legislation strikes the right balance between fairness and flexibility in the workplace to achieve the objectives of both social equity and economic modernization.

Article 3 of the Convention. The right of organizations freely to organize their activities and to formulate their programmes. The Committee recalls that it previously expressed the need to amend numerous provisions of the Workplace Relations Act, 1996 (WR Act) which lifted the protection of industrial action in support of: multiple business agreements (section 423(1)(b)(i)); "pattern bargaining" (section 439); secondary boycotts and general sympathy strikes (section 438); negotiations over "prohibited content" (sections 356 and 436 of the WR Act, in connection with the

Workplace Relations Regulations, 2006); strike pay (section 508 of the WR Act); and provisions which prohibited industrial action in case of danger to the economy (sections 430, 433 and 498 of the WR Act), through the introduction of compulsory arbitration at the initiative of the Minister (sections 500(a) and 504(3) of the WR Act). The Committee also recalls that it previously raised the need to amend provisions of the WR Act which prohibited industrial action in instances when it risked harm to the national economy and empowered the Minister to order compulsory arbitration.

The Committee notes the concerns raised by the ACTU that most of the restrictions remain in place in the Fair Work Act. In particular, sections 408–411 protect industrial action only if it is undertaken in the process of bargaining for an agreement, which would appear to effectively prohibit sympathy strikes and general secondary boycotts. The Act maintains the removal of protection of industrial action in support of multiple enterprise agreements (section 413(2)). The Committee notes that the Government indicates in its report that, under the Fair Work Act, certain categories of multiple employers with a close connection to each other are able to bargain together as single-interest employers for a single enterprise agreement with their employees. In that instance, protected industrial action is available to employers and employees. The Fair Work Act also allows voluntary multi-employer bargaining. However, employers and employees do not have access to protected industrial actions in these circumstances. In addition, the pre-existing secondary boycott arrangements, regulated by the Trade Practices Act, 1974, remain in place. ***The Committee requests the Government to review the abovementioned provisions, in the light of its previous comments, in full consultation with the social partners concerned, with a view to bringing them into full conformity with the Convention.***

Pattern bargaining remains unprotected, unless the parties are "genuinely trying to reach an agreement" (sections 409(4) and 412). Industrial action remains unprotected if it is in support of the inclusion of unlawful terms, including: to extend unfair dismissal benefits to workers not yet employed for the statutory period; to provide strike pay; to pay bargaining fees to a trade union; and to create a union right to entry for compliance purposes that are different or superior to those contained within the Act (section 409(3)). The Committee notes that the Government indicates that, under the Fair Work Act, industrial action in pursuit of an agreement that contains non-permitted matters is still protected, provided the bargaining representatives reasonably believed the claims were permitted. The Government further indicates that, under the Fair Work Act, it remains unlawful for an employer to pay, or an employee to demand or request strike pay, but that when protected industrial action is taken there will no longer be a minimum mandatory deduction of four hours' pay. In addition, section 423 permits the suspension or termination of protected industrial action if it may cause significant economic harm. Section 424(1)(d) requires the suspension or termination of industrial action if it has threatened, is threatening or would threaten to cause significant damage to the Australian economy or an important part of it, while section 431 permits the Minister to terminate proposed industrial actions in the same circumstances. Industrial actions that are threatening to cause significant harm to a third party must also be suspended or terminated (section 426). The Government indicates that in order for the prohibition or suspension of industrial action to be ordered by the FWA, that agency must be satisfied that the action is threatening to cause significant and imminent economic harm. The Committee observes that these restrictions depend upon a complex review of conditions apparently set forth with the aim of balancing a number of concerns. ***With reference to its previous comments on these matters and recalling that the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87 (see in particular the 1994 General Survey on freedom of association and collective bargaining, paragraphs 159, 160, 168 and 179), the Committee requests the Government to provide detailed information on the application of these provisions by the FWA and to continue to keep them under review with the social partners with the aim of ensuring the full application of the provisions of the Convention.***

The Committee previously noted the need to amend section 30J of the Crimes Act, 1914, which prohibits industrial action threatening trade or commerce with other countries or among states. Section 30K of that Act prohibits boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade. The Committee notes that the ITUC states that there have been no amendments to the Crimes Act. In addition, section 419 of the Fair Work Act, 2009, requires the FWA to suspend or terminate industrial action in non-national enterprises or by non-national employees, if the event will or would be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation. ***The Committee once again requests the Government to review the abovementioned provisions, in the light of its previous comments, in full consultation with the social partners concerned, with a view to bringing them into full conformity with the Convention and, in the meantime, to provide detailed information on any use of these provisions in practice.***

In addition, the Committee notes the concerns raised by the ACTU in relation to the potential obstacles to the effective exercise of industrial action that may be posed by the provisions concerning strike ballots. ***The Committee requests the Government to provide information on the application of those provisions in practice.***

The Committee recalls that it previously raised the need to amend the restrictive conditions set for granting a permit allowing trade union representatives to have entry to the workplace in order to meet with workers. The Committee notes that, under the Fair Work Act, a union official must hold a permit provided by the FWA in order to have the right of entry under the Fair Work Act for a certain workplace. In determining whether to grant an entry permit, the FWA will consider any matter it considers relevant, including whether the applicant has ever been convicted of violating an industrial law or convicted of a crime involving fraud, entry onto premises, or intentional use of violence or destruction of property (section 513). The Committee notes that the Government indicates that the Fair Work Act permits union officials to hold

discussions with employees who are members, or eligible to be members, of a union and to enter workplaces to investigate suspected breaches of the Act or an instrument made under the Act. ***The Committee requests the Government to provide information on the practical application of this provision, including statistics relating thereto.***

Building industry. The Committee recalls from previous comments that: (i) the Building and Construction Industry Improvement (BCII) Act of 2005 renders virtually all forms of industrial action in the building and industrial sector unlawful; (ii) introduces severe financial penalties, injunctions and actions for uncapped damages in case of "unlawful" industrial action; (iii) gives the enforcement agency known as the Australian Building and Construction Commission (ABCC) wide-ranging coercive powers akin to an agency charged with investigating criminal matters; (iv) grants the capacity to the Minister for Workplace Relations to regulate industrial affairs in the building and construction industry by ministerial decree through a device referred to as a building code which is inconsistent with the Convention on several points and is implicitly "enforced" through an "accreditation scheme" for contractors who wish to enter into contracts with the Commonwealth. The Committee previously requested the Government to indicate whether the proposed bill would: (i) amend sections 36, 37 and 38 of the BCII Act, 2005, which refer to "unlawful industrial action" (implying not simply liability in tort vis-à-vis the employer, but a wider responsibility towards third parties and an outright prohibition of industrial action); (ii) amend sections 39, 40 and 48–50 of the BCII Act so as to eliminate any excessive impediments, penalties and sanctions against industrial action in the building and construction industry; (iii) introduce sufficient safeguards into the BCII Act so as to ensure that the functioning of the ABCC and inspectors does not lead to interference in the internal affairs of trade unions – especially provisions on the possibility of lodging an appeal before the courts against the ABCC's notices prior to the handing over of documents (sections 52, 53, 55, 56 and 59 of the BCII Act); and (iv) amend section 52(6) of the BCII Act which enables the ABCC to impose a penalty of six months' imprisonment for failure to comply with a notice to produce documents or give information so as to ensure that penalties are proportional to the gravity of any offence.

The Committee notes that the Government indicates that the Office of the ABCC will be retained until 31 January 2010 and that, after that date, subject to the passage of legislation, it will be replaced with a new agency, the Office of the Fair Work Building Industry Inspectorate. In addition, based on an independent report the Government commissioned and consultation with industry stakeholders, the Government developed and introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill, 2009, into Parliament on 17 June 2009. According to the ACTU, that Bill maintains the coercive powers of the ABCC, while allowing trade unions to petition for the coercive powers to be switched off. This Bill: (i) repeals sections 36, 37 and 38 of the BCII Act; (ii) repeals sections 39 and 40 of the BCII Act and repeals and substitutes sections 48–50 with the effect that the provisions of the Fair Work Act apply to the building and construction industry in the same way as they do to all other industries; (iii) introduces numerous safeguards and limits the coercive powers to no longer allow investigation of matters relating to compliance with laws governing the registration of the internal affairs of unions; and (iv) maintains the current limitation on the ABCC's power to impose any penalty under section 52(6) of the BCII Act, which requires the ABCC to refer the matter to the Office of the Commonwealth Director of Public Prosecutions who determines whether to prosecute. ***The Committee requests the Government to indicate any progress made concerning the adoption of the Transition to Fair Work Bill. The Committee also once again requests the Government to indicate any measures taken to instruct the ABCC to refrain from imposing penalties or commencing legal proceedings under the ABCC while the review is under way.***

Document No. 169

ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 186-188 (United Kingdom)

ILC.100/III/1A

International Labour Conference, 100th Session, 2011

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

United Kingdom

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

The Committee takes note of the Government's report. It further notes the detailed comments and information provided by the Trades Union Congress (TUC) in a communication dated 28 October 2010, which raised a number of issues on the application of the Convention in law and in practice that have been the subject of the Committee's comments for many years now. ***The Committee requests the Government to reply to these comments in its next report.***

Article 3 of the Convention. Right of workers' organizations to draw up their constitutions and rules without interference by the public authorities. The Committee's previous comments concerned the right of trade unions to draw up their rules and formulate their programmes without interference from the authorities, particularly as regards the exclusion or expulsion of individuals on account of membership in an extremist political party with principles and policies wholly repugnant to the trade union. Following the judgment of the European Court of Human Rights (ECHR) reached in the case of *Associated Society of Locomotive Engineers and Firemen (ASLEF)* v. *the United Kingdom* (27 May 2007), which found that section 174 of the Trade Unions and Labour Relations (Consolidation) Act, 1992 (TULRA) violated Article 11 of the European Convention on Human Rights on freedom of association in that it did not strike a proper balance between the rights of individual members and those of the trade union, the Government had informed the Committee that relevant amendments contained in an Employment Bill were then before the Parliament.

The Committee had also noted the detailed comments made by the TUC which set out certain reservations in respect of the proposed amendment both as regards what it saw as a degree of legal uncertainty around its meaning and the perception of excessive complexity in the new legislation. The Committee takes due note of the detailed observations made by the Government in its latest report in reply to these concerns. In particular, the Government informs that section 19 of the Employment Act of 2008 has now amended section 174 of the 1992 Act and significantly extends the scope for trade unions to exclude and expel individuals on the grounds of their political party membership. The Government states that it attempted to balance competing human rights about freedom of belief and freedom of association in its drafting of these amendments. It therefore included safeguards concerning the essential elements of natural justice, due process and transparency which aim to ensure that: (a) membership of the political party concerned is contrary to a rule or objective of the union; (b) the union has taken the decision to exclude or expel in accordance with its rules; and (c) the union has followed fair procedures when taking that decision, and the individual does not lose his livelihood or suffer other exceptional hardship for loss of union membership. As regards this last point, the Government indicates that, since "closed shop" is already unlawful in the country, a loss of union membership is very unlikely to produce hardship on this scale. As regards the TUC allegation that the complexity would lead to unjustified and vexatious litigation, the Government states that there is no evidence to support that such mischievous litigation has been indulged in since the amendments came into force in April 2009. The Government adds in this respect that a compensatory award for unlawful exclusion would only apply where the trade union refused to admit or re-admit the individual and where membership of the political party is not contrary to a rule or objective of the trade union, whereas in the Government's understanding, the rules or objectives of British trade unions often specify that membership of certain political parties, or xenophobic or racist behaviours associated with such parties, are incompatible with union membership. The Government concludes that these amendments

do not breach the Convention and are necessary in a democratic society for the protection of the rights and freedom of others.

The Committee requests the Government to reply to the further concerns expressed by the TUC in its latest comments and to provide any available information on the practical application of the amendments to section 174 of the TULRA.

Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA). In its previous comments, the Committee had noted that according to the TUC, due to the decentralized nature of the industrial relations system, it was essential for workers to be able to take action against employers who are easily able to undermine union action by complex corporate structures, transferring work, or hiving off companies. The Committee generally raised the need to protect the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. The Committee takes note of the Government's reiteration that it has no plans to change the law in this area. The Committee emphasizes that the globalization of the economy and the delocalization of work centres may have a severe impact on the right of workers' organizations to organize their activities in a manner as to defend effectively their members' interests should lawful industrial action be too restrictively defined. ***The Committee therefore recalls that workers should be able to participate in sympathy strikes, provided the initial strike they are supporting is lawful, and to take industrial action in relation to social and economic matters which affect them and requests the Government to review sections 223 and 224 of the TULRA, in full consultation with the social partners, and to provide further information in its next report on the progress made in ensuring respect for this principle.***

The Committee further recalls that, when reviewing the comments made by the British Airline Pilots' Association (BALPA), the International Transport Federation (ITF) and Unite the Union, the Committee had observed with serious concern the practical limitations on the effective exercise of the right to strike of the BALPA workers in the case at hand. The Committee observed that the omnipresent threat of an action for damages that could bankrupt the union, possible in the light of the *Viking* and *Laval* judgments issued by the European Court of Justice (ECJ), created a situation where the rights under the Convention could not be exercised. While noting the Government's statement that the impact of the ECJ judgments was limited, the Committee referred to the likelihood of such issues becoming more frequent within the current context of globalization, particularly in certain sectors of employment, like the airline sector and considered that the doctrine being articulated in these ECJ judgments was likely to have a significant restrictive effect on the exercise of the right to strike in practice in a manner contrary to the Convention.

In its latest report, the Government points out that, even if there were an international dimension to a United Kingdom trade dispute, it was far from clear that the industrial action involved would fail to meet the legitimacy and proportionality requirements laid down in the ECJ case law. In any event, the Government indicated that in so far as the proportionality tests might apply to United Kingdom industrial action, these tests were derived from EU treaties, to which the Government is obliged to give effect. The Government therefore considers that amendment of the TULRA would not have any impact on the proportionality tests set out in these judgments. As regards the threat of unlimited damages, the Government observes that it has not been proven that these ECJ judgments would have the effect of nullifying the limits on damages for unlawful industrial action that are set out in the TULRA, but even if they did, the Government maintains that it could not change this impact through any unilateral action on its part. The Government concludes that the effect of the ECJ judgments on United Kingdom industrial action has not been established as no United Kingdom court has decided a case in this area and, in any event, any effect would probably be limited to the small minority of disputes which have the necessary international dimension. For these reasons, the Government considers that it is not necessary to review the TULRA or take other national measures.

The Committee wishes once again to recall the ***serious concern*** it raised as to the circumstances surrounding the BALPA proposed industrial action, for which the courts granted an injunction on the basis of the *Viking* and *Laval* case law and where the company indicated that, should the work stoppage take place, it would claim damages estimated at £100 million per day. The Committee recalls in this regard that it has been raising the need to ensure fuller protection of the right of workers to exercise legitimate industrial action in practice and considers that adequate safeguards and immunities from civil liability are necessary to ensure respect for this fundamental right, which is an intrinsic corollary of the right to organize. While taking due note of the Government's observations in relation to its obligations under EU law, the Committee considers that protection of industrial action in the country within the context of the unknown impact of the ECJ judgments referred to by the Government (which gave rise to significant legal uncertainty in the BALPA case), could indeed be bolstered by ensuring effective limitations on actions for damages so that unions are not faced with threats of bankruptcy for carrying out legitimate industrial action. The Committee further considers that a full review of the issues at hand with the social partners to determine possible action to address the concerns raised would assist in demonstrating the importance attached to ensuring respect for this fundamental right. ***The Committee therefore once again requests the Government to review the TULRA, in full consultation with the workers' and employers' organizations concerned, with a view to ensuring that the protection of the right of workers to exercise legitimate industrial action in practice is fully effective, and to indicate any further measures taken in this regard.***

Reinstatement of workers having participated in lawful industrial action. In its previous comments, the Committee recalled that for the right to strike to be effectively guaranteed, the workers who stage a lawful strike should be able to return to their posts after the end of the industrial action. Making the return to work conditional on time limits and on the employer's consent constituted, in the Committee's view, obstacles to the effective exercise of this right, which constitutes an essential means for workers to promote and defend the interests of their members. The Committee therefore requested the Government to indicate any measures taken or contemplated with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action.

The Committee notes that the Government reiterates that those participating in lawfully organized, official industrial action are protected against dismissal for action which lasts 12 weeks or less. Dismissing a worker for taking industrial action during this period is considered to be automatically unfair. Virtually all industrial action in the United Kingdom lasts less than 12 weeks and therefore this protection extends to virtually all workers who stage official and lawfully organized strikes. In addition, regardless of the duration of the industrial action, an employer cannot dismiss a worker for taking industrial action if the employer has failed to take reasonable procedural steps to resolve the dispute with the trade union (i.e. agreed procedures for dispute resolution). The Government however maintains that it is not appropriate to support the view that an employer must never dismiss employees under any circumstances when they take protected industrial action. In any event, the sacking of strikers is very rare in the United Kingdom.

The Committee recalls the importance it attaches to the maintenance of the employment relationship as a normal legal consequence of the recognition of the right to strike (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 139). While provisions that enable employers to dismiss workers during or at the conclusion of an industrial action on the grounds of illegitimate or unlawful action may be in conformity with the provisions of the Convention, it considers that restricting the right to maintain the employment relationship to industrial action of twelve weeks or less places an arbitrary limit on the effective protection of the right to strike in a manner contrary to the Convention. ***The Committee therefore once again requests the Government to review the TULRA, in full consultation with workers' and employers' organizations concerned, with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action and to provide information on the steps taken in this regard.***

Notice requirements for industrial action. In its previous comments, the Committee had taken note of comments made by the TUC to the effect that the notice requirements for an industrial action to be protected by immunity were unjustifiably burdensome. The Committee notes from the Government's report that it held discussions with the TUC about these issues during the reporting period, but that no agreement was reached. ***The Committee requests the Government to continue to provide information on developments in this regard, as well as any relevant statistics or reports on the practical application and effect of these requirements.***

The Committee is raising other points in a request addressed directly to the Government.

Document No. 170

ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 156 (Russian Federation)

ILC.102/III(1A)

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

Russian Federation

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1956)

The Committee recalls that it had previously requested the Government to provide its observations on the comments made by the International Trade Union Confederation (ITUC), the Russian Labour Confederation (KTR) and the Seafarers' Union of Russia (RPSM) alleging numerous violations of trade union rights in practice, including the denial of legal personality trade unions, interference by the authorities in internal trade union affairs, harassment of trade union leaders, and restrictions on the rights to strike. The Committee notes the Government's reply thereon. The Committee notes that an ILO mission visited the country in October 2011 in order to discuss similar issues pending before the Committee on Freedom of Association with all interested parties.

The Committee notes the comments made by the ITUC in a communication dated 31 July 2012 alleging numerous violations of trade union rights in practice, including denial of registration of trade unions, dissolution of a migrant workers' union upon a court's order and restrictions on the right to strike. ***The Committee requests the Government to provide its observations thereon.***

The Committee notes that the Government's report for the current reporting cycle has not been received, however, it observes that the Labour Code has been amended.

Article 3 of the Convention. Right of workers' and employers' organizations to organize their administration and activities. Labour Code. The Committee recalls that it had previously requested the Government to amend section 410 of the Labour Code so as to repeal the obligation to indicate the duration of a strike in order to allow trade unions to declare strikes of unlimited duration. The Committee notes with ***interest*** that this provision has been amended so as to repeal this obligation.

Other legislation. The Committee recalls that it had previously requested the Government to ensure that workers of postal services, municipal services and railways can exercise the right to strike and, to that effect, amend section 9 of the 1994 Federal Postal Service Act, section 11(1)(10) of the 1998 Federal Municipal Services Act and section 26 of the 2003 Federal Rail Transport Act. Furthermore, noting that the 2004 Law on State Civil Service prohibits civil servants from stopping their duties to solve a labour dispute, it also requested the Government to amend the relevant legislative provisions so as to ensure that public servants who do not exercise authority in the name of the State could exercise the right to strike. The Committee notes that the Government reiterates that the right to strike of the following categories of workers is restricted: workers of the federal courier communications and the municipal employees, as well as certain categories of railway workers. The Government considers that the restrictions imposed on the right to strike of certain categories of workers do not contradict international standards. It refers in this respect to Article 8(2) and (1)(c) of the International Covenant on Economic, Social and Cultural Rights and points out that, under these provisions, a State may impose prohibition on the exercise of the right to strike by members of the armed forces, the police, or the administration of the State, as well as other persons, if necessary, in a democratic society in the interests of national security, public order, or for the protection of the rights and freedoms of others. The Government stresses that nothing in this Article shall authorize States parties to Convention No. 87 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. The Committee once again recalls its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. It further recalls that, in addition to the armed forces and the police (members of which could be excluded from the application of the Convention), the right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State and in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that railway services and postal services do not constitute essential services. ***The Committee therefore requests once again the Government to take the necessary measures to amend the abovementioned legislative acts so as to bring its legislation into conformity with the Convention and ensure that workers of the federal courier communications, railway workers, municipal employees, as well as public servants who do not exercise authority in the name of the State, can exercise the right to strike. It requests the Government to indicate in its next report all measures taken in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

Document No. 171

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 104 (Egypt)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

Egypt (ratification: 1957)

The Committee takes note of the information provided by the Government in reply to its comments.

The Committee notes that a Bill on trade unions has been discussed by the trade union organisations and is now before the People's Assembly. The Committee also notes the statement by the Government that the Bill confers wide rights on the Federation of Trade Unions, which has the main responsibility for organising and managing all the activities of the trade union organisations. The Committee recalls in this respect that in its previous observation, it had pointed out that it is incompatible with the principles of freedom of association to impose or maintain a single-trade-union structure through legislation as is already the case with Act No. 35, sections 9, 10, 13, 15, 16 and 17.

The Committee notes the statement by the Government that these provisions meet a request by the workers to strengthen the trade union movement and fit it to play its part in society. The Committee is bound to point out that, although the aim of the Convention is not to make trade union pluralism compulsory, pluralism must remain possible in every case where workers wish to establish organisations independent of the existing structure.

The Committee has already commented on the right to strike. It notes from the information provided by the Government that the Bills now under consideration do not mention strikes, which come under the general rules and basic principles governing the society. The Committee asks the Government to specify the general rules and basic principles applicable to strikes, and points out that the right to strike is one of the essential means available to workers and their organisations for furthering and defending their occupational interests. In this connection, the Committee notes the detailed explanations provided by the Government in its report on the application of Convention No. 98 to the effect that the legislation at present in force does not constitute a system of compulsory arbitration.

The Committee observes that its earlier comments also related to other points: the trade union rights of certain managerial staff (Act No. 35, section 19(e)); the right of trade unions to organise their internal administration and activities (Act No. 35, section 23; sections 9, 10, 21(a) and 36(c); sections 61 and 62; section 41).

The Committee hopes that the new Act, presently under consideration, will make it possible to bring the legislation into full conformity with the Convention in the light of the comments made above and it asks the Government to provide information on any developments in the situation.

Document No. 172

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 129-133 (Colombia)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Colombia (ratification: 1976)

The Committee takes note of the information communicated in the latest report of the Government in reply to its previous comments and those of the General Confederation of Labour.

In its previous comments the Committee has raised several discrepancies between the national legislation and the Convention:

1. Establishment of workers' organisations

- the prohibition on setting up more than one works union per undertaking (sections 357 and 364(i) of the Labour Code, section 26 of Decree No. 2351 of 1965 and section 11(1) and (2) of Decree No. 1373 of 1966).
- the requirement of too high a number of trade union organisations for the establishment of a local or regional federation (ten) or a national confederation (20) (sections 27 and 28 of Decree No. 1469 of 1978 on freedom of association).
- the obligation to obtain recognition of legal personality from the Ministry of Labour (sections 366 and 372 of the Labour Code as supplemented by section 5 of Decree No. 1469 of 1978, and section 423 of the Labour Code in respect of federations and confederations).

The Government states that first-level unions, which are generally weaker than industry unions, become still weaker when they proliferate, which affects their power to negotiate. This is also true of national confederations. Furthermore, the Government states that the Administrative Claims Code (Decree No. 1 of 1984) guarantees the possibility of appealing against administrative acts such as resolutions of the Ministry of Labour refusing legal personality to a union (section 50) and that a trade union organisation which has been refused legal personality may apply for the restoration of its rights (section 85).

The Committee notes the Government's argument on the risk of the weakening of the bargaining power of first-level unions, regional federations and national confederations where they have an inadequate number of workers or trade union organisations. It considers nevertheless that by prohibiting the creation of more than one union per undertaking and requiring the affiliation of a minimum of ten organisations at the regional level and 20 at the national level, the provisions in question may well prevent the establishment of first-level unions, federations and confederations (see paragraph 240 of the General Survey on Freedom of Association and Collective Bargaining prepared by the Committee of Experts in 1983). Furthermore, the Committee observes that the appeals provided for by section 50 of the Administrative Claims Code are only administrative and not judicial. Section 85 seems to confer the possibility of judicial appeal on a point of law for the restoration of a right. The Committee considers, however, that if such judicial appeal is to constitute an adequate guarantee, the judges should be able not only to ensure that the legislation has been correctly applied but also to re-examine both the substance of the matter and the grounds determining the administrative decision in the light of the provisions of the Convention (see paragraph 117 of the above-mentioned General Survey).

The Committee therefore asks the Government to amend its legislation so as to permit the establishment without hindrance and

without previous authorisation of first-level unions, federations and confederations.

2. Interference in the internal administration of trade unions

The questions raised relate to the following points:

- ministerial approval of amendments to the constitutions of first-level unions and those of federations and confederations (sections 369, 370 and 425 of the Labour Code and section 15 of Resolution No. 4 of 1952).
- regulation by Resolution No. 4 of 1952 of questions that should be governed by the constitutions of the unions rather than by law (quorum at the general assembly, composition of executive bodies, electoral procedure, etc.).
- supervision of the internal management and meetings of unions by public servants (section 486 of the Labour Code and section 1 of Decree No. 672 of 1956), strict rules for trade union meetings (Decree No. 2655 of 1954) and presence of authorities at general assemblies convened to vote the calling of a strike (section 444(2) of the Labour Code).
- the obligation to be Colombian for election to trade union office (section 18(a) of Resolution No. 4 of 1952).
- the election of union officers to be submitted for approval by the administrative authorities (section 21 of Resolution No. 4 of 1952 and sections 10 to 13 of Decree No. 1469 of 1978).
- the suspension, with loss of the right to organise, of leaders who have been responsible for the dissolution of their union (sections 380(2)(b) and (c) and 4 of the Labour Code).
- the obligation to belong to the occupation for election to trade union office (sections 388(1)(c) and 432(2) of the Labour Code, and section 18(c) of Resolution No. 4 of 1952 for first-level unions and 422(1)(c) for federations).

The Government states that section 486 of the Labour Code, which is still in force, is intended to prevent employers, workers and officers or members of trade union organisations from infringing the provisions concerning conditions of employment and the protection of workers following their occupation and exercising the right to freedom of association. It states that interference by the administrative authorities in respect of the approval of election to trade union office and the application of penalties to trade union officers when they cause, by their own fault, the dissolution of a union is intended only to supervise the application of specific legal provisions designed to protect the members. Furthermore, the Government states that the provisions on membership of an occupation are logical.

The Committee observes that section 486 of the Labour Code confers on the officials of the Ministry of Labour the power to summon to their office leaders and members of trade union organisations to demand from them information on their role and the submission of books, registers and other documents, and also confers on these officials the power to be present at any moment without notice at a trade union meeting to prevent the infringement of the provisions mentioned by the Government.

The Committee recalls that the freedom of unions to hold meetings is a condition indispensable to the effective exercise of trade union rights and that the public authorities should refrain from any interference that would restrict this right or impede its lawful exercise. The Committee also considers that the application of the provisions concerning the management of trade unions must be left mainly to the trade unionists themselves, supervision over management not going further than the obligation to furnish periodical financial reports. Lastly, the Committee, while noting the Government's comments on the need for officers to belong to the occupation, hopes that the Government will amend the provisions on the membership of the occupation so as to ensure that a dismissed trade union officer does not lose his office and to permit the candidature of persons who have previously belonged to the occupation; the Committee also hopes that the Government will make section 18 of Resolution No. 4 of 1952 (restriction to Colombians of the right to manage unions) more flexible so as to enable organisations to choose their leaders in full freedom and foreign workers to attain trade union office, at least after a reasonable period of residence in the host country.

The Committee therefore asks the Government to amend its legislation in order to ensure to workers and their organisations the right to draw up their constitutions, elect their representatives and organise their administration without interference from the public authorities.

3. Right of trade unions to further and defend the interests of the workers

The questions raised by the Committee relate to the following points:

- the prohibition placed on trade unions from taking part in political matters or holding meetings on them (section 378(a) of the Labour Code, section 16 of Decree No. 2655 of 1954 and sections 12 and 50 of Resolution No. 4 of 1952).
- the prohibition of federations and confederations from calling a strike (section 417(1) of the Labour Code).
- the prohibition of strikes not only in the essential services in the strict sense of the term but also in a very wide range of public services that are not necessarily essential (section 430 of the Labour Code and Decrees Nos. 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963 and 57 and 534 of 1967).
- compulsory arbitration empowering the Minister of Labour to end a labour dispute that has lasted 40 days (section 2 of Decree No. 939 of 1966) and the President of the Republic to order the termination of a strike affecting the interests of the national economy (section 3(4) of Act No. 48 of 1968).
- the sentences of imprisonment during the temporary suspension of the right to strike under emergency powers (Decree No. 2004 of 1977).
- the automatic dismissal of trade union leaders who have intervened or participated in an illegal strike (section 450(2) of the Labour Code).

The Government does not comment on the prohibition of political activities by trade unions, but states that while the calling of a strike by a federation or a confederation in a whole sector of economic activity or the classification as essential of some services does little harm to developed nations, it is very harmful to countries that are trying to overcome the obstacles of underdevelopment. It adds that the Convention does not deal with essential services. It further explains that the power of the President of the Republic, under Act No. 48 of 1968, to terminate a strike seriously affecting the national economy by submitting the dispute to compulsory arbitration is not discretionary since it comes into play only subject to the positive opinion of the Supreme Court (Labour Chamber).

The Committee, while noting the comments of the Government on the difficulties faced in overcoming the obstacles of economic underdevelopment, emphasises that the peaceful exercise of the right to strike has always been considered by the supervisory bodies to be one of the essential means that should be available to the workers and their organisations for advancing their occupational claims. The prohibition or restriction of its exercise is compatible with the Convention only in respect of public servants acting in their capacity as agents of the public authority or in essential services in the strict sense of the term (and not in the public services in general) where the interruption of such activities due to a strike would endanger the life, personal safety or health of the whole of part of the population.

The Committee therefore hopes that the Government will amend its legislation so as to change the provision prohibiting political activities by trade unions and to abolish the excessive restrictions on the peaceful exercise of the right to strike. Resort to compulsory arbitration should apply only to essential services in the strict sense of the term, and the suspension of the right to strike under emergency powers should be confined to the immediate period of the emergency.

The Committee would be grateful if the Government would indicate in its next report the measures it could take to bring its legislation into full conformity with the Convention in the light of the above comments.

Document No. 173

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 136-137 (Denmark)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Denmark (ratification: 1951)

The Committee takes note of the information contained in the report of the Government and of the adoption of Act No. 300 of 6 June 1984, which concerns, inter alia, occupational associations.

The Committee also takes note of the comments of the Danish Federation of Trade Unions (LO) and the Salaried Employees' and Civil Servants' Confederation (FTF) on the application of the Convention. It observes that, according to these trade union organisations, the collective agreements providing for the indexation of wages on the cost of living were suspended by the Government in October 1982, because of their inflationary effect, for a period up to January 1985, which was extended by Parliament to January 1987, thereby putting a brake on wage claims. These organisations also mention situations in which the Government has taken legislative action to prevent or end strikes in certain sectors of the public service (namely those in

which radio operators and engineers work). The Committee also takes note of the information furnished by the Government in reply to these comments. The Government explains in particular that its action to end the strike, which had already lasted four months, in the sector of wireless operators was necessary, since, because of the climatic conditions of the country, the prolongation of this strike would have had serious consequences. With regard to its action to prevent the strike in the engineering sector, the Government explains that a strike in this sector would have created conditions in which human life would have been endangered and would have led to considerable loss of property.

First, the Committee points out that, in the General Survey that it submitted to the 69th (1983) Session of the International Labour Conference, particularly paragraph 200, it emphasises that the right to strike is one of the essential means available to workers and their organisations for the promotion and defence of their economic and social interests. Secondly, the Committee points out that restrictions on the right to strike should be limited to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Since wages form an important aspect of the living and working conditions in an undertaking and are a question of economic policy, the Committee would draw the attention of the Government to the fact that freezing wages for more than four years is a restriction on the right of trade union organisations to organise their activities and formulate their programmes in full freedom for the defence of their economic interests (Article 3 of the Convention).

The Committee requests the Government to re-examine these questions in consultation with the trade union organisations concerned, in the light of the principles stated above, and to keep it informed of any developments in the situation.

Document No. 174

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 142-145 (Ethiopia)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Ethiopia (ratification: 1963)

The Committee takes note of the information communicated by a Government representative to the Conference Committee in 1984 and the report submitted by the Government.

The Committee would again refer to the points already raised by it in its previous comments.

1. The Committee has noted that, under section 9(4) and (5) of Proclamation No. 222, the coming together of unions results in a single union at the national level, namely the All-Ethiopia Trade Union (AETU), one of whose functions is to represent the workers and trade unions of Ethiopia (section 6), which, in turn, have to report to the higher level unions (section 11). It has also noted that the procedure laid down by section 6(7) of the Proclamation confers on the single national trade unions (AETU and AEPA) the exclusive right to draft the by-laws of all trade unions and associations.

The Committee notes the statement by the Government that the aim of the Convention is not to make trade union diversity an obligation and that the establishment and maintenance of a single-trade-union structure are the legal expression of the will of the workers. The Committee would point out, however, that the principle of the free choice of workers' and employers' organisations set forth in Article 2 of the Convention is not intended to favour the thesis of trade union diversity, the implication of the Convention being that this diversity must at least be possible in every case. In paragraph 137 of the General Survey which it submitted to the 69th (1983) Session of the International Labour Conference, the Committee stated that "even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure".

A de facto single-trade-union system should not be made compulsory by law and appropriate measures should be taken to give effect to the principles that are referred to by the Committee in its comments.

2. With regard to the All-Ethiopia Peasant Association (AEPA), the Committee observes, as it has already done, that the Government reaffirms that the AEPA is not a trade union organisation governed by the Proclamations, but a mass organisation of independent peasants, established voluntarily by them. The Committee points out, however, that the peasants' associations are governed by Proclamation No. 223 of 1982, sections 6 and 7 of which confer on them aims, powers and duties that are similar to those accorded the trade union organisations by Proclamation No. 222 at the ideological, economic, social and educational levels. The Committee further notes the statement of the Government that these independent peasants are not to be confused with agricultural workers, who are to be found only on the state farms. The Committee would again point out that peasants, even when they have become collective owners of the land, remain rural workers and should, accordingly, enjoy the trade union guarantees laid down by the Convention, their organisations being workers' organisations. The Committee draws the attention of the Government to the fact that rural workers united in associations should be able to set up and join organisations freely without previous authorisation and to draw up their rules, elect their representatives in full freedom and to formulate their programmes without interference from the public authorities, in accordance with Articles 2 and 3 of the Convention. The Committee points out that these Articles of the Convention are infringed by the following provisions of Proclamation No. 223 of 1982: section 9 on the minimum area for the establishment of a first-level association, section 73 on registration by the Ministry without any indication of the procedure or possible ways of appeal in the event of refusal; section 17(2) on the issuing of the internal regulations by the AEPA; section 5 on the conditions for election to trade union office; and section 7 on the determination of the powers and duties of the associations. Furthermore, the Committee observes that there is no legislative or other provision to govern the dissolution of the associations.

The Committee, therefore, requests the Government to ensure that the Articles of the Convention are applied to rural workers' associations and to indicate any relevant legislative provisions concerning the dissolution of these associations.

The Committee notes further that the agricultural workers of state farms are not covered by Proclamation No. 223. It, therefore, requests the Government to indicate any legislative provisions through which the Convention is applied to this category of workers and to state whether they are considered to be public servants of the State.

3. The Committee has pointed out in previous comments that trade unions other than the All-Ethiopia Trade Union (AETU) cannot affiliate with international organisations. It added that, under Article 5 of the Convention, freedom to affiliate is recognised to every trade union, whether it be at the national level, first level or for a branch of industry. The Committee notes that the Government considers the existing situation to be a logical part of the single-trade-union system established in the country by the workers. The Committee, therefore, refers to its comments at point 1 above and draws the attention of the Government to the necessity, in order to give effect to the Convention, of safeguarding the rights of unions

that might be established outside the AETU to establish and join federations and to affiliate with international trade union organisations. The Committee requests the Government to ensure that effect is given to this provision of the Convention.

4. The Committee takes note of the statement by the Government that the procedures of sections 106 and 99(3) of the Labour Proclamation No. 64 of 1975, contain no prohibition of the right to strike. In its previous comments, the Committee has called attention to the fact that section 106 of the Proclamation makes illegal any strike initiated where the dispute has not been referred to the Labour Division of the High Court, whose decisions are final by virtue of section 99(3) or, where it has been so referred, if 50 days have not elapsed before any decision is given, which makes any strike practically impossible and thus considerably restricts the possibility open to trade union organisations of defending the interests of their members. Since, by virtue of Article 3 of the Convention, a certain number of means must be available to the workers for furthering and defending their economic and social interests, and since the right to strike is an essential one of these means, the Committee requests the Government to take the necessary steps, in particular by legislative action, to enable the workers to exercise these trade union rights.

5. Furthermore, the Committee has also noted that, under section 5 of Proclamation No. 222, the unions are obliged to disseminate among the workers the development plans of the Government as well as Marxist-Leninist theories, and to implement the decisions, directives and orders of higher authorities. Proclamation No. 223 sets forth the same obligations for peasants' associations (sections 15(4) and 22(5)) and further specifies that every member of a peasant association has the duty to accept and implement the National Democratic Revolution Programme of Ethiopia (section 13(1)).

The Committee observes that a trade union which wished to formulate another programme would find itself in conflict with the law. These detailed provisions defining the scope of the unions and also section 6(7), under which the All-Ethiopia Trade Union issues the by-laws of its unions in accordance with the legislation, and section 17(2) of Proclamation No. 223 on peasants' associations, under which the AEPA lays down in detail the powers of the General Assembly of the first-level peasants' associations, are contrary to the principles of freedom of association. The Committee hopes that the Government will take the necessary action to bring its legislation into conformity with the Convention.

6. The Committee has pointed out that public servants and domestic staff do not enjoy the trade union rights granted by Proclamation No. 222. It notes the Government's statement that their right to organise is treated separately by the new Labour Code, which is still being examined. The Committee requests the Government to inform it of any development in this connection and to transmit a copy of the new Code as soon as this is adopted.

7. With reference to the employers' organisations, which the Committee has considered not to constitute employers' organisations within the meaning of the Convention - according to which their principal aim should be to further and defend the interests of the employers - the Committee notes the Government's statement that the

amendments to the Proclamation of 1978 on the Chamber of Commerce have been approved and will be published shortly. The Committee requests the Government to send it a copy of the relevant texts.

[The Government is asked to supply full particulars to the Conference at its 71st Session and to report in detail for the period ending 30 June 1985.]

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Document No. 175

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 219-222 (Kuwait)

International Labour Conference
79th Session 1992

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

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Kuwait (ratification: 1961)

The Committee takes note of the Government's statement in its report that this Convention has made an effective contribution to strengthening freedom of association and the right to organise, developing trade union activities and directing freedom of association

towards its goals of protecting workers' rights and improving working conditions. The Government adds that the draft Labour Code takes account of the Committee's observations by including all the provisions of the Convention except those that run counter to national security.

The Committee recalls that for several years it has been drawing attention to a number of discrepancies between the Labour Code (Act No. 38 of 1964) and the Convention, in particular:

(1) the prohibition on establishing more than one trade union for a given establishment or activity and the membership requirement of at least 100 workers in order to establish a trade union (section 71 of the Act) and ten employers to form an association (section 86);
the requirement that trade unions may federate only if they represent the same occupation or industries producing similar goods or providing similar services (section 79);
the prohibition on organisations and their federations from forming more than one general confederation (section 80);
the system of trade union unity instituted by sections 71, 79 and 80 read together;

(2) the requirement that non-Kuwaiti workers must reside in Kuwait for five years before joining a trade union; the requirement that a certificate of good reputation and good conduct must be obtained in order to join a union; the denial of the right to vote and to be elected of trade unionists who are not of Kuwaiti nationality, except to elect a representative whose only right is to express their opinions to the trade union leaders (section 72);

(3) the prohibition on trade unions from engaging in any political or religious activity (section 73);

(4) the requirement that a certificate must be obtained from the Minister of the Interior stating that he has no objection to any of the founder members before a trade union may be established; and the requirement that at least 15 members must be Kuwaiti before a union may be established (section 74);

(5) the wide powers of supervision of the authorities over trade union books and records (section 76);

(6) the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77);

(7) the restriction on the free exercise of the right to strike (section 88 of the Labour Code).

With regard to the system of trade union unity, the Committee can only recall that the principle set forth in Article 2 of the Convention, that workers should be able to constitute organisations of their own choosing, is not intended as an expression of support either for the idea of trade union unity or for that of trade union pluralism. If workers choose to group together in a single trade union system, legislation should not impose such a system but should allow pluralism to be possible in the future (in this connection, see paragraphs 136 and 137 of the 1983 General Survey on Freedom of Association and Collective Bargaining). The Committee requests the Government to amend its legislation to ensure that workers, should they so wish, are able to set up unions outside the established trade union structure in order to safeguard their occupational interests.

As regards the prohibition imposed on foreign workers from voting or standing as candidates in trade union elections, except to elect a representative to express their opinions to the trade union leaders, the Committee stresses that the right of workers' organisations to elect their representatives (Article 3 of the Convention) is limited by the restrictions imposed on foreign workers by section 72 of the Labour Code, and that the legislation should be made more flexible in order to permit non-Kuwaiti workers to have access to or hold trade union office, at least after a reasonable period of residence in Kuwait (in this connection see paragraphs 159 and 160 of the General Survey).

With regard to the wide powers of supervision of the authorities at all times over trade union books and records, the Committee recalls that under Article 3 of the Convention, workers' organisations should have the right to organise their administration without any interference from the public authorities and that, accordingly, supervision of union finances should not normally go beyond a requirement that the organisation submit periodic financial returns (see paragraph 188 of the General Survey).

With reference to section 88 of the Labour Code under which compulsory arbitration may be imposed at the request of one of the parties in order to settle a labour dispute and end a strike, the Committee recalls that the right to strike is one of the essential means available to workers' organisations promote and protect their members' interests. It requests the Government to revise its legislation in order to ensure that compulsory arbitration with a view to ending a strike cannot be imposed except in the case of strikes in essential services in the strict sense of the term or in the event of an acute national crisis.

In its previous observation, the Committee noted that a draft Labour Code repealing several provisions contrary to the Convention (sections 71, 72, 73, 74 and 79) was being prepared. Since the Government's report confirms that the above draft takes the Committee's observations fully into account, the Committee asks the Government in its next report to provide information on the status of the draft Labour Code and on the measures it envisages to:

- remove from the legislation all provisions institutionalising trade union unity;
- enable foreign workers to vote and to stand as candidates in trade union elections;
- remove the prohibition on trade unions from engaging in any political activity;
- limit the powers of supervision of the authorities over the establishment and the internal management of trade unions;
- remove the measures providing for the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution; and
- remove the excessive restrictions on the exercise of the right to strike.

The Committee hopes that the Government will do its utmost to take the necessary measures in the very near future.

The Committee is addressing a direct request to the Government concerning another subject.

[The Government is asked to supply full particulars to the Conference at its 79th Session.]

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Document No. 176

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 238-240 (Syrian Arab Republic)

International Labour Conference
79th Session 1992

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

Syrian Arab Republic (ratification: 1960)

The Committee takes note of the information contained in the Government's report to the effect that the committee composed of representatives of the Ministry of Social Affairs and Labour, the General Federation of Workers' Unions (FGST), the General Federation of Peasants (FGP), the General Federation of Craftsmen (FGA) and the Chamber of Industry decided to obtain the written opinion of the FGA, FGP and FGST concerning the amendment of certain provisions of Legislative Decree No. 84 of 1968 concerning trade unions, Act No. 21 of 1974 respecting peasants' associations, and Legislative Decree No. 250 of 1969 respecting craftsmen's associations, to bring them into line with the Convention. The Government adds that by 21 April 1991 only the FGST had issued an opinion on the possibility of repealing sections 25, 32, 36, 44(b)(4), 49(c) of Legislative Decree No. 84 and section 12 of Legislative Decree No. 250. The Committee regrets, however, that the report does not indicate whether the FGST supported or opposed the repeal of the sections in question.

The Committee recalls that the discrepancies between the national legislation and the Convention concern the following:

- Legislative Decree No. 84 of 1968 concerning trade unions (section 7) which organises the structure of trade unions on a single union basis;
- Legislative Decree No. 250 of 1969 regarding craftsmen's associations (section 2) and Act No. 21 of 1974 regarding peasants' cooperative associations (sections 26 to 31) which impose a single trade union system;
- section 25 of Legislative Decree No. 84 restricting the trade union rights of non-Arab foreign workers;

- sections 32, 35, 36, 44, and 49(c) of Legislative Decree No. 84 and sections 6 and 12 of Legislative Decree No. 250 of 1969 restricting the free administration and independence of the management of trade unions;
- section 160 of the Agricultural Labour Code of 1958 prohibiting strikes in the agricultural sector.

1. The single trade union system. The Committee recalls that, under Article 2 of the Convention, workers, without distinction whatsoever and without previous authorisation shall have the right to establish and join organisations of their own choosing. It also recalls that this Article is not intended as an expression of support either for the idea of trade union unity or for that of trade union pluralism; pluralism, however, should remain possible in all cases.

The Committee regrets that neither the above-mentioned committee nor the FGST have issued an opinion on the repeal of the provisions in the national legislation which organise the single trade union system (sections 3, 4, 5, 7 and 49(c) of Legislative Decree No. 84 of 1968, Legislative Decree No. 250 of 1969 and Act No. 21 of 1974). According to the Government, the FGST has issued an opinion on the possibility of repealing section 49(c) of Legislative Decree No. 84 concerning the right of the General Federation to dissolve the management committee of any trade union.

Accordingly, the Committee once again requests the Government to take the necessary measures in the very near future to remove from its legislation the numerous references to the single trade union federation designated in the law as the General Federation of Workers' Unions (FGST) so as to enable workers who so wish to establish trade union organisations of their own choosing outside the existing trade union structure, in conformity with Article 2.

2. Restrictions on the trade union rights of non-Arab foreign workers employed in the Syrian Arab Republic. Section 25 of Legislative Decree No. 84 only entitles such workers to form or join trade unions if they have been resident in Syria for one year and only if there are reciprocal rights. The Committee recalls that the guarantees set out in Article 2 of the Convention should apply to all workers and employees, without distinction whatsoever, and asks the Government to amend section 25 to bring the national legislation into conformity with the Convention.

3. The broad powers of intervention of the authorities in trade union finances. The Committee regrets that the opinion of the FGST concerns only section 32 of Legislative Decree No. 84 (the need for the prior consent of the FGST and the approval of the Ministry for the acceptance of gifts, donations and legacies) and sections 36 of Legislative Decree No. 84 and 12 of Legislative Decree No. 250 (the obligation on unions to allocate a certain percentage of their income to the higher trade union bodies), and that it gave no opinion on section 35 of Legislative Decree No. 84 (financial supervision by the Ministry at all levels of the trade union organisation).

The Committee stresses the need to bring the legislation into line with Article 3 of the Convention which guarantees workers' organisations the right to organise their administration without any interference from the public authorities. The Committee has always considered that supervision of union finances should not normally go

beyond a requirement for the periodic submission of financial reports, and that if the administrative authority has a discretionary power to inspect the books and other documents of organisations or to carry out investigations and demand information at any time, there exists a serious risk of interference in trade union affairs. The Committee therefore asks the Government to repeal the provisions which enable the Government to intervene in the financial administration of unions.

4. Requirement of six months in an occupation before being eligible for trade union office (section 44 of Legislative Decree No. 84). The Committee considers that provisions of this nature may prevent qualified persons, such as pensioners or full-time union officers from carrying out union duties. It therefore requests the Government to make its legislation more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of organisations, so as to allow the candidature of persons outside the profession.

5. Prohibition of strikes in the agricultural sector (section 160 of the Labour Code of 1958). The Committee notes that, according to the Government, the draft amendment to the Act on the organisation of agricultural relations contains a provision repealing section 160 which makes it unlawful for agricultural employers and tenant farmers to suspend agricultural work on their land and for agricultural workers to go on strike.

The Committee again stresses that it is most important that legislation should not deprive trade union organisations of the right to strike, as this is one of the essential means by which they may promote and defend the occupational interests of their members.

The Committee asks the Government to indicate in its next report the measures that have been taken to bring all its legislation into conformity with the requirements of the Convention.

[The Government is asked to supply full particulars to the Conference at its 79th Session.]

Document No. 177

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 151 (Jamaica)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Jamaica (ratification: 1962)

The Committee notes the information provided by the Government in its report.

The Committee recalls that for several years its previous comments concerned the necessity to amend sections 9 and 10, paragraphs 1, 2, 4, 5 and 8 of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended in 1978, which empower the Minister to submit an industrial dispute to compulsory arbitration and hence to terminate any strike. The Committee has noted in the past that the list of essential services contained in the legislation is too broadly defined and that the notion of a strike which is liable seriously to jeopardize the interests of the nation can be interpreted very widely.

The Government indicates that the Labour Relations and Industrial Disputes Act is being revised and that the right to strike is one of the key areas examined. The Government adds that before deciding what sectors should be regarded as essential services, it has to carefully examine the dependence on the economy of these services.

The Committee reiterates that the right to strike is one of the essential means which should be available to workers and their organizations to promote and defend their economic and social interests. The Minister of Labour should therefore only be able to have recourse to the courts in the following circumstances: (1) in the event of strikes in essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; or (2) in the event of total and prolonged stoppage of work which might constitute an acute national crisis; or (3) at the request of the two parties concerned (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 152, 154, 159 and 160).

The Committee urges the Government to provide information in its next report on the outcome of the reviewing process of the Labour Relations and Industrial Disputes Act and to indicate the measures taken to amend its legislation in order to bring it into conformity with the principles of freedom of association.

The Committee is also addressing a request directly to the Government concerning some other points.

Document No. 178

ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 91–99 (Belarus)

Report III /Addendum (Part A)

Application of International Labour Standards 2021

Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
109th Session, 2021

Belarus

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1956)

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 16 and 30 September 2020, respectively, and examined by the Committee below together with the Government's reply thereon.

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

Civil liberties and trade union rights. The Committee notes the ITUC and BKDP allegations of extreme violence to repress peaceful protests and strikes, and detention, imprisonment and torture of workers while in custody following the presidential election in August 2020. The Committee notes that in its report, the Government indicates that the elections held in August 2020 were the most competitive and emotional in terms of public perception and reaction in the history of the State. The Government further indicates that following the vote counting, the political tensions that were fuelled from the outside resulted in a series of protests and events that were organized and held in violation of current legislation and aimed at destabilising the country. The Government points out that the exercise of rights and freedoms, including freedom of assembly, meetings, street processions, demonstrations and picketing, must be peaceful, respect the law of the land and not lead to violations of the law, the rights and legitimate interests of others, and threaten public and national security. The Government further points out that protest actions by some citizens to express their disagreement with the results of the presidential elections were purely political in nature and were organized without regard to the legislation establishing the procedure for their conduct and were not always peaceful. In the course of these actions, numerous offences were recorded; these included acts of resistance to the legitimate demands of law enforcement officers, associated with the manifestation of aggression, use of violence, damage to official transport, blocking the movement of vehicles, damage to infrastructure facilities. The Government indicates that the majority of persons referred to by the BKDP had been held administratively liable for organizing and/or actively participating in illegal protests or calling for participation in such protests. The Government considers that holding persons accountable for illegal acts cannot and should not be regarded as persecution of workers and trade unionists for the exercise of their civil rights and freedoms, including the rights to participate in sanctioned peaceful protests and lawful strikes. The status of a worker or trade union leader does not create additional advantages or immunity.

The Committee observes the statement by the UN High Commissioner for Human Rights at the Intersessional meeting of the Human Rights Council on the situation in Belarus on 4 December 2020, in which she pointed out that the monitoring and analysis of demonstrations since 9 August 2020 indicate that participants were overwhelmingly peaceful. The Committee expresses its ***deep concern*** over the serious allegations submitted by the ITUC and BKDP and the continued deterioration of the situation of human rights in the country, particularly with respect to the right of peaceful assembly, as noted by the UN High Commission for Human Rights at the most recent above-mentioned meeting. The Committee recalls that peaceful participation in strikes or demonstrations should not give rise to arrest or detention. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike or protest. The Commission recalls the International Labour Conference (ILC) 1970 Resolution concerning trade union rights and their relation to civil liberties, which emphasises that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal. The Committee refers to Recommendation 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). ***The Committee urges the Government to take all necessary measures to implement this recommendation of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms. The Committee further urges the Government to take measures for the release of all of trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions. The Committee also requests the Government to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons.***

Regarding the reported cases of violent mistreatment of workers participating in such protests, the Committee, ***deeply regretting*** that the Government provides no information in this regard, recalls that it is the responsibility of the Government to ensure a climate free from violence, threat or pressure against peacefully protesting workers. ***The Committee urges the Government to investigate without delay any***

Freedom of association, collective bargaining, and industrial relations

alleged instances of intimidation or physical violence through an independent judicial inquiry, in order to shed light on the facts and circumstances surrounding these acts, and to identify those responsible, punish the guilty parties and thus prevent the repetition of similar events. The Committee requests the Government to provide information on all measures taken to this end. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial.

The Committee recalls that it in its previous comment it noted that activities aimed at giving effect to the recommendations of the Commission of Inquiry continued in the country in collaboration with the ILO. In this respect, the Committee noted that a training course on international labour standards for judges, lawyers and legal educators took place in Minsk in June 2017 and that a tripartite conference "Tripartism and Social Dialogue in the World of Work" was held in Minsk on 27 February 2019. The Committee recalls that it had previously noted that one of the outcomes of a tripartite activity on dispute resolution held in 2016 was the common understanding of the need to continue working together towards building a strong and efficient system of dispute resolution, which could handle labour disputes involving individual, collective and trade union matters. The Committee noted with regret the BKDP's indication that the work on developing such a mechanism has been neglected completely. ***The Committee once again requests the Government to provide its comments thereon and invites it to continue to take advantage of ILO technical assistance in this regard.***

Article 2 of the Convention. Right to establish workers' organizations. The Committee recalls that in its previous observations, it had urged the Government to consider, within the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council), the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. The Committee recalls that it requested the Government to provide its comments on the allegations of the BKDP and the ITUC of cases of refusal to register trade union structures of the Free Trade Union of Belarus (SPB) and of the Belarusian Union of Radio and Electronics Workers (REP union) in Orsha and Bobruisk. The Committee notes the Government's indication that the requirement to provide confirmation of legal address is not an obstacle to the registration of trade unions and that there were no cases of refusal to register trade unions or (associations of trade unions in 2019 and the first nine months of 2020. With regard to the refusal to register a REP primary trade union in Bobruisk, the Government confirms that on 5 July 2019, the Bobruisk city executive committee decided to refuse the registration of the primary trade union because its members were not bound by common interests by virtue of the nature of their work as required by section 1 of the Law on Trade Unions. The Government points out that the relevance and the validity of this requirement was confirmed at a meeting of the tripartite Council of 30 April 2009. Thus, according to the Government, the steps taken by the REP union to establish the so-called city primary organization, uniting citizens without association with any organization, industry or profession, did not meet the requirements of the Law on Trade Unions. Additional grounds for the decision to deny registration were the absence of a decision by the authorized trade union body to create an organizational structure and other shortcomings in the documents submitted for the registration. The decision of the Bobruisk city executive committee was not appealed in court. The Committee notes that a similar explanation is provided by the Government regarding the refusal to register a primary trade union in Orsha. The Government points out that a refusal to register does not amount to a ban on the establishment of a trade union or its organizational structure as once all of the shortcomings have been remedied, the documents for the state registration can be resubmitted. The Committee recalls that it had previously taken note of the decision regarding the requirement of section 1 of the Law on Trade Unions, agreed upon by all members of the tripartite Council's sitting of 30 April 2009.

Regarding the Committee's previous request to discuss the issue of registration of trade unions by the tripartite Council, the Committee notes the Government's indication that the possibility of implementing the Committee's proposal may be considered when the tripartite Council resumes its work once the epidemiological situation in the country has improved. The Government points out, however, that the comments of the Committee of Experts are publicly available and that members of the tripartite Council can freely consult them and, if they deem it necessary, put the consideration of the Committee's comments on the agenda of the tripartite Council. The Government reiterates that the agenda for meetings is set on the basis of proposals from the parties and organizations represented on the Council, taking into account the relevance of the issues raised, and with the agreement of the Council's members. To that end, the information should be submitted to the Council's secretariat (the Ministry of Labour and Social Protection) with an explanation as to why that particular issue is problematic and merits consideration by the Council. The Government indicates that in 2016–20, there had been no submissions for discussion of issues relating to the legal address requirement. ***The Committee expects the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee requests the Government to inform it of the outcome of the discussion.***

The Committee observes with ***concern*** that during his televised meeting with the chairperson of the Federation of Trade Unions of Belarus (FPB) President Lukashenko urged that trade unions be set up at all private enterprises by the end of 2020 under the threat of liquidation of those private companies which did not organize trade unions upon FPB demand. In his remarks, he underlined the State position supporting the FPB trade unions. The Committee recalls that the principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution (see the 2012 General Survey on the fundamental Conventions, paragraph 55). The Committee considers that the spirit of Convention No. 87 calls for impartial treatment of all trade union organizations by the authorities, even if they criticize the social or economic policies of national or regional executives, as well as avoidance of reprisals for pursuing legitimate trade union activities. The issuance of a statement by a high public authority that would favour one union over another or even use its authority to create unions within a designated trade union federation undermines the right of workers to establish and join organisations of their own choosing.

The Committee recalls that the 1952 ILC Resolution concerning the independence of the trade union movement emphasizes that a stable, free and independent trade union movement is an essential condition for good industrial relations and that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes. The Resolution recalls that governments, in seeking the cooperation of trade unions to carry out their economic and social policies, should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuit of political aims, nor should they attempt to interfere with the normal functions of a trade union movement.

The Committee urges the Government to refrain from showing favouritism towards any given trade union and to put an immediate stop to the interference in the establishment of trade union organizations. The Committee requests the Government to provide information on all measures taken to that end.

Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. Legislation. The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 of 28 November 2003 on Receiving and Using Foreign Gratuitous Aid. The Committee further recalls that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 of 31 August 2015 on Foreign Gratuitous Aid and the ensuing Regulations on the Procedures for the Receipt, Recording, Registration and Use of Foreign Gratuitous Aid, the Monitoring of its Receipt and Intended Use, and the Registration of Humanitarian Programmes. The Committee notes the Government's indication that the national legislation does not prohibit trade unions from receiving gratuitous foreign aid, including from international trade union organizations. At the same time, the legislation defines the objectives and conditions for the use of foreign gratuitous aid and stipulates that such aid must be registered in accordance with the established procedure, which, according to the Government, is not complicated and rapid. The Government indicates that Decree No. 5 has been replaced by Decree No. 3 of 25 May 2020. The Committee notes with ***regret*** that just as previously under Decrees Nos 24 and 5, the foreign gratuitous aid cannot be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of the Regulation bears the sanction of possible liquidation of the organization. The Committee notes the Government's indication in this respect that the ban on receiving and using foreign donations for purposes involving political and mass propaganda work among the population is conditioned by the national security interests, the need to exclude opportunities for destructive influence and pressure from external forces (foreign states, international organizations and associations, foundations, etc.) aimed at destabilising the socio-political and socio-economic situation in the country. The Government emphasizes that this procedure applies to all legal entities, including trade unions, and further points out that there are no cases of trade unions being denied foreign gratuitous aid and that there are no cases of trade unions being liquidated for violation of the procedure for its use. Further in this respect, the Government considers that the issue of procedure established for receiving foreign gratuitous aid is unjustifiably linked to *Articles 5* and *6* of the Convention.

While taking note of the above, the Committee observes that the broad expression "political and mass propaganda work among the population" when applied to trade unions may hinder the exercise of their rights as it is inevitable and sometimes normal for trade unions to take a stand on questions having

political aspects that affect their socio-economic interests, as well as on purely economic or social questions. As to the link with *Articles 5* and *6* of the Convention, the Committee draws the Government's attention to paragraph 624 of the report of the Commission of Inquiry where it was observed that the right recognized in these Articles "implies the right to benefit from the relations that may be established with an international workers' or employers' organization. Legislation which prohibits the acceptance by a national trade union or employers' organization of financial assistance from an international workers' or employers' organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with this right. Although there were no specific allegations as to the practical application of [the] Decree, the Commission reiterates the conclusions made by [the] supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid [...] is incompatible with the right of workers' and employers' organizations to organize their own activities and to benefit from assistance that might be provided by international workers' and employers' organizations".

Further in this connection, the Committee recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities. The Committee recalls that under the Law, which establishes a procedure for mass events, the application to hold an event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. In this context, "violation" includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date of the event. The Committee had requested the Government to amend the legislation, in particular by abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the Law and setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles.

In its previous observation, the Committee noted the Government's indication that the Law on Mass Activities was amended on 26 January 2019. The Government indicated that the revised Act sets out a number of additional measures and requirements that need to be complied with by the organizers in order to ensure the law and order and public safety during mass events. The Committee noted with deep regret that the Law on Mass Activities was not amended along the lines of its previous requests. It also noted with concern the BKDP's allegation that the amendments to the Law were not discussed with the social partners. The Committee also noted the BKDP's indication that among the novelties in the Law is the notification procedure for street action, which applies to mass events to be organized at "permanent places" designated as such by local authorities. Thus, according to the BKDP, the format of an event is imposed on the organizers, as rallies and pickets are possible in the squares designated as "permanent places", but processions and demonstrations are not. The Committee requested the Government to provide its comments thereon.

The Committee notes the Government's indication that because a violation of the procedure for organizing and/or holding a mass event may entail a serious threat to public order, the national legislation establishes certain liability, including liquidation of an organization for a single violation if the mass event results in serious damage or substantial harm to the rights and legal interests of other citizens and organizations. The Government points out that the above should not be interpreted as a deterrent to the exercise by citizens and trade unions of their right to freedom of peaceful assembly. The Government adds that the decision to terminate activities of an organization may only be taken by the Supreme Court. The Government indicates that to date, there have been no decisions on the liquidation of trade unions for violation of the procedure for organizing and conducting mass events.

With regard to the information provided by the BKDP that the introduction of notification procedures for the organization and holding of mass events in permanent locations imposes on the organizers the format of the event, the Government indicates that the organizers have the right to determine the format of the planned event themselves. Thus, if the planned format allows the event to be held in one of the specially designated permanent locations, the organizers may use the notification procedure, if not - the organizers need to receive a permission to hold the mass event. The above is aimed not at restricting the organizers in choosing the format of the event, but rather at eliminating excessive interference of state bodies in the process and thus at creating additional guarantees for the realization by citizens of the right to assembly. At the same time, certain restrictions on individual rights and freedoms are a means of legal protection of public order and public safety, morality, public health and the rights and freedoms of other persons. Thus, the Government considers that the legislation in force is in conformity with the principles of freedom of association and freedom of assembly.

While taking note of the above, the Committee recalls that it had previously noted with regret the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the Regulation on the

procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49, which entered into force on 26 January 2019). The Committee noted that according to the Regulation, once a mass event is authorized, the organizer must conclude contracts with the relevant territory internal affairs bodies, health services facilities and cleaning facilities regarding, respectively, protection of public order, medical and cleaning services. The Regulation provides for the fees in relation to protection of public services as follows: three base units – for an event with the participation of up to ten people; 25 base units – for an event with the participation of 11 to 100 people; 150 base units – for an event with the participation of 101 to 1,000 people; 250 base units – for an event with the participation of more than 1,000 people. The Committee notes that the current base unit is set at BYN27 (US$11). If the event is to take place in an area which is not a "permanent designated area," the above fees are to be multiplied by a coefficient of 1.5. In addition to the above fees, the Regulation provides for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event. According to the Regulation, these shall include: salary of employees engaged in the provision of services taking into account their category, number and time spent in the mass event; mandatory insurance contributions; the cost of supplies and materials, including medicine, medical products, detergents; indirect expenses of specialized bodies; taxes, fees, other obligatory payments to the republican and local budgets provided by law. The Committee notes with ***deep regret*** that the Regulation was amended on 3 April 2020 by the Ordinance of the Council of Ministers No. 196 so as to provide that the above-mentioned various contracts have to be concluded by an organizer prior to filing a request for authorization to hold an event. The Committee notes with ***deep concern*** that according to the most recent observations of the BKDP, the new amendment deprives trade unions of the possibility to carry out their public activities.

Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee considers that the capacity for carrying out mass actions would appear to be extremely limited if not non-existent in practice. The Committee notes with ***regret*** that at this stage, the Government considers it not advisable to change the existing procedure for receiving and using foreign gratuitous aid. ***The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used. Furthermore, considering that the right to organize public meetings and demonstrations constitutes an important aspect of trade union rights, the Committee requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49, as amended, which makes the exercise of this right nearly impossible in practice. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.***

Practice. The Committee recalls that it has been noting the allegations of repeated refusals to authorize the BKDP, the BNP and the REP union to hold demonstrations and public meetings for a number of years and in this respect, it had previously urged the Government, in working together with the above-mentioned organizations, to investigate all cases of refusals to authorize the holding of demonstrations and meetings, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. In this respect, the Committee had noted that according to the Government, in 2016–19, the following were the most common reasons to deny an authorization to hold a mass event: the application did not contain the information required by the law; another mass event was being held in the same place at the same time; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; and the event was announced in the mass media prior to receiving authorization. The Government indicated that when a permission to hold a mass event was not granted, the organizers, having rectified the shortcomings, could re-submit their application. Finally, a decision prohibiting the holding of a mass event may be appealed in court. The Government referred to several examples where the permission to hold such events was granted to the BKDP. While taking note of this information, the Committee noted the 2019 BKDP's allegations that executive authorities in Minsk, Mogilev, Vitebsk, Zhlobin, Borisov, Gomel, Brest and Novopolotsk refused to grant a permission to hold mass events and requested the Government to provide its detailed comments thereon. The Committee notes the Government's indication that the decision to allow or prohibit a mass event is made taking into account the date, place, time, number of participants, weather conditions and a number of other circumstances directly affecting public order and safety and that both the rights of citizens to freedom of association and freedom of assembly and the principle of the priority of the public interest, according to which, the exercise of rights should not undermine public benefit and safety, damage the environment, historical and cultural values, and infringe on the rights and interests of other persons, are taken into

account. The Committee further notes the detailed information provided by the Government in reply to the 2019 BKDP allegations. The Committee notes, in particular, that with the exception of one case where a permission to hold a mass event was granted, others were denied on account of the following: the event was to take place in a location not allowed for such a purpose; the failure to provide information on the source of funding and information on contracts for medical care and cleaning of the territory; the application did not contain the information required by the law; and another mass event was being held in the same place at the same time. The Committee observes from the information provided by the Government that it would indeed appear that the application of the legislation in practice hinders the right of workers to carry out their activities without interference. ***In view of the continuing difficulties experienced by the BKDP unions, the Committee urges the Government to engage with the social partners, including in the framework of the tripartite Council, with a view to addressing and finding practical solutions to the concerns raised by the unions in respect of organizing and holding mass events. The Committee requests the Government to provide information on concrete steps taken in this respect and the outcome of such discussions. The Committee further requests the Government to provide statistical information on the requests submitted and permissions granted and denied, segregated by the trade union centre affiliation.***

The Committee recalls the 2019 BKDP and ITUC allegations regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty, in 2018, of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US$22,500 at that time). The Committee noted that the particulars of these cases were being considered by the Committee on Freedom of Association in the framework of its examination of the measures taken by the Government to implement the recommendations of the Commission of Inquiry. In this connection, the Committee also noted the BKDP allegation that the equipment seized during searches in the REP union and BNP premises had not been returned and requested the Government to provide information thereon.

The Committee notes the Government's indication that according to the Investigative Committee, computer equipment, mobile phones and other equipment seized during searches of the REP union and BNP administrative premises were returned to their official representatives in October 2019, except for the hard drives and flash drives containing information on financial and economic transactions of these organizations. The data storage devices have not been returned and are kept together with the corresponding material in the criminal case of tax evasion by the leaders of the REP union Messrs Fedynich and Komlik. The Government indicates that the information contained therein will be used to conduct further investigations into possible similar crimes committed by these persons in the period from 2012 to 2018 with the assistance of the BNP employees. In this connection, the Minsk City Investigation Committee Department has appointed an additional tax audit of the REP union, which is yet to be initiated. Upon the completion of the tax audit, the leading criminal authority will take a decision on the future fate of the seized information storage devices. While noting this information, the Committee observes that the data contained in the storage devices could have been copied and returned to the union thereby avoiding the situation where a union is deprived of administrative and financial information necessary for the conduct of its activities. ***The Committee requests the Government to provide information on the outcome of a new investigation.***

Right to strike. The Committee recalls that it had been requesting the Government for a number of years to amend the following sections of the Labour Code as regards the exercise of the right to strike: sections 388(3) and 393, so as to ensure that no legislative limitations can be imposed on the peaceful exercise of the right to strike in the interest of rights and freedoms of other persons (except for cases of acute national crisis, or for public servants exercising authority in the name of the state, or essential services in the strict sense of the term, i.e. only those, the interruption of which, would endanger the life, personal safety or health of the whole or part of the population); 388(4) so as to ensure that national workers' organizations may receive assistance, including financial assistance, from international workers' organizations, even when the purpose is to assist in the exercise of freely chosen industrial action; 390, by repealing the requirement of the notification of strike duration; and 392, so as to ensure that the final determination concerning the minimum service to be provided in the event of disagreement between the parties is made by an independent body and to further ensure that minimum services are not required in all undertakings but only in essential services, public services of fundamental importance, situations in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population, or to ensure the safe operation of necessary facilities.

The Committee notes the Government's indication that the right to strike is not expressly provided for in the Instrument of the ILO; rather, the ILO supervisory bodies derive the right to strike from *Article 3* of Convention No. 87, despite the fact that the legality of this interpretation has been questioned by the Employers' Group on several occasions and that under Article 37 of the ILO Constitution, any question or dispute concerning the interpretation of conventions shall be referred to the International Court of Justice,

the only body which has the right to interpret Conventions. The Committee further notes that the Government refers to the national constitutional and legislative provisions enshrining the right to strike. It further notes the Government's indication that the exercise of the right to strike requires the existence of a collective labour dispute and that national legislation does not provide for the possibility of organizing and holding political strikes. The law may impose restrictions on the exercise of the right to strike to the extent necessary in the interests of the national security, public order, public health and the rights and freedoms of others. The Government points out that pursuant to section 393 of the Labour Code, in the event of a real threat to national security, public order, public health, the rights and freedoms of other persons and in other cases provided for by law, the President of the Republic of Belarus has the right to postpone or suspend a strike, but not for more than three months. The Government further points out that legal provisions containing certain restrictions or conditions on the exercise of the right to strike are due to the very nature of the right. According to the Government, the right to strike is fundamentally different from other human rights due to a number of specific following features: it is not an end in itself, but a tool to achieve an end, a way to protect the interests of workers; the right to strike is not inherent and inalienable as it may be restricted; it must be balanced with the rights of other human rights when the health and safety of others are affected or essential services are impacted; and while it is an individual right, the possibility of its realization depends on the agreement of other parties. For the reasons expressed above, the Government disagrees with the calls of the Committee for the amendment of the legislation, in particular as regards section 388(4) of the Labour Code.

At the outset and in reply to the Government's general remarks, the Committee recalls that its opinions and recommendations 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**.** It is within this mandate that it has been dealing with the questions pertaining to the right to strike.

The Committee requests the Government to take measures to revise the above-mentioned legislative provisions, which negatively affect the right of workers' organizations to organize their activities in full freedom, in consultation with the social partners, and to provide information on all measures taken or envisaged to that end.

The Committee recalls that it had previously requested the Government to provide its reply to the BKDP allegations of violation of the right to strike in practice**.** The Committee notes the Government's indication that a strike is a measure of last resort to which workers represented by a trade union have the right to resort if all other constructive ways of resolving a collective labour dispute (conciliation, mediation and arbitration) have been exhausted. The Government points out that the need to comply with the procedure for resolving collective labour disputes should not be considered as a practice contradicting provisions of the Convention regarding the right of workers' organizations to freely exercise their activities. The Committee notes with ***regret*** that while the Government confirms that the decision by members of the SPB at an enterprise in Polotsk to call a rolling strike from 1 November to 31 December 2017 was declared illegal by the court, it does not indicate the reasons therefor.

The Committee notes with ***concern*** detailed allegations of numerous cases of arrests, detention of and fines imposed on trade unionists for having organized and participated in strikes following the August 2020 events. The Committee notes the Government's indication that attempts to organize strikes at various enterprises were in no way connected with the resolution of collective labour disputes, as per the requirement set by the Labour Code; rather the purpose of these protests was to draw public attention to the civil position and political demands of some employees against the country's leadership, without due regard to the interests of other members of the workforce who do not share the same political views, as well as the economic interests of enterprises and of the State. The Committee notes that pursuant to the definition of the word "strike" set out in section 388 (1) of the Labour Code, as referred to by the Government, strikes are permitted only in relation to a collective labour dispute. The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the

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framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes (see the 2012 General Survey on the fundamental Conventions, paragraph 124). ***The Committee therefore further requests the Government to amend section 388(1) of the Labour Code, in consultation with the social partners, to ensure that workers can exercise their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee requests the Government to indicate all measures taken or envisaged to that end.***

Consultations with the organizations of workers and employers. The Committee recalls that in its previous comment it had noted that the BKDP alleged lack of consultations in respect of the adoption of new pieces of legislation affecting rights and interest of workers. The Committee notes in this respect the Government's indication that the development of draft legislation regulating social and labour issues is carried out with the direct involvement of the social partners. The obligation to consult the social partners and the procedure therefor are reflected in the tripartite General Agreement for 2019-21. In addition, and as a follow-up to the Law "On Normative Legal Acts", a Regulation on the Procedure for Public Discussion of Draft Normative Legal Acts was approved by the Council of Ministers on 28 January 2019. The Regulation describes the procedures and means of public consultation with regard to legislative drafts. Furthermore, pursuant to Regulation of the Council of Ministers No. 193 of 14 February 2009, draft legislation affecting labour and socio-economic rights and interests of citizens is submitted to the FPB as the most representative organization of workers for possible comments and/or proposals. In addition, both the FPB and the BKDP are represented in the National Council on Labour and Social Issues (NCLSI), as well as in the tripartite Council. Both tripartite advisory bodies have certain functions with regard to draft legislation affecting social and labour issues. The Government indicates that it had consulted with trade unions and employers' organizations with regard to the amendments to the Labour Code and that discussions in this regard were held at meetings of the NCLSI held on 28 June 2018 and 31 May 2019.

While taking note of this information, the Committee understands that the FPB, as an organization with a higher overall number of members, has preferential rights in the processes of consultation on legislation affecting rights and interest of workers. The Committee considers that both the number of members and independence from the authorities and employers' organizations are essential elements for consideration in determining the representativeness of an organization. In light of the above-noted publicly expressed support by the State authorities at the highest level for the FPB, the Committee is bound to reiterate its previous comments made in 2007, which recalled the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country before establishing the notion of representativeness. ***The Committee therefore requests the Government to ensure that the BKDP and the FPB, as members of both the NCLSI and the tripartite Council, enjoy equal rights in consultations during the preparation of legislation and to that end to take the necessary measures to amend Regulation of the Council of Ministers No. 193. The Committee requests the Government to provide information on all steps taken in this regard. The Committee further once again requests the Government to take the necessary measures in order to further strengthen the role of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which should, as its title indicates, serve as a platform where consultations on the legislation affecting rights and interests of the social partners can take place.***

Further in this respect, the Committee notes the Government's indication that the tripartite Council was set up with the advice of the ILO to consider issues related to the implementation of the recommendations of the Commission of Inquiry as well as other issues that may arise between the Government and its social partners, including the consideration of complaints received from trade unions. The Committee welcomes the Government's expressed readiness to either work to further improve the Council's function or to create another structure. The Committee also notes that the Government also expresses its concern over the issue of representation at the Council and the willingness of the parties to accept the decisions that will be made within this tripartite body. The Government indicates, in particular, that in its experience, representatives of the BKDP are not prepared to support Council's decisions that differ from the BKDP predetermined position or declare that they do not have the necessary authority to adopt a position of the Council. The Government indicates that it would like to count on the advice of the Office in this respect once the Council resumes its work, which has been temporarily suspended due to the epidemiological situation caused by the widespread of COVID-19. ***Taking all the above into account, the Committee expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.***

The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. The Committee ***regrets*** to observe that the recent developments as examined above appear to indicate steps backward on some

of the previously achieved progress in implementing the Commission of Inquiry's recommendations. ***The Committee therefore urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.***

In light of the situation described, the Committee is obliged to note that there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and notes with concern that the recent developments referred to in detail above would appear to indicate a retreat on the part of the Government from its obligations under the Convention.

[The Government is asked to supply full particulars to the Conference at its 109th Session and to reply in full to the present comments in 2021.]

Document No. 179

ILC, 59th Session, 1974, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 141 (Guatemala)

International Labour Conference
59th Session 1974

Report III
(Part 4A)

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)

Volume A:

General Report and Observations concerning Particular Countries

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International Labour Office Geneva

Guatemala (ratification: 1952)

Further to its earlier observation, the Committee notes the statements made to the Conference Committee in 1973 and the information contained in the Government's latest report, to the effect that a special Labour Commission, established on a tripartite basis in September 1973, has begun its task of preparing amendments to the Labour Code.

The Committee trusts that the task of revising the legislation will be completed in the near future and that account will be taken of its earlier comments, more particularly as regards section 222 *(a)* of the Labour Code (prohibiting the re-election of trade union leaders), section 211 *(a)* and *(b)* (supervision of unions by the Government), section 226 *(a)* (dissolution of unions which have intervened in matters of electoral or party policy) and section 211 *(c)* (prohibition of the establishment of minority unions in undertakings).

As regards the point raised in its earlier observation concerning the trade union rights of workers employed directly or indirectly by the State, who are excluded from the scope of the Labour Code and the Civil Service Act, the Committee feels obliged to remind the Government that it would be desirable to adopt provisions specifically granting to such workers the rights prescribed by the Convention.

The Committee further wishes to refer to its previous comments concerning Decree No. 1786 of 1968, which, in the case of collective economic demands, prohibits recourse to strikes or to arbitration by workers in independent or semi-independent government undertakings, the economic activities of which are similar to those of private undertakings. The Committee must once again point out that this provision constitutes a serious limitation on the possibilities of action and the activities of the trade unions in question. It would remind the Government that the Committee on Freedom of Association has indicated that the prohibition of strikes might be permissible in strictly essential services, the interruption of which would be harmful to the public interest. In such a case, it is important that adequate guarantees are given to the workers concerned so that their interests will be safeguarded by appropriate conciliation and arbitration procedures which are both impartial and rapid, and in which those concerned can take part at every stage. The Committee trusts that these considerations will be borne in mind when the legislation is being revised.

With regard to its earlier comments concerning section 63 of the Civil Service Act, which permits public officials freely to form associations to defend their professional interests, but which is not governed by any regulations for its application, the Committee notes that the National Civil Service Office has been consulted. It would again express the hope that the Government will, in the very near future, take the necessary steps to implement fully the freedom of association of public officials in accordance with the provisions of the Convention.

Finally, the Committee feels obliged once again to ask the Government to state whether Decree No. 31-71, which governed trade union activities during the state of emergency, has been repealed.[1]

Honduras (ratification: 1956)

The Committee notes the Government's report, which arrived too late to be examined in 1973, and the statement made by a Government representative to the

[1] The Government is asked to supply full particulars to the Conference at its 59th Session.

Document No. 180

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 99 (United Republic of Cameroon)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

United Republic of Cameroon (ratification: 1962)

With reference to its earlier direct requests, the Committee notes the information supplied by the Government in its report.

1. The Committee has made comments on section 4, subsection 2, of Order No. 24/MTLS/DEGPE of 27 May 1969, which excludes the possibility of more than one trade union for a given branch of activity in a given central organisation. The Committee has considered that this provision constitutes a restriction conflicting with Article 2 of the Convention.

The Government offers nothing new on this point. The Committee therefore requests it to provide information on any development on this matter.

2. The Committee has pointed out that strikes may be prohibited by the administrative authorities in services and undertakings considered to come under a vital sector of economic, social or cultural activity (section 165(3) of the Labour Code and section 2 of Decree No. 74/969 of 3 December 1974). The Committee notes the statement of the Government that the notion of the "undertaking considered particularly important for the economic and social development of the country" (section 2 of the Decree) is to be understood in a rather wide way because, as Cameroon is a developing country, the normal operation of most of its undertakings is indispensable to its economic and social survival.

The Committee appreciates the explanations of the Government but it considers that the prohibition of strikes in sectors so broadly defined places a clear restriction on the possibilities of trade unions to further and defend the interests of their members (Article 10 of the Convention) and on the right of trade unions to organise their activities (Article 3).

The Committee requests the Government to take the appropriate measures in this matter.

Document No. 181

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 103-104 (Dominican Republic)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

Dominican Republic (ratification: 1956)

The Committee takes note of the report of the Government. In particular, it notes that the Secretary of State for Labour has prepared various advance drafts of resolutions to repeal Resolution No. 15/64 (which requires a minimum number of organisations for the formation of a federation or confederation) and Resolution No. 13/74 (concerning the presence of an inspector from the Department of Labour at certain trade union meetings), and also an advance draft to bring all agricultural workers within the scope of the Labour Code, since, under the present section 265, the Labour Code does not apply to agricultural, agro-industrial, stock-raising or forestry undertakings that continuously and permanently employ no more than ten workers.

The Committee has pointed out that the Labour Code authorises strikes only within very narrow limits (sections 373, 374 and 377 and the provisions concerning the arbitration procedure). In its report the Government again expresses its intention of revising the legislation on this point.

Concerning the right to strike, the Committee also observes that section 370 of the Labour Code prohibits strikes in "public services of permanent utility" and that section 371 lists some of these services, extending the appellation to similar services. The Committee considers that the prohibition of strikes is admissible only in essential services in the strict sense, namely those whose interruption might endanger the existence or well-being of the whole or part of the population. Some of the services mentioned in section 371, however, do not seem to belong to the class of essential services strictly speaking. The Committee therefore invites the Government to re-examine the list in question with a view to limiting it to services which are really essential.

The Committee notes that the National Administration and Personnel Office (ONAP) is studying the new conditions of employment for the public service and that the observations of the Committee concerning civil servants and other workers in the service of the public authorities have been transmitted to it. With reference to the legislation in force, the Committee has already made the following observations: civil servants and other workers employed by the public authorities are, with some exceptions, excluded from the labour legislation (section 3 of the Labour Code and Act No. 2059 of 19 July 1949) and are therefore deprived of the guarantees provided for concerning freedom of association. Furthermore, Act No. 56 of 24 November 1965 prevents all trade union propaganda and proselytism within public and municipal administrations or autonomous institutions of the State. Finally, although public servants have the right of association under Act No. 520 (regarding non-profit-making associations), this Act contains provisions whose application could be contrary to the Convention (section 13, for example, refers to the dissolution of an association by the executive authority).

The Committee trusts that the resolutions repealing Resolutions No. 15/64 and No. 13/74 will be adopted shortly and also the necessary provisions to amend the legislation in accordance with its comments. The Committee asks the Government to inform it of any change in this connection.

Document No. 182

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 110 (Jamaica)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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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

Jamaica (ratification: 1962)

Referring to its previous comments, the Committee notes the information communicated by the Government in its last report that the provisions of the Labour Relations and Industrial Disputes Act are under review. The Committee hopes that the proposed re-examination of these provisions will take into account the Committee's previous comments concerning the list of essential services which is too wide in scope to be considered compatible with the Convention, as it permits strikes to be stopped in a wide range of activities, such as the banking services, transport, loading and unloading of ships, oil refining, etc. The Committee recalls that the list of essential services should be limited to those services whose interruption might endanger the existence or well-being of the whole or part of the population.

The Committee has already referred to the Labour Relations and Industrial Disputes Act, 1978, as amended, which grants the Minister the right, at his own initiative, to refer to the Tribunal an industrial dispute for compulsory arbitration to "safeguard the national interest" (section 15(iii)). The Government indicates that this procedure is resorted to within the framework of the restrictions imposed by the Pay Guidelines of 1978, which in the Committee's view, appears tantamount to a system of compulsory arbitration. Such a procedure should be confined to essential services only in the strict sense of the term. The Committee therefore requests the Government to re-examine its legislation with a view to bringing it into conformity with the Convention and to provide any information on steps taken to ensure its application.

Document No. 183

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 111-112 (Liberia)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

(Articles 19, 22 and 35 of the Constitution)

General Report
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International Labour Office Geneva

Liberia (ratification: 1962)

With reference to its previous observations, the Committee takes note of the statements made by the Government representative to the Conference Committee in 1980 and of the information provided by the Government in its last report.

Right to organise of state employees. The Committee has already noted that the national legislation does not recognise the right to organise of state employees. It has also noted that the draft Labour Bill that has been under preparation for several years guarantees this right to the employees of public undertakings but excludes the employees of the Government (section 1(1)(h) and section 1(2)).

A Government representative at the Conference Committee stated in this connection that under Convention No. 98 it was possible to exclude

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public servants engaged in the administration of the State from the rights and guarantees provided for by the Convention in respect of collective bargaining and that Convention No. 87 should be read in conjunction with Convention No. 98. The Committee is bound to point out that Convention No. 87 provides expressly that all workers without distinction whatsoever (including employees of the State) shall have the right to establish organisations for furthering and defending the interests of their members. The legislation should therefore recognise the right to organise of all state employees.

Supervision of trade union elections by the Labour Practices Review Board. The Committee observes that the Bill no longer contains restrictive provisions in this field and that it thus ensures fuller application of the Convention on this point.

Right of agricultural workers to organise jointly with industrial workers. The Committee has already noted that section 4601-A of the Labour Practices Act prohibits an industrial labour organisation from exercising any privilege or function for agricultural workers. It has pointed out that this restriction could bring about an impediment to the development of trade union organisations among agricultural workers, since it prohibits both the joint membership by agricultural and industrial workers in the same union and the joint membership by industrial and agricultural workers' unions of the same national trade union centre. The Committee notes with interest from the statement of a Government representative to the Conference that trade unions may organise in all sectors, including the agricultural sector. The Committee nevertheless hopes that the proposed Bill will explicitly repeal section 4601-A.

Abolition of the right to strike. The Committee takes note of Decree No. 12 of 30 June 1980 abolishing strikes and declaring that all labour disputes shall be handled exclusively by the Minister of Labour, Youth and Sports. The Committee points out that a prohibition of strikes in all the economic activities of the country constitutes a considerable limitation of the possibilities of action of trade union organisations and that such a limitation is not compatible with the principles of freedom of association generally admitted. The Committee asks the Government to consider taking measures to bring the legislation into conformity with the Convention.

The Committee also hopes that the Bill, which has been under study for several years, will take account of its comments and will be adopted in the near future.[1]

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[1] The Government is asked to supply full particulars to the Conference at its 67th Session and to report in detail for the period ending 30 June 1981.

Document No. 184

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 119-121 (Philippines)

International Labour Conference
67th Session 1981

Report III
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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

Philippines (ratification: 1953)

The Committee has taken note of the Government's detailed replies to the Committee's observation in reports received in June 1979 and October 1980.

1. It notes with satisfaction the promulgation of Act No. 386, of 1 May 1980, extending the right to organise for purposes of collective bargaining to persons employed in non-profit, religious, charitable, medical, or educational institutions. In addition, the Committee notes with interest that under the same legislation ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labour organisations for the purpose of enhancing and defending their interests and for their mutual aid and protection (section 244).

2. In its previous observation, the Committee had expressed the view that the legal provisions in force concerning the right to strike (Presidential Decree No. 823, amended by Letter of Instruction 368, Presidential Decree No. 849, section 264 of the Code, etc.) make it possible to submit any conflict to compulsory arbitration and could be so applied in practice as to result in a general abolition of the right to strike, which would considerably restrict the right of unions to organise their activities (Article 3 of the Convention). The Committee notes the Government's reply according to which a notice of strike or an actual strike is only referred to compulsory arbitration in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights to freedom of others. It further notes from statistics provided by the Government that, in 1979, out of 265 strike notices filed and 39 actual strikes, only 33 and 5 cases, respectively, were certified for compulsory arbitration. The Committee would be grateful if the Government would continue to provide statistics of this kind in its future reports.

3. The Committee had further noted that the industries which are regarded by the Government as vital and in which strikes are therefore prohibited are defined very broadly by the provisions in force given that this definition covers most of the economic activities. The Committee had considered that the prohibition of strikes should be confined to services that are essential in the strict sense of the term.

The Committee recalls in this regard that the Government, in its report for the period ending 30 June 1978, had indicated that the list of vital industries contained in Letter of Instruction No. 368 of 1976 was to be reviewed with a view to limiting the list and that a tripartite conference was to be convened to consider the matter. The Committee notes that the Government's last report contains no

information on this matter. It hopes that the review in question will soon be completed and will result in a revised list restricted to essential services in the strict sense of the term, that is, services whose interruption would endanger the existence or the well-being of the whole or part of the population.

4. In its earlier comments the Committee had considered that section 234(c) of the Labor Code, as amended, under which a union can be registered only if it includes at least 50 per cent of the workers of a bargaining unit, section 237(a) which stipulates that if a federation is to be registered, it must comprise at least ten unions of the same region and the same industry, and section 238 which precludes more than one federation or national union per any one industry in any area or region were incompatible with Articles 2 and 6 of the Convention which provide that workers shall have the right to establish organisations of their own choosing, on the sole condition that they conform to the rules of the organisation concerned, with Article 7 which provides that the acquisition of legal personality by these organisations shall not be made subject to conditions of such a character as to restrict the application of the principles of the Convention, and with Article 5 which provides that workers' and employers' organisations shall have the right to establish and join federations and confederations. Whilst noting from the Government's last report that, since 1975, 627 new unions have been registered and that there is practically no record of any complaint citing these requirements as restrictive, the Committee nevertheless wishes to recall the Government's earlier statement that the above-mentioned requirements only constituted transitory measures. The Committee accordingly hopes that measures will be taken at an early date to revise the provisions in question so as to ensure conformity with the above-mentioned Articles of the Convention.

5. The Committee notes that section 270 of the Labor Code precludes all aliens from engaging directly or indirectly in any form of trade union activity. It hopes that the Government will review the provision in question, in the light of Article 2 of the Convention which provides for the right of workers and employers, without distinction whatsoever, to establish and join organisations of their own choosing.

6. The Committee further notes that, under section 271 of the Labor Code, no foreign organisation or entity may give any donations, grants or other forms of assistance to any labour organisation or group of workers in the country without prior permission by the Secretary of Labor. The Committee considers a provision of this nature to be such as to deprive the workers of an important benefit that may flow from their right to affiliate with international organisations of workers, as laid down in Article 5 of the Convention. It accordingly requests the Government to reconsider the need for a provision of this kind.

7. Further to its previous comments on certain provisions of the Labor Code relating to administrative decisions concerning the registration of a trade union (sections 231, 235, 239 and 240), and the removal from office of a trade union officer (section 242), the Committee has noted from the report of the Government that an appeal lodged with the Supreme Court against an administrative decision refusing or cancelling registration or removing a trade union officer from office has a suspensive effect. Since such a practice is already established, the Committee expresses the hope that the Government will adopt specific provisions regarding the right of appeal of both cancelled trade unions, as well as of dismissed trade union officers. The Committee would also ask the Government to indicate whether, during the reporting period, any such appeals had been resolved through decisions of the Supreme Court.

8. With regard to the powers of inquiry conferred on the Secretary of Labor in respect of the financial management of trade unions (section 275 of the Code), the Committee notes that the policy of the Ministry of Labor was to limit itself to inquiry during the presentation of the complaints. However, the Committee would ask the Government to consider, during a next revision of the legislation, modifying the texts in question so as to limit inquiries of the Secretary of Labor to exceptional cases, for instance to cases of presumed irregularity, or to complaints submitted by members of a trade union.

9. The Committee has noted the Government's reply to its earlier comments concerning the right to organise of managerial staff and the status of security staff.[1]

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[1] The Government is asked to report in detail for the period ending 30 June 1981.

Document No. 185

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 127-128 (Cameroon)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

Third Item on the Agenda:
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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

Cameroon (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee takes note of the information supplied by the Government to the Conference Committee in 1981 and that contained in the latest report. The Government states that section 4(2) of Order No. 24/MTLS/DEGRE of 1969, which excludes the possibility of more than one trade union for the same branch of activity in a given central organisation, is due to a concern for the rational organisation of trade unions and does not in any manner prejudice the furthering and defending of the interests of members. The Committee points out that a provision of this kind restricts the right of workers, without distinction whatsoever, to establish and join organisations of their own choosing (Article 2 of the Convention).
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> The Committee further notes the Government's statement that it is impossible to establish an exhaustive list of administrations, services or sectors of the economy in which the exercise of the right to strike may be prohibited by the administrative authorities under section 165(3) of the Labour

Code and section 2 of Decree No. 74/969 of 1974, that is to say the services and undertakings considered to come within a vital sector of economic, social or cultural activity. The Committee points out that in certain sectors, such as the public service and essential services, a prohibition may be applied, subject to the provision of adequate guarantees to safeguard the interests of the workers (appropriate, impartial and rapid procedures of conciliation and arbitration) and that the notion of essential services must be restricted to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee therefore considers that a prohibition of strikes in sectors that are so broadly defined severely limits the possibilities open to the trade unions of furthering and defending the interests of their members (Article 10) and their right to organise their activities (Article 3).

The Committee would be grateful if the Government would introduce appropriate amendments in respect of the above-mentioned points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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Document No. 186

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 152-155 (Guatemala)

International Labour Conference
71st Session 1985

Report III
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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

Guatemala (ratification: 1952)

The Committee takes note of the information supplied by a Government representative to the Conference Committee in June 1984, of the discussion that followed on the application of this Convention, of the information contained in the latest report of the Government and of the legislation in force in Guatemala.

The Committee notes in particular that Legislative Decree No. 88-83 of 8 August 1983 has abolished the state of alert and that the Government has communicated a draft legislative decree containing provisions intended to give fuller effect to Convention No. 87.

The Committee considers, however, that important discrepancies between the national legislation and the Convention still exist on the following points:

Right to organise

- the absence of regulations governing the right to associate granted to public servants by section 63 of Legislative Decree No. 1748 of 10 May 1968 on the civil service;
- the prohibition on workers in the employment of the State from establishing trade unions or associations (section 57 of Legislative Decree No. 24-82 of 27 April 1982 to promulgate the Fundamental Statute of Government and repeal of the 1965 Constitution (section 109)).

The Committee takes note of the draft legislative decree sent by the Government and observes that section 7(2) of this draft provides that the right of association granted by section 63 of Decree No. 1748 shall be exercised in accordance with the provisions laid down in the Labour Code.

The Committee notes the contradiction existing between section 63 of Legislative Decree No. 1748 of 1968 and section 57 of Legislative Decree No. 24-82 of 1982 and recalls that Article 2 of the Convention grants the right of association to all workers without distinction whatsoever, including workers in the employment of the State. It therefore trusts that section 57 of the Fundamental Statute of Government (prohibition on workers in the employment of the State from establishing trade unions or associations) will be repealed.

Activities of trade unions

- the strict supervision of the activities of the unions by the Government (section 211(a) and (b) of the Labour Code of 16 August 1961);
- the impossibility for the unions of taking part in politics (section 207 of the Labour Code);
- the dissolution of trade unions that have taken any part in matters concerning electoral or party politics (section 226(a) of the Code);
- the prohibition on all trade unions from taking part in party politics (section 51(12)(1) of Legislative Decree No. 24-82 of 1982);

- the prohibition on employees of the State and their unions from all political activities and from strikes (section 63 of the Civil Service Act of 1968).

The Committee observes that section 8 of the draft legislative decree (which provides for the amendment of section 226 of the Labour Code concerning the dissolution of trade unions that have taken part in electoral or party politics) will introduce the possibility for these unions of intervening with public bodies with a view to the cultural, economic and social advancement of the workers in accordance with their constitutions, these actions not being covered by the prohibition placed on unions from taking part in matters of electoral or party politics.

The Committee trusts that the amendment of section 226 of the Labour Code will also apply to sections 207 of the Labour Code (impossibility for trade unions of taking part in politics), 63 of the Civil Service Act (prohibition on persons in the employment of the State from taking part in political activities) and 51(12)(1) of the Fundamental Statute of Government (prohibition on trade unions from taking part in party politics).

Right to elect trade union leaders in full freedom

- the restriction to Guatemalans of the possibility of being elected to trade union office (sections 51(12)(2) of the Fundamental Statute of Government and 223(b) of the Labour Code).

The Committee points out that Article 3 of the Convention confers on workers' organisations the right to elect their representatives in full freedom. It hopes that the Government will relax section 223(b) of the Labour Code and section 51(12)(2) of the Fundamental Statute of Government (restriction to Guatemalans of the right to lead trade unions) so as to enable these organisations to exercise without hindrance the choice of their leaders and to enable foreign workers to attain trade union office, at least after a reasonable period of residence in the host country.

Right of trade unions to further and defend the interests of the workers

The Committee observes that several provisions of the Labour Code and the special laws seriously restrict the exercise of the right to strike:

- the obligation to obtain a majority of two-thirds of the workers in the undertaking or production centre (section 241(c)) and a majority of two-thirds of the members of a trade union (section 222(f) and (m)) for the calling of a strike;
- the prohibition of strikes or work stoppages placed on agricultural workers at harvest time with a few exceptions (sections 243(a) and 249);
- the prohibition of strikes or work stoppages placed on workers in undertakings or services in which the Government considers that the suspension of their work would seriously affect the national economy (sections 243(d) and 249);

- the possibility of calling the national police to ensure the execution of work in the event of an illegal strike (section 255);
- the imprisonment and trial of offenders (section 257);
- the prohibition of strikes by workers in decentralised autonomous and semi-autonomous state bodies (section 4 of the decree issued under the Civil Service Act, Decree No. 1786 of 6 September 1968), by state servants (section 63 of the Civil Service Act of 1968) and by workers in the employment of the State and in public services (sections 57 and 54 of Legislative Decree No. 24-82 of 1982).

Moreover the Committee observes that the Penal Code lays down heavy penalties for illegal strikes:

- the possibility of imposing a sentence of from one to five years' imprisonment on those who carry out acts intended to paralyse or disturb undertakings contributing to the development of the national economy, with a view to harming national production (section 390(2) of the Penal Code as amended in 1973);
- the possibility of imposing a sentence of from six months to two years' imprisonment on public employees and employees of public service undertakings who collectively abandon their duty and possibility of doubling the sentence for those who incite to the collective abandonment of work (section 430 of the Penal Code of 1973).

The Committee points out that the peaceful exercise of the right to strike is one of the basic means that must be available to the workers for furthering their occupational claims. The prohibition or restriction of its exercise is compatible with the Convention only in respect of public officials acting in their capacity as agents of the public authority or in essential services in the strict sense of the term (and not in public services in general) where the interruption of such activities due to a strike would endanger the life, personal safety or health of the whole or part of the population.

The Committee observes that section 7(3) of the draft legislative decree repeals section 4 of Decree No. 1786 of 6 September 1968, which prohibits workers in decentralised autonomous and semi-autonomous state bodies from resorting to strikes or arbitration for the settlement of their differences. Nevertheless, in view of the many discrepancies existing between the legislation and the Convention, the Committee hopes that the Government will amend its legislation to guarantee to workers the peaceful exercise of the right to strike and that suitable guarantees will be granted to protect workers in the public service and in essential services who are denied an important means of defending their occupational interests, perhaps through conciliation and arbitration procedures.

In conclusion, the Committee, while hoping that the draft decree sent by the Government will be adopted in the near future, emphasises the necessity of amending the provisions of the Labour Code, the Penal Code, the Civil Service Act and the Fundamental Statute of Government in order to remove the present restrictions and to ensure the application of the Convention. It asks the Government to keep it informed of developments in the situation on these various points.

[The Government is asked to supply full particulars to the Conference at its 71st Session and to report in detail for the period ending 30 June 1985.]

Document No. 187

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 179-182 (Philippines)

International Labour Conference
71st Session 1985

Report III
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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

Philippines (ratification: 1953)

The Committee takes note of the written and oral information communicated by the Government to the Committee of the International Labour Conference in June 1984 and of the discussion that was held in this Committee.

The Committee points out that the discrepancies existing between the national legislation and the Convention relate to the following points:

1. Right of trade unions to further and defend the interests of their members

- requirement of a two-thirds majority of union members in a bargaining unit for the calling of a strike (section 264(f) of the Labour Code as amended by Act No. 130 of 5 October 1981);
- a very broad and non-restrictive list of cases of labour disputes that may affect the national interest, in which the Government may end the disputes through compulsory arbitration accompanied by a prohibition on strikes and the possibility of dismissing trade union leaders and workers participating in an illegal strike (section 264(g) and (i) and section 265 of the Code as amended by Act No. 227);
- penalties of up to six months' imprisonment for participation in an illegal strike (section 273(a) as amended on 2 June 1982);
- immediate deportation and prohibition from returning to the Philippines except with the special permission of the President of the Philippines of any foreign worker participating in an illegal strike (section 273(b) as amended on 2 June 1982);
- a sentence of penal servitude for life for organisers or leaders of strike pickets or collective actions deemed to be meetings or demonstrations held for propaganda purposes against the Government, mere participation being punishable by imprisonment (section 146 of the Penal Code as amended by Presidential Decree No. 1834, published in the Official Gazette of 25 July 1983).

The Government admits that the legislation authorises recourse to compulsory arbitration and confers on the Minister of Labor the power to put an end to labour disputes likely to lead to strikes contrary to the national interest, but it insists that the powers of the Minister are exercised with extreme caution, after consultation with the workers' and employers' organisations and attempts at conciliation. Furthermore, the parties are entitled to appeal to the Supreme Court in the case of compulsory arbitration. Moreover, legal strikes have taken place in all the industries listed in section 264 of the Labour Code, including banks and electric industries, and solidarity strikes have affected factories in the export processing zone. According to the Government, the requirement of a majority of two-thirds for calling a strike is intended to prevent wild-cat strikes and strikes resulting from rivalry between unions or within a union. The unions have no difficulty in assembling the majority in question. Besides, peaceful strike pickets are authorised except where in violation of section 273 of the Labour Code, when a sentence of six months' imprisonment may be imposed. Proceedings instituted under section

273 preclude prosecutions for the same acts under the Revised Penal Code. This provision, moreover, is subject to the supervision provided for by section 267 of the Labour Code, which provides that no trade unionist or trade union leader shall be arrested for trade union activities unless the Minister of Labor and Employment has been consulted. In addition, the Government states that where proceedings relating to a labour dispute are instituted, by virtue of a presidential directive of 1982 addressed directly to the prosecutors and judges, before the opening of the criminal inquiry the matter is referred to the ministry for administrative action through conciliation or arbitration. The Government adds that no conviction has been pronounced on the basis of the penal aspect of the law.

The Committee takes note of this information, and in particular of the fact that, according to the Government's statement, strikes have taken place in several sectors of the economy, including those set forth in the above-mentioned list, and that there have been no convictions. It observes, however, that the Government itself recognises in its written communication that it resorted to compulsory arbitration to end strikes in 23 cases in 1982 and in 33 cases in 1983. The Committee points out that the peaceful exercise of the right to strike is one of the essential means that workers and their organisations must have for advancing their economic and social occupational claims. The restriction or prohibition of its exercise is compatible with the Convention only in respect of public servants acting in their capacity as agents of the public authority or in essential services in the strict sense of the term, where the interruption of such activities due to a strike would endanger the life, personal safety or health of the whole or part of the population. Furthermore, strikes carried out as an expression of solidarity or a gesture of protest should be admissible.

The Committee trusts that the Government will amend its legislation in order to eliminate the excessive restrictions on the peaceful exercise of the right to strike and the heavy penalties that workers are liable to suffer for having lead an illegal strike or for having taken part in picketing during an illegal strike, provided that it was not a strike called in a service the interruption of which would endanger the life, personal safety or health of the population.

2. Right of workers to establish organisations of their own choosing

- requirement that at least 30 per cent of the workers in a bargaining unit shall be members of a trade union for the union to be registered (section 344(c) of the Labour Code);
- requirement of too high a number of trade unions of the same region or branch (ten) to establish a federation or a registered national union (section 237(a);
- impossibility of registering more than one federation or national union per branch of activity in a given area or region (section 238).

The Government states that there has been no complaint on the grounds that a trade union has not been recognised because it has failed to meet the 30 per cent membership requirement and that workers

can join directly the 200 federations existing at present in the Philippines. As regards sections 237(a) and 238, the Government states that they fit the "one union, one industry" concept, endorsed by the trade union movement in 1974. It recognises, however, that this concept has been the subject of an appeal to the Supreme Court of the Philippines, and states that the Committee will receive a copy of the Court's decision as soon as it has been handed down. The Government states that all these provisions are part of the on-going review being undertaken of labour relations law and policy.

The Committee points out that the requirement of too high a percentage of workers for the establishment of a trade union and of trade unions for the establishment of a federation may constitute an obstacle to the rights of workers and their organisations to establish the trade unions and federations of their own choosing and that the possibility of registering only one federation per branch of activity for a given region establishes, at this level, a single-trade-union situation, which is contrary to Articles 2, 5 and 6 of the Convention. The Committee recognises that bargaining privileges may be granted to the most representative trade union, but it has always considered that the national legislation should not prevent workers and their organisations from associating in more than one registered union per undertaking or in more than one federation if they so wish. In this case, the minority unions or federations should be able to defend the individual interest of their members.

The Committee trusts that the Government will amend its legislation so as to guarantee to workers and their organisations the right to establish organisations of their own choosing and it asks the Government to supply a copy of the decision of the Supreme Court on the appeal against the "one union, one industry" concept as soon as it is handed down.

3. Right of workers without distinction whatsoever to join trade unions

- prohibition on the direct or indirect participation of foreigners in any form of trade union activity (section 270 of the Labour Code).

The Government indicates that the prohibition in question would apply only to foreigners without a work permit. Foreigners who have obtained a work permit would have the right to organise and the right to bargain collectively.

The Committee takes note of this explanation, but in view of the express prohibition contained in section 270 of the Labour Code, it urges the Government to amend its legislation on this important point in order to guarantee the right to organise to foreigners working in the Philippines by means of a specific provision in the legislation.

4. Powers of supervision of the authorities over the management of trade unions

- powers of inquiry conferred on the Minister of Labor in respect of the financial management of trade unions (section 275 of the Labour Code).

The Government maintains that the 75 recent audits of union accounts by the Bureau of Labor Relations have been carried out only on the application or complaint of trade unionists and that the amendment of this provision is under study.

In these circumstances, the Committee hopes that the Government will be able to amend its legislation on this point so as to guarantee that administrative supervision of the management of trade unions takes place only on the complaint of members and that it will be open to re-examination by the competent judicial authority.

The Committee trusts that the Government will adopt the necessary measures to bring the whole of its legislation into conformity with the Convention in the near future and asks the Government to report any progress made in this connection.

Document No. 188

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 182-184 (Poland)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Poland (ratification: 1957)

The Committee takes note of the information supplied by the Government in its reports received in May and October 1983, April and October 1984 and March 1985. It has also taken note of the developments that have occurred in Poland since its previous observation in 1983, which have been widely referred to in the report of the Commission especially mandated to examine the complaint on the observance by Poland of Conventions Nos. 87 and 98. The Committee notes, in particular, that martial law has been lifted and that an Amnesty Act was adopted in July 1983 which, according to the Government, have contributed to the creation of a climate propitious to social peace and national understanding.

In the light of all the information in its possession, the Committee observes that several important provisions of the trade union legislation (Trade Union Act, Act respecting farmers' socio-occupational organisations, Act on the representation of non-manual workers employed by the State, all three adopted in October 1982) are not compatible with the rights recognised by the Convention. The following are the points in question:

Only one trade union organisation may exist in an undertaking until the Council of State has considered the application of the Trade Union Act, three years after its coming into force, that is to say in October 1985 (section 53(4) of the Trade Union Act, as amended by the Act of 21 July 1983). Furthermore, in the agricultural sector, the legislation imposes a single national federation of farmers (section 33(2) of the Act respecting farmers' socio-occupational organisations) and, as to the public service, the Act on the representation of non-manual workers employed by the State provides that these shall have the right to join the union of workers in the administration of the State (section 40). Similarly, workers employed in military units and in state undertakings within the jurisdiction of the Ministries of National Defence and the Interior can only establish trade unions as laid down in the legislation (section 14(1) of the Trade Union Act). The Government states in its reports that the Trade Union Act does not impose any restriction on the establishment of trade union structures, that all workers may join the new trade unions irrespective of their former trade union membership, and that

the National Federation of Farmers is not of a monopolistic nature since many farmers' organisations do not belong to it. The Committee takes note of these statements, but considers that the above-mentioned provisions establish to a varying extent single-trade-union systems and are thus incompatible with Article 2 of the Convention, under which workers have the right to establish organisations of their own choosing.

Under section 12 of the Trade Union Act, the right to organise is not recognised to officials of prison establishments. According to the Government, these officials constitute a militarised formation with a hierarchical and disciplinary system similar to that of the army. The Committee however maintains the opinion it expressed in its General Survey of 1983, namely that the functions exercised by this category of public servants should not normally justify their exclusion from the right to organise.

The Trade Union Act lays down a number of conditions for the calling of a strike, including the acceptance of the decision by the majority of the workers concerned and the prior agreement of the higher trade union body (section 38(1)). It also establishes a very extensive list of essential services in which strikes are prohibited (section 40). Furthermore, under section 37(1) the purpose of the strike shall be to defend the social and economic interests of a clearly defined group of workers. According to the Government, the provisions on the calling of strikes constitute a guarantee to ensure that a decision is taken democratically and that it expresses the will of the workers. The Government also states that the list of essential services will be revised in the light of the application of the Act in practice. With regard to section 37(1) of the Act, the Government states that strikes for political purposes extending beyond the framework of the undertaking, occupation or industrial sector are not authorised, but that other forms of protest are allowed, provided that they violate neither legal order nor the principle of social coexistence. The Committee takes note of these statements but is bound to point out that the imposition of conditions for the calling of strikes that are too severe may seriously jeopardise the possibility open to workers of organising such movements and that the prohibition of strikes should be confined to essential services in the strict sense of the term, that is to say those whose interruption would endanger the life, personal safety or health of the whole or part of the population. It also points out, as it has already done in its General Survey of 1983, that trade union organisations should have the possibility of resorting to protest strikes, including those called to criticise the economic and social policy of governments. In the opinion of the Committee, the above-mentioned provisions thus constitute obstacles to the right of trade unions to organise their activities (Article 3) with a view to furthering and defending the interests of their members (Article 10).

The Committee expresses the firm hope that the Government will take the necessary measures to bring its legislation, a review of which is planned for October 1985, into conformity with the Convention.

Furthermore, the Committee asks the Government to supply information on the following provisions:

With regard to the transfer of the assets of the former organisations dissolved by the Trade Union Act, the Committee notes that the assets of the trade union organisations have been transferred, as appropriate, to the new works unions or the newly set up federations. The process of transfer is still under way. In this regard the Committee is addressing a direct request to the Government.

The Committee again asks the Government to state whether the expression "unions and inter-union organisations" appearing in section 20 of the Trade Union Act covers federations set up on a geographical basis.

Lastly, the Committee asks the Government to provide information on the practical application of section 47 of the Trade Union Act, under which any person who leads a strike organised in violation of the provisions of the Act is liable to a penalty of up to one year's imprisonment. In this respect, the Committee would recall the opinion it already expressed in its General Survey of 1983 that penalties of imprisonment should not be imposed in the case of peaceful strikes. It would like in particular to have information on any convictions that may have been passed or that may be passed under this provision.

The Committee is addressing a direct request to the Government on other points.

[The Government is asked to supply full particulars to the Conference at its 71st Session and to report in detail for the period ending 30 June 1985.]

Document No. 189

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 198-200 (Uruguay)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Uruguay (ratification: 1954)

The Committee takes note of the Government's statements to the Conference Committee in 1983 as well as the written information received in August and October 1984.

1. In its previous comments, the Committee has called attention to several provisions in the national legislation that are not compatible with the Convention:

- the need to belong to the occupation as worker or employer for election to office in an occupational association (sections 4, 5, 8 and 9 of Act No. 15137 respecting occupational associations dated 12 May 1981 and sections 38, 39 and 46(c) of the regulations issued under it, Decree No. 513/981 of 9 October 1981);
- the need, in certain cases, to have been a member of the association in question for two years (sections 5(c) and 9(a) of the Act and 39(c) and 47 of the Decree);
- the need to have held no executive office in an organisation declared unlawful and never to have been disqualified from election to office under the Constitution (sections 39(d) and 46(e) of the Decree);
- the requirement that an interval elapse before re-election to trade union office (section 19 of the Decree);
- the regulation of membership of second-level and third-level occupational associations, and international organisations, and rules governing the election and composition of the executives of

second-level and third-level associations, all matters that should have been regulated under the constitutions of the associations rather than under the Decree (sections 22 to 27 of the Decree);
- the excessive length of the periods allowed the Ministry of Labour and Social Security for the registration of occupational associations (sections 64 and 65 of Decree No. 640/973 of 8 August 1973).

The Committee, noting that the Government confines itself in its report to repeating its previous statements to the effect that the provisions of the national legislation the Committee has been commenting on are not contrary to Convention No. 87, is bound to urge the Government to reconsider its position and asks it to indicate in its next report the measures taken or under consideration to bring its legislation into full conformity with the Convention on these points.

2. The Committee has also examined the conclusions of the Committee on Freedom of Association reached at its November 1984 meeting in Cases Nos. 1207 and 1209 (236th Report) relating to complaints concerning the obligation to submit the agendas of constituent meetings of trade union organisations to the authorities for approval, the delay in holding elections for permanent officers in associations and the disqualification of the officers of dissolved associations. The Committee observes that the Committee on Freedom of Association considered that the delay in holding the elections of the permanent officials of organisations was due to the fact that the Government itself convened the trade union elections by ministerial decision after inspecting the agenda of the constituent assemblies. The Committee would point out that the non-intervention by governments in the organisation and running of trade union meetings constitutes an essential element of trade union rights. It trusts that the Government will therefore change this practice, which constitutes interference in the holding of trade union elections, and asks the Government to state in its next report whether all the elections to permanent office in occupational associations at present administered by temporary officers have actually taken place and whether the measures disqualifying the officers of dissolved organisations have been lifted.

3. Lastly, the Committee has examined the recent provisions on the right to strike (Act No. 15530 of 27 March 1984, the Decree issued under it, No. 245 of 15 June 1984, Fundamental Law No. 3 of 13 April 1984 and Decree No. 254 of 25 June 1984).

The Committee raises several provisions which affect the principles of freedom of association:
- the power of the Minister of Labour and Social Security to submit collective disputes to compulsory and binding arbitration for reasons of general interest (section 10 of Act No. 15530 and section 21 of the Decree), whereas resort to binding arbitration should only be used where both parties request it or should be confined to cases of disputes in essential services in the strict sense of the term, that is to say those the interruption of which would endanger the life, personal safety or health of the whole or part of the population;

- recognition of the right to strike to workers only in the private sector (section 1 of Act No. 15530 and of the Decree) and refusal of the right to strike of all public servants (section 1 of Act No. 3 of 13 April 1984), whereas exclusions from the right to strike should apply only to public servants acting in their capacity as agents of the public authority and to workers in essential services in the strict sense of the term. Other workers in the public sector should be able to strike;
- restriction of the right to strike to exclusively occupational purposes (sections 1, 2 and 16 of the Act and sections 2 and 30 of the Decree) and prohibition of the temporary stoppage of activities in the private and public sectors (sections 1 and 2 of Decree No. 254/984 of 25 June 1984), whereas workers should be able to strike over all matters concerning the defence of their occupational interests both for economic and social reasons and at the workplace. Accordingly, for example, where workers have been dismissed or trade unionists imprisoned, strikes called as an expression of solidarity or a means of protest should be permissible;
- restrictions on the manner of holding a strike: sit-in strike, deliberate reduction of output, etc. (section 19 of the Act and section 33 of the Decree), whereas such restrictions could be justified only if the strike were to lose its peaceful character;
- establishment of a minimum service (section 16 of the Act). The Committee recalls that workers' organisations should participate with the employers or the public authorities in the determination of minimum services;
- requirement of an absolute majority of the workers in the undertaking or undertakings concerned for the calling of a strike, the vote being summoned and supervised by the authorities (sections 8 and 14 of the Act and sections 12, 13 and 28 of the Decree), whereas trade union organisations should be able to call strikes in accordance with the voting criteria laid down in their own by-laws or when a simple majority of voters so decide;
- the declaration that a strike is illegal pronounced by the executive (section 17 of the Act and section 31 of the Decree) and challenging of the strike vote before the administrative authorities (section 18 of the Decree), whereas any presumed illegality of strike action should not be subject to administrative supervision. Any challenge to the result of a strike vote should only be heard by the judicial authorities.

The Committee hopes that the Government will re-examine all these provisions and take the necessary measures to modify the excessive restrictions on the exercise of the right to strike so as to bring its legislation into conformity with the Convention.

Document No. 190

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 225-226 (Norway)

International Labour Conference
79th Session 1992

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

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Norway (ratification: 1949)

The Committee notes the information contained in the Government's report and the comments of the Norwegian Trade Union Federation of Oil Workers (OFS) of 10 May 1991. It also notes the conclusions of the

Committee on Freedom of Association in Case No. 1576 (279th Report of the Committee on Freedom of Association, adopted by the Governing Body at its 251st Session, November 1991) concerning the restrictions imposed on the right to strike by legislative means in the oil industry through the imposition of compulsory arbitration.

While noting the Government's statement in its report that the interference by the authorities in the right to strike in order to restrict or prohibit it is compatible with the Convention in the event that the strike is liable to cause considerable economic losses with a harmful effect on society or third parties and that the oil industry should, in this respect, be considered to be an essential service, the Committee recalls that the principle whereby the right to strike may be limited or prohibited in essential services would become meaningless if the legislation defined essential services too broadly. The Committee has already indicated that the prohibition upon the right to strike should be confined to services whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in a situation of acute national crisis. Moreover, the Committee has considered it compatible with the Convention to maintain a minimum service, provided that it is restricted to operations that are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population and provided that workers' organisations are, if they wish, able to participate in defining the minimum service along with the employers and public authorities.

The Committee of Experts, in the same way as the Committee on Freedom of Association, expresses doubts as to the compelling need to have had recourse to compulsory arbitration in the dispute in the oil industry and encourages the parties concerned, with the participation of the Government if necessary, to reach an agreement on the minimum services that would be strictly necessary in order not to compromise the life, personal safety or health of the whole or part of the population during a labour dispute in the oil sector. As did the Committee on Freedom of Association, the Committee of Experts recommends that all the parties to the dispute give priority to collective bargaining as the means of determining employment conditions.

Noting that, according to the information contained in the report of the Committee on Freedom of Association, the Government plans to examine possible modifications to the existing system, the Committee trusts that the Government will endeavour to take the necessary measures to bring national law and practice into conformity with the principles of the Convention and requests it to indicate any progress achieved in this respect in its next report.

Document No. 191

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 226-230 (Pakistan)

International Labour Conference
79th Session 1992

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

Pakistan (ratification: 1951)

The Committee notes the Government's report for the period 30 June 1990 and the discussion which took place in the Conference Committee in 1991. It also notes the conclusions reached by the Committee on Freedom of Association in Case No. 1534 (278th Report, paragraphs 451 to 472, and 281st Report, paragraphs 160 to 173,

approved in May-June 1991 and February 1992, respectively) and the Government's reply to the comments previously made by the Pakistan National Federation of Trade Unions (PNFTU), as well as the comments made by the All Union Pakistan Trade Union Council dated 25 June 1991 and the Government's observation thereon supplied in letters dated 5 October 1991 and 29 January 1992.

The Committee's previous observations referred to inconsistencies between the national legislation and various Articles of the Convention on the following points:

- ban on trade union membership and activities for employees of the Pakistan International Airlines Corporation (PIAC) (section 10 of the PIAC Act, 1956);
- denial of the rights guaranteed by the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980, and section 4 of the Export Processing Zone (Control of Employment) Rules, 1982);
- exclusion of public servants of grade 16 and above from the scope of the Industrial Relations Ordinance, 1969 (section 2(viii)(special provision));
- restrictions on recourse to strikes (sections 32(2) and 33(1) of the Ordinance);
- prohibition on minority unions from representing their members in relation to individual grievances;
- comments from the PNFTU alleging the promotion of union activists as an anti-union tactic.

The Committee also notes that, according to the All Union Pakistan Trade Union Council, employees in private and public sector hospitals are denied the right to form trade unions.

1. The Committee notes with interest that section 10 of the PIAC Act has been amended to repeal the ban on trade union membership and activities by airlines employees. It notes, however, from the Conference discussions, that a similar ban applies to employees of the Pakistan Telecommunications Corporation and that, according to the Government representative, draft legislation restoring trade union rights there was to have been passed by the National Assembly at the end of 1991. The Committee accordingly requests the Government to confirm that the draft was passed and to supply a copy of the amending legislation.

2. The Government states that export processing zones were set up to boost industrialisation and to enable workers and employers to work together in an environment of industrial peace, and since this has been largely achieved, the 1980 Act has not been amended; however, it gives the assurance that all unreasonable restrictions on the right to organise will be removed. The Committee welcomes this development. It nevertheless reminds the Government that these restrictions are not consistent with the requirements of the Convention. It asks the Government to transmit any legislation amending the Act and Rules in question.

3. As for the granting of trade union rights to senior civil servants, the Government states that since they are engaged in the administration of the State they are not covered by the Industrial Relations Ordinance; there are, however, 25 associations of civil servants which, it claims, can act in a wide range of ways for the

defence of their members' interests. The Committee notes from section 28 of the Sindh Government Servants (Conduct) Rules, amended in 1990 and mentioned in a previous direct request, that associations of public servants are subject to serious restrictions incompatible with Articles 2 and 3 of the Convention: membership confined to civil servants serving in one functional unit (see the 1983 General Survey on Freedom of Association and Collective Bargaining, paragraph 126); requirement that all office-bearers be members of that association (op. cit., paragraph 158); bans on engaging in political activities, limiting activities to matters of personal interest of their members, ban on involvement in the individual cases of their members, ban on issuing periodical publications or publishing representations on behalf of their members without government sanction and the requirement of prior approval of the approving authority (the employer) of their by-laws (see, respectively, op. cit., paragraphs 195, 68, 152).

Noting that the Government has not replied to its query whether similar restrictions exist in other provinces, the Committee cannot but repeat that senior and provincial civil servants - like all other workers - should have the right to form and join organisations of their own choosing, organisations which should be free to act in the defence of the occupational interests of their members. If it is felt that joint membership with other types of government servants is undesirable due to the special characteristics or functions of a particular group or to avoid conflicts of interest, provisions so forbidding joint membership should ensure that such workers have the right to form their own organisations and that the categories of concerned staff are not so broadly defined that the organisations of other workers in the government services are weakened by depriving them of a substantial proportion of potential membership (op. cit., paragraph 131). The Committee accordingly asks the Government to inform it of measures taken or envisaged to bring the legislation into conformity with the Convention on this point.

4. Regarding the schedule of eight public utility services in which strikes are banned, the Government is of the view that if any such service is disrupted this is likely to endanger the health and safety of the society or part of the population; it adds that the list is already a bare minimum and if any service was deleted thus allowing strikes or lockouts, this would certainly affect the interest of the community as a whole. The Committee agrees that most of the services listed in the schedule accord with its definition of essential services where strikes may be restricted or even prohibited, namely services where an interruption would endanger the life, personal safety or health of the whole or part of the population (op. cit., paragraph 214); it must repeat, however, that it has consistently considered that oil production and distribution, the post and telegraph service, railways and airways (except for air traffic controllers), and ports are not within this definition and accordingly again asks the Government to amend the schedule.

5. As regards the rights of representation of minority unions, the Government repeats that if a minority union is permitted to dialogue with the employers in the presence of the elected workers' representatives (the bargaining agent) this would undermine the very

existence of the elected representatives; it adds that workers themselves have been agitating against any such practice publicly and during the tripartite discussions on the issue, feeling that workers' rights are infringed when employers can establish contact with minority unelected unions. The Committee would emphasise that the only rights of minority unions that it is advocating are those of representing their own members in individual grievances, not an undermining of the bargaining parties; by virtue of the right of workers to join organisations of their own choosing, as set forth in Article 2 of the Convention, the members of unions should have the right as regards their individual claims, even if their union is a minority one, to be represented by their own organisation (op. cit., paragraph 141). The Committee therefore again asks the Government to consider amending its legislation so as to enable minority unions to represent their members in these specific circumstances.

6. The Committee notes that the Committee on Freedom of Association, in Case No. 1534, examined allegations from the PNFTU and other union organisations identical to the comments made by the PNFTU in the context of the present Convention, namely that a number of foreign-owned companies in the bank and finance sector were giving false promotions to their employees so as to remove them from the category of "workman" in section 2 of the Industrial Relations Ordinance and place them in the "employer" category, thus denying their right to belong to the same union as workers. The Committee on Freedom of Association found that these staff movements were clearly designed to undermine the membership of workers' unions, some of which had been severely affected in practice and called on the Government to take measures to strengthen the application of the protective provisions in the Ordinance so as to prevent employers from weakening workers' unions through artificial promotions. The present Committee notes the Government's explanations that section 15(i) provides protection against anti-union acts and that, if these were in effect false promotions since the employees received higher wages but not the corresponding change of task to a supervisory role, the employees could use the unfair labour practice provisions of section 22(A)(8)(g) and eventually go to the labour courts for redress. Noting that the Government has not yet supplied the statistics requested in its previous observation on the "employers'" organisations which might be formed by the promoted workers, the Committee considers that the Government should strengthen the Ordinance as suggested above, and asks it to inform it of any measures taken or envisaged in this connection.

7. Regarding the denial of the right to form trade unions and to strike of employees in private and public sector hospitals, the Committee notes the Government's statement that it is conscious of the need of constant care and service to the sick, injured and physically handicapped population so that it does not consider it appropriate to allow the members of the medical profession to form trade unions and to go on strike though these rights are available to other workers under the Industrial Relations Ordinance, 1969. The Committee, while accepting that private and public sector hospitals fall within the category of essential services where the right to strike can be denied, asks the Government to restore to these employees the right to

form trade unions and to negotiate collectively their terms and conditions of employment.

In view of the fact that the Committee has been commenting on many of these points for some considerable time, it trusts that the Government will make every effort to take the measures to bring its legislation into full conformity with the Convention as soon as possible.

Document No. 192

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 162 (Swaziland)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Swaziland (ratification: 1978)

The Committee notes the Government's report. The Committee recalls that, for a number of years, its previous comments concerned discrepancies between the Convention and the 1980 Industrial Relations Act and the 1973 Decree on Meetings and Demonstrations.

Article 2 of the Convention

- non-recognition of the right of association of prison staff (section 83(c) of the Act);
- obligation upon workers to organize within the context of the industry in which they exercise their activity (section 2(1) and (2) of the Act);
- power of the Labour Commissioner to refuse to register a trade union if he considers that the interests of the workers are fully or substantially represented by a trade union that has already been registered (section 23), even though by virtue of section 24(1)(d) an appeal may be made against such a refusal before the Labour Tribunal;
- obligation for an occupational organization or federation to obtain authorization before affiliating with any international organization (section 34(1)).

Article 3 of the Convention

- prohibition on federations from carrying out political activities and limitation of their activities to providing advice and services (section 33);
- prohibition of the right to strike in certain sectors or services, in particular in the postal, radio and teaching sectors (section 65(6) of the Act);
- power of the Minister to refer any dispute to compulsory arbitration if he considers that a current or pending strike constitutes a threat to the national interest (section 63(1));
- important restrictions of the rights of organizations to hold meetings and peaceful demonstrations (section 12 of the 1973 Decree).

The Committee notes with interest the information provided by the Government in its report that a draft Industrial Relations Bill, which takes into consideration the comments of the Committee of Experts, has been elaborated and was submitted to Parliament in 1995. The draft has been approved by the National Assembly and needs to be submitted to the Senate. In addition a draft amendment of the Employment Act was also elaborated in 1995. It will have to be discussed in a tripartite commission before being submitted to the competent authorities. The Government adds that it will provide copies of these two texts as soon as they are adopted.

The Committee trusts that these two texts will bring the legislation into full conformity with the requirements of the Convention. It requests the Government to transmit, in its next report, copies of the two drafts in question, even if they have not yet been adopted, so as to enable the Committee to examine their conformity with the Convention and, if they have already been adopted, it requests the Government to transmit them in their final version."

Document No. 193

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 163-164 (Syrian Arab Republic)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Syrian Arab Republic (ratification: 1960)

The Committee notes the information supplied by the Government in its report indicating that the draft legislative decree to amend the provisions of Legislative Decree No. 84 of 1968 on trade unions in line with certain comments made by the Committee for a number of years, has not yet been adopted. The Government adds that it has again asked the General Federation of Peasants and the General Federation of Craftsmen to designate their representatives to serve on the tripartite commission responsible for preparing texts to amend Act No. 21 of 1974 on peasants' associations and Legislative Decree No. 250 of 1969 on craftsmen's associations.

Since the Government's report, which arrived too late to be examined by the Committee at its session in February 1995, contains no further information on the situation, the Committee is bound to repeat once again the comments and requests it has been making for many years and recalls that there are still divergencies between the national legislation and the Convention, particularly on:

— Legislative Decree No. 84 of 1968 on trade unions (section 7) which organizes the structure of trade unions on a single union basis;
— Legislative Decree No. 250 of 1969 regarding craftsmen's associations (section 2) and Act No. 21 of 1974 regarding peasants' cooperative associations (sections 26 to 31) which impose a single trade union system;
— section 25 of Legislative Decree No. 84 which restricts the trade union rights of non-Arab foreign workers;
— sections 32, 35, 36, 44 and 49(c) of Legislative Decree No. 84 and sections 6 and 12 of Legislative Decree No. 250 of 1969 restricting the free administration and independence of management of trade unions;
— section 160 of the Agricultural Labour Code of 1958 prohibiting strikes in the agricultural sector.

1. *Single trade union system.* The Committee recalls that Article 2 of the Convention is not intended as an expression of support for either the idea of trade union unity or trade union pluralism but to ensure that workers, without distinction whatsoever, and without previous authorization, shall have the right to establish and join organizations of their own choosing. The Committee requests the Government to take the necessary measures without delay to delete from legislation the numerous references to the single central trade union organization designated in law as the General Federation of Workers' Union (FGST) and allow workers who so wish to establish organizations of their own choosing outside the existing trade union structure.

2. *Restrictions to the right of non-Arab foreign workers employed in the Syrian Arab Republic.* Section 25 of Legislative Decree No. 84 does not confer on foreign workers the right to join trade unions unless they have resided in Syria for one year and on condition of reciprocity. The Committee recalls that the guarantees of Article 2 of the Convention apply to *all workers, without distinction whatsoever.* It requests the Government to amend this Article to bring national legislation into conformity with the Convention.

3. *Wide powers of intervention by the authorities over public finances.* Several sections of Legislative Decree No. 84 (32, 35, 36, 44 and 49, paragraph (c)), and of Legislative Decree No. 250 of 1969 (6 and 12) confer on the public authorities the discretionary power to inspect the books and other documents of organizations, to carry out investigations, to demand information at any time and to supervise trade union funds. The Committee requests the Government to abolish these impediments to the right of

workers' organizations to organize their management and activity without interference from the public authorities in accordance with the requirements of *Article 3, paragraphs 1 and 2, of the Convention.*

4. *The need to belong to the occupation for a minimum of six months in order to be elected to trade union office.* Section 44 of Legislative Decree No. 84 is liable to prevent qualified persons such as permanent trade union members and retired persons from exercising trade union office. The Committee requests the Government to make its legislation more flexible in order to allow the candidature of persons who formerly worked in the occupation and to lift the conditions on belonging to the occupation for a reasonable proportion of trade union officials in order to allow the candidature of persons from outside the occupation.

5. *Prohibition on strikes in the agricultural sector.* In regard to section 160 of the Agricultural Labour Code forbidding agricultural workers to go on strike, the Committee notes with regret that the repeal of this text announced by the Government some time ago has not yet been adopted. The Committee once again emphasizes the importance it attaches to legislation not depriving trade union organizations of the right to strike, as this is one of the essential means by which they can promote and defend the occupational interests of their members, and requests the Government to repeal this provision.

The Committee must therefore request the Government once again to indicate in its next report the measures which have been taken to bring the whole of its legislation into conformity with the Convention.

[The Government is requested to provide full particulars to the Conference at its 83rd Session.]

Document No. 194

ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 130–132 (Chile)

Report III /Addendum (Part A)

Application of International Labour Standards 2021

Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
109th Session, 2021

Chile

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1999)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) relating to the measures adopted in the context of the COVID-19 pandemic with regard to the application of the Convention. In this respect, the Committee welcomes the measures indicated by the Government with a view to extending the mandates of trade union executives during the state of emergency (with the possibility for the organizations to elect their representatives if they considered that the conditions existed for holding elections), and to ensuring that workers engaged in telework are informed of the existence of unions in the enterprise, and other measures to facilitate the action and consultation of workers' organizations on measures related to the pandemic, such as their participation in agreements for the reduction of working hours as a consequence of the health emergency, and their capacity to defend their members in the event of any flaws in the suspension of employment relations.

The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 15 September 2020, alleging the violent repression of the protest against an anti-union reform at the end of 2019, including the temporary detention and injuries suffered by various trade union leaders, as well as the attempt to break into the headquarters of the Single Central Organization of Workers of Chile (CUT). The Committee also notes the observations of the CUT, received on 6 October 2020, also alleging limitations on the exercise of the right to demonstrate and on trade union activities, and the arbitrary and unjustified detention of 24 trade union leaders in several cities, as well as the death of a trade union leader of artisanal fishers (challenging the official version of suicide as the cause of his death), raids on and attempts to enter trade union premises (in particular the CUT headquarters, also alleged by ITUC), and spying on and monitoring trade union leaders. ***The Committee requests the Government to provide its comments on these serious allegations.***

The Committee notes that, as to the complaint made under article 26 of the ILO Constitution alleging failure to comply with this and other ILO Conventions by the Republic of Chile, made by a Worker delegate to the International Labour Conference in 2019, the Governing Body: (i) decided not to refer the matter to a Commission of Inquiry and to close the procedure under article 26; and (ii) invited the Government to continue reporting to the ILO regular supervisory system on measures taken to apply in law and practice the Conventions concerned.

As to other pending matters, the Committee reiterates the content of its previous comments adopted in 2019 and reproduced below.

The Committee notes the observations on the application of the Convention in law and practice (including allegations of violations in the public, food, transport and copper sectors) provided by the following organizations: the National Association of Fiscal Employees (ANEF), received on 29 August 2019; the Confederation of Copper Workers (CTC), the General Confederation of Public and Private Sector Workers (CGTP), and the World Federation of Trade Unions (WFTU, taking up the observations of the CGTP), all received on 30 August 2019; the International Trade Union Confederation (ITUC), received on 1 September 2019; as well as the observations of the Federation of Workers' Unions of Chile (FESINTRACH), received on 2 September 2019, the No. 1 Promoter CMR Falabella Enterprise Union, received on 20 September 2019, and the Single Central Organization of Workers of Chile (CUT), received on 26 October 2019. ***The Committee requests the Government to provide its comments in this regard.*** Noting that the Government has not replied to the various requests made in its previous comments, including with regard to the multiple observations made by social partners in 2016, the Committee trusts that it will receive the missing information in the next report.

Articles 2 and 3 of the Convention. Legislative matters not covered by the reform of the Labour Code. In its previous comment, while noting with satisfaction the amendment or repeal of various provisions of the Labour Code which were not in conformity with the Convention, the Committee observed that the following provisions had not yet been brought into conformity with the Convention:

- Amendment of article 23 of the Political Constitution, which provides that the holding of trade union office is incompatible with active membership of a political party and that the law shall establish penalties for trade union officials who engage in party political activities. In its previous comments, the Committee welcomed the submission of a draft constitutional amendment in October 2014 to remove these restrictions, but noted that the draft had not been approved.
- Amendment of section 48 of Act No. 19296, which grants broad powers to the Directorate for Labour for the supervision of the accounts and financial assets and property of associations. In its previous

comment, the Committee noted the Government's indication that the approach adopted by the Directorate for Labour in that regard is consistent with the principles of freedom of association and leaves it to organizations to control their own accounts, financial assets and property; and that a protocol agreement had been agreed between the Government and the public sector round-table of 2014 which included the commitment to address possible amendments to Act No. 19296.

– Repeal of section 11 of Act No. 12927 on the internal security of the State, which provides that an interruption or strike in certain services may be penalized with imprisonment or banishment, and the amendment of section 254 of the Penal Code, which establishes criminal penalties in the event of the interruption of public services or public utilities or dereliction of duty by public employees. In its previous observation, the Committee noted the Government's indication that these provisions had not been applied and recalled that no penal sanction should be imposed on a worker for participating peacefully in a strike, which is merely exercising an essential right, and therefore that sentences of imprisonment or fines should not be imposed.

The Committee observes that in its latest report the Government has not provided any further information on the application, amendment or repeal of these provisions, and that the observations of the various social partners continue to denounce the incompatibility of these provisions with the Convention. ***The Committee once again expresses the hope that the Government will take the necessary measures in the very near future to bring these provisions into conformity with the Convention and requests it to report any developments in this regard.***

Article 3. Right of organizations to organize their activities and to formulate their programmes. Exclusion from strike action of enterprises declared to be strategic. Section 362 of the Labour Code, under the heading of the determination of enterprises in which the right to strike may not be exercised, provides that a strike may not be called for workers providing services in corporations or enterprises, irrespective of their nature, purpose or function, which provide services of public utility or the cessation of which would cause serious damage to health, the national economy, the provision of supplies to the population or national security. In its previous comment, the Committee recalled that this definition of enterprises in which the right to strike cannot be exercised, to be approved jointly by various ministries and subject to appeal to the Court of Appeal, potentially covers services which go beyond the definition of essential services in the strict sense of the term (those the interruption of which may endanger the life, personal safety or health of the whole or part of the population). Recalling that the prohibition of strikes relating to the services provided should be limited to essential services in the strict sense of the term, the Committee reiterated that the concepts of public utility and of damage to the economy are broader than that of essential services. The Committee also observed that "services of public utility" would already be covered by the system of minimum services established in section 359, which is distinct from the concept of essential services in the strict sense of the term. Observing that the Government has not provided the requested information on the application of this provision in practice, the Committee notes that, according to the indications of the ITUC, under the terms of this provision a list was approved in August 2017 of 100 enterprises considered to be strategic and excluded from the exercise of the right to strike, which include enterprises in the health and energy sectors, and that 14 unions have lodged appeals in this regard with the Court of Appeal. The Committee also notes that in August 2019 a new list was published of enterprises considered to be strategic and excluded from the exercise of the right to strike (43 enterprises were removed from the former list of 100 enterprises, and 15 new enterprises were added). ***While considering that section 362 of the Labour Code should be amended to ensure that the prohibition of the right to strike can only cover essential services in the strict sense of the term, the Committee once again requests the Government to provide information on the application in practice of section 362 of the Labour Code, with an indication of the various categories of services provided by the enterprises excluded from the exercise of the right to strike, and the action taken in relation to any complaints lodged in this respect. The Committee recalls that, without calling into question the right to strike of the large majority of workers, a negotiated minimum service may be established for public services of fundamental importance that are not essential services in the strict sense of the term.***

Replacement of workers. In its previous comment, while on the one hand the Committee noted with satisfaction the introduction in the Labour Code of a prohibition to replace striking workers, as well as the sanctions in the event of such a replacement (sections 345, 403 and 407) on the other hand, it noted that, according to the CGTP, other recently introduced provisions could undermine or introduce uncertainty into such prohibition to replace striking workers. The CGTP referred, in particular, to the possibility envisaged in new section 306 of the Labour Code for an enterprise that has subcontracted work or services to another enterprise to carry out directly or through a third party the subcontracted work or services interrupted due to a strike (in this regard, the CGTP alleged that over 50 per cent of workers in the country work in subcontracting enterprises). The Committee requested the Government to provide its comments on the observations of the CGTP and to report on the application in practice of sections 306, 345, 403 and 407, including the sanctions imposed for the replacement of striking workers, and on the impact of the hiring of workers under section 306 on the workers or services interrupted due to a strike. The Committee notes that the Government reports various legal opinions issued by the Directorate for Labour concerning

these provisions, including an opinion that it is not in accordance with the law for an enterprise providing temporary services to provide workers to a principal enterprise for the performance of work or services which have been interrupted due to a strike by workers in the enterprise contracted to perform them. The Committee welcomes these clarifications, while noting that the Government has not provided further information on the application in practice of the above-referred provisions. The Committee also notes that the issue of the replacement of workers is the subject of additional observations by the social partners. In this respect, the CTC indicates that section 403 of the Labour Code supports the internal replacement of striking workers, and the CGTP denounces the fact that the authorities have allowed the replacement of striking workers in the public passenger transport sector in Santiago de Chile. ***The Committee requests the Government to provide its comments on the observations of the social partners on these matters, and to provide further information on the application in practice of sections 306, 345, 403 and 407, including on the sanctions applied for the replacement of striking workers, and on the impact of the hiring of workers under section 306 on striking workers or services interrupted due to a strike.***

Exercise of the right to strike beyond the framework of regulated collective bargaining. In previous comments, the Committee noted that, in general terms, the exercise of the right to strike is regulated exclusively within the framework of regulated collective bargaining. In this respect, the Committee referred to the recommendations made to the Government by the Committee on Freedom of Association (CFA), in which: (i) given that existing legislation does not permit strike action outside the context of the collective bargaining process, the CFA requested the Government, in consultation with workers' and employers' organizations, to take all necessary steps to amend the legislation in line with the principles of freedom of association (see 367th Report, March 2013, Case No. 2814, paragraph 365); and (ii) recalling the principle that the occupational and economic interests that workers defend through the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the enterprise which are of direct concern to the workers, the CFA requested the Government to take all the necessary measures, including legislative measures if necessary, to uphold this principle, and to submit the legislative aspects of the case to the Committee of Experts (see 371st Report, March 2014, Case No. 2963, paragraph 238).

In this regard, certain social partners (see for example, the observations of the ITUC in 2016, the CGTP in 2016 and 2019, and the CTC in 2019) have been denouncing the failure to protect the right to strike outside the framework of regulated collective bargaining. The Committee also noted that a ruling of 23 October 2015 of the Court of Appeal of Santiago held that the sole fact that the law regulates strike action in one instance, that is in the context of regulated collective bargaining, cannot lead to the conclusion that outside that context strikes are prohibited, based on the understanding that matters that the legislature has failed to regulate or define cannot be held to be prohibited (the Committee refers to other recent rulings along these same lines, such as the ruling by the Labour Court of Antofagasta of 6 August 2019, finding that the right to strike is an essential right regulated by the Convention and that the Supreme Court has found that the right to strike is guaranteed even outside the framework of collective bargaining procedures). ***In light of the judicial decisions referred to above, the Committee once again requests the Government to provide its comments on the observations of the social partners denouncing the failure to protect the right to strike outside the framework of regulated collective bargaining and to provide information on any measures taken in relation to the recommendations referred to in this regard.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

Document No. 195

ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 181-185 (Fiji)

Report III /Addendum (Part A)

Application of International Labour Standards 2021

Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
109th Session, 2021

Fiji

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2002)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and 15 September 2020 and of the Fiji Trades Union Congress (FTUC) received on 23 May and 13 November 2019, denouncing violations of civil liberties and lack of progress on the legislative reform. ***The Committee notes the Government's general reply thereto, as well as to the 2017 and 2018 FTUC observations, and requests it to provide further details on the specific incidents of alleged violations of civil liberties reported by the FTUC.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereafter the Conference Committee) in June 2019 concerning the application of the Convention. It notes that the Conference Committee observed serious allegations concerning the violation of basic civil liberties, including arrests, detentions and assaults, and restrictions of freedom of association and noted with regret the Government's failure to complete the process under the Joint Implementation Report (JIR). The Conference Committee called upon the Government to: (i) refrain from interfering in the designation of the representatives of the social partners on tripartite bodies; (ii) reconvene the Employment Relations Advisory Board (ERAB) without delay in order to start a legislative reform process; (iii) complete without further delay the full legislative reform process as agreed under the JIR; (iv) refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference; (v) ensure that workers' and employers' organizations are able to exercise their rights to freedom of association, freedom of assembly and speech without undue interference by the public authorities; and (vi) ensure that normal judicial procedures and due process are guaranteed to workers' and employers' organizations and their members. The Conference Committee also requested the Government to report on progress made towards the implementation of the JIR in consultation with the social partners by November 2019 and called on the Government to accept a direct contacts mission to assess progress made before the 109th Session of the International Labour Conference. ***While duly noting the context of the current COVID-19 pandemic, the Committee trusts that the direct contacts mission requested by the Conference Committee will be able to take place as soon as the situation so permits and, if possible, before the next International Labour Conference.***

Trade union rights and civil liberties. In its previous comments, the Committee requested the Government to respond in full detail to the FTUC allegations of continued harassment and intimidation of trade unionists, in particular with respect to its National Secretary, Felix Anthony. The Committee notes the Government's general statement that Mr Anthony has been able to organize and carry out trade union activities without any interference from the Government and that the arrest, search and detention of persons previously alleged by the ITUC and the FTUC were not intended to harass or intimidate trade unionists but to allow the Commissioner of Police to conduct investigations into alleged violations of applicable laws. The Government also affirms that the Commissioner of Police and the Office of the Director of Public Prosecutions are both independent and neither the entities nor their decisions are subject to the direction or control of the Government. The Committee notes, however, the 2020 ITUC allegations that Mr Anthony is currently charged with one count of malicious acts under the Public Order Act, 1969 in relation to his trade union activities following the mass termination of 2,000 workers' contracts by the Fiji Water Authority in April 2019, which led to protests and the arrest of trade unionists and union members, including Mr Anthony. The ITUC alleges that Mr Anthony was to appear before the court on 1 September 2020 and if convicted, he could receive a fine of up to US$2,500 or be imprisoned for up to three years. The Committee notes the Government's reply that the arrest and subsequent criminal prosecution of Mr Anthony are not a targeted attack but a matter that is criminal in nature and that the presiding court will make a determination on the criminal charges and penalties imposed, if any. The Committee further notes with ***concern*** the ITUC and FTUC allegations of continued intimidation by the police, arrests, detention, interrogation and the filing of criminal charges against trade unionists, as well as prolonged confiscation of personal and union property and violent dispersal of gatherings between April and June 2019. ***Recalling the interdependence between civil liberties and trade union rights and emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations, the Committee requests the Government to make serious efforts to ensure that state entities and their***

Freedom of association, collective bargaining, and industrial relations

officials refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference in trade union activities, so as to contribute to an environment conducive to the full development of trade union rights. The Committee requests the Government to consider issuing instructions to the police and the armed forces in this regard and to provide training to ensure that any actions taken during demonstrations respect the basic civil liberties and fundamental labour rights of workers and employers. Furthermore, the Committee firmly expects that any charges against Mr Anthony related to the exercise of his trade union activities will be immediately dropped.

Appointment of members to and the functioning of the Employment Relations Advisory Board to review labour legislation. In its previous comments, having observed the FTUC concerns that the Government had systematically dismantled tripartism by removing or replacing the tripartite representation on a number of bodies with its own nominees, the Committee requested the Government to provide detailed information on the manner in which it designated individuals to these bodies and the representative nature of the organizations that appeared therein. The Committee notes the detailed reply provided by the Government on the appointment of members to the ERAB, the Fiji National Provident Fund, the Fiji National University, the Wages Council and the Air Terminal Service (Fiji) Limited. The Committee also notes the Government's clarification that, in addition to the ERAB, the National Occupational Health and Safety Advisory Board (NOHSAB) and the National Employment Centre Board (NECB) also have tripartite membership. The Government further indicates, with regard to the ERAB, that: (i) the Minister for Employment is the appointing authority and representatives of workers and employers are appointed from persons nominated by workers' and employers' organizations; (ii) appointment of members is undertaken through a consultation process to allow expanded representation of workers from various organizations; (iii) there is no interference from the Government in the designation of representatives of the social partners; and (iv) as the current ERAB membership ended in October 2019, the social partners were invited to submit nominees and both the Fiji Commerce and Employers Federation (FCEF) and the FTUC have already done so at the end of October 2019. The Committee observes, however, that, according to the FTUC, there is no indication as to when the appointment of ERAB members will take place, despite the urgency of the situation, and that the ITUC remains concerned about government manipulation of national tripartite bodies, thus curtailing the possibility of genuine tripartite dialogue. ***The Committee trusts that the Government will refrain from any undue interference in the nomination and appointment of members to the ERAB and to other tripartite bodies, and will ensure that the social partners can freely designate their representatives. The Committee expects the appointment of ERAB members to take place without delay so as to allow this mechanism to reconvene and meet regularly in order to pursue the labour law review and meaningfully address all outstanding matters in this regard.***

Progress on the review of labour legislation as agreed in the Joint Implementation Report. The Committee previously noted with regret the apparent lack of progress on the review of the labour legislation as agreed in the JIR and urged the Government to take the necessary measures with a view to rapidly bringing the legislation into line with the Convention. The Committee notes the Government's indication that several meetings took place with the tripartite partners and the ILO between June 2018 and August 2019, in which it was agreed that a number of matters under the JIR have already been implemented and that the tripartite partners are making good progress on the outstanding matters concerning the review of labour laws and the list of essential services and industries, despite the FTUC's boycott and withdrawal from the tripartite dialogue within the ERAB in June 2018, February and August 2019. The Committee notes that, according to the FTUC, the Government's reference to boycott clearly reveals that there remain issues in the appointment process of ERAB members and shows the Government's lack of genuine commitment to previously agreed timelines that had led to the boycott. The Committee notes from the resolutions adopted at the 48th biennial delegates conference of the FTUC provided by the Government in its supplementary report that: (i) the FTUC maintains its position on boycotting participation in any tripartite forums until its role as an important stakeholder with sincere engagement is recognized; and (ii) the FTUC expresses concern about the Government's failure to uphold its commitment to engage in genuine social dialogue and to take any positive action to review the labour legislation, and denounces the way in which the Ministry of Employment, Productivity and Industrial Relations has handled the review process. The Committee further observes that the ITUC calls on the Government to return to the negotiating table with the social partners to fully implement the JIR and to grant safeguards and guarantees to those participating in the dialogue. Finally, the Committee welcomes the Government's indication in its supplementary report that a detailed Plan of Action with timelines was elaborated with the ILO Country Office in September 2020 to give guidelines to the tripartite partners and the Plan of Action enumerates issues to be addressed in order to implement recommendations of the ILO supervisory mechanisms, including the reconvening of the ERAB, the ERA matrix, the reform of the essential services list, training and sensitization of the police on civil liberties and freedom of association, as well as the organization of the direct contacts mission. ***In light of the above, the Committee urges the Government to take all necessary measures to continue to review the labour legislation within the reconvened ERAB, as agreed in the JIR and the September 2020 Plan of Action, with a view to rapidly bringing it into line with the Convention, taking into account the Committee's comments below.***

Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. The Committee had previously noted that the following issues were still pending after the adoption of the Employment Relations (Amendment) Act, 2016: denial of the right to organize to prison guards (section 3(2)); and excessively wide discretionary power of the Registrar in deciding after consultation whether or not a union meets the conditions for registration under the Employment Relations Promulgation, 2007 (ERP) (hereinafter, ERA, section 125(1)(a) as amended). The Committee notes, on the one hand, the Government's indication that the tripartite partners met in August 2019 to discuss the proposed amendments and all clauses in the ERA matrix but observes, on the other hand, the ITUC and the FTUC allegation that no progress has been achieved since then and the matrix agreed by the tripartite partners is still pending with the Solicitor General's office. ***In the absence of any substantial progress in this regard, the Committee urges the Government to finalize the process of review on the basis of the tripartite-agreed matrix so that the necessary amendments for bringing the legislation into full conformity with the Convention may be rapidly submitted to Parliament and adopted.***

Article 3. Right of organizations to elect their representatives in full freedom, organize their activities and formulate their programmes. The Committee had previously observed that, pursuant to section 185 of the ERA as amended in 2015, the list of industries considered as essential services included: (i) the services listed in Schedule 7 of the ERP; (ii) the essential national industries declared under the former Essential National Industries (Employment) Decree, 2011 (ENID) (financial industry, telecommunications industry, civil aviation industry and public utilities industry), and the corresponding designated companies; and (iii) the Government, statutory authorities, local authorities and government commercial companies (following the adoption of the Public Enterprise Act, 2019, these are now referred to as public enterprises – an entity controlled by the State and listed in Schedule 1 of the Act or designated as such by the Minister).

The Committee welcomes the Government's indication that, as agreed in the JIR and with the technical assistance of the Office, a workshop was held on 16 and 17 October 2019 with the participation of the tripartite partners to consider, gauge and determine the list of essential services and industries. The Committee also welcomes that, as a result of the workshop, the tripartite parties agreed on a time-bound plan of action to review the existing list of essential services within the ERAB and to engage in discussion with the aim of restricting limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Government informs that it has received proposals for amendments from representatives of workers and employers and is currently considering them. The Committee notes, however, the concerns expressed by the FTUC that due to the Minister's absence from the workshop, all decisions had to be referred to the Solicitor General's office and that the timelines continue to be ignored without any justification for the delay in convening meetings to finalize the essential national industries list and the ERA matrix.

The Committee wishes to reiterate that while some essential industries are defined in line with the Convention, namely those which had been initially included in Schedule 7 of the ERP, other industries where strikes may now be prohibited due to the inclusion of the ENID in the ERA do not fall within the definition of essential services in the strict sense of the term, including: statutory government authorities; local, city, town or rural authorities; workers in managerial positions; the financial sector; radio, television and broadcasting services; civil aviation industry and airport services (except air traffic control); public utilities industry in general; pine, mahogany and wood industry; metal and mining sector; postal services; and public enterprises in general. The Committee also wishes to emphasize that provisions which prohibit the right to strike on the basis of potential detriment to public interest or economic consequences are not compatible with the principles relating to the right to strike. The Committee recalls, however, that for services which are not considered essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population or in public services of fundamental importance in which it is important to deliver the basic needs of users, a negotiated minimum service, as a possible alternative to fully restricting industrial action through imposed compulsory arbitration, could be appropriate. The right to strike may also be restricted for public servants but only those exercising authority in the name of the State. ***Given the extensive breadth of the services where workers' rights to take industrial action may be prohibited, as noted above, the Committee urges the Government to meaningfully engage with the social partners without further delay to review the list of essential services, as agreed in the JIR and the October 2019 and the September 2020 action plans, so as to restrict limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Committee requests the Government to provide information on the progress achieved in this regard.***

In addition, the Committee has been requesting for a number of years that the Government take measures to review numerous provisions of the ERA. In the absence of any progress reported in this regard, the Committee recalls that the following issues in the ERA are still pending: obligation of union officials to be employees of the relevant industry, trade or occupation for a period of not less than three months (section 127(a) as amended); prohibition of non-citizens to be trade union officers (section 127(d)); interference in union by-laws (section 184); excessive power of the Registrar to request detailed and

certified accounts from the treasurer at any time (section 128(3)); provisions likely to impede industrial action (sections 175(3)(b) and 180); compulsory arbitration (sections 169 and 170, section 181(c) as amended, new section 191BS (formerly 191(1)(c)); penalty in form of a fine in case of staging an unlawful but peaceful strike (sections 250 and 256(a)); provisions likely to impede industrial action (section 191BN); penalty of imprisonment in case of staging a (unlawful or possibly even lawful) peaceful strike in services qualified as essential (sections 191BQ(1), 256(a), 179 and 191BM); excessively wide discretionary powers of the Minister with respect to the appointment and removal of members of the Arbitration Court and appointment of mediators, calling into question the impartiality of the dispute settlement bodies (sections 191D, 191E, 191G and 191Y); and compulsory arbitration in services qualified as essential (sections 191Q, 191R, 191S, 191T and 191AA). In this regard, the Committee observes, from the resolutions adopted at the 48th biennial delegates conference of the FTUC provided by the Government in its supplementary report, the concerns expressed by the FTUC about the inefficiency of the Arbitration Court and the Employment Tribunals, as well as the need to improve the current dispute resolution system in order to reduce considerable delays in resolving disputes. ***The Committee therefore urges the Government to take measures to review the above provisions of the ERA, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations, with a view to their amendment, so as to bring the legislation into full conformity with the Convention.***

Public Order (Amendment) Decree (POAD). With regard to its previous comments concerning the practical application of the POAD, the Committee notes that the Government simply reiterates that the POAD facilitates the maintenance of public order and that prior permission is required to ensure the carrying out of administrative functions and the provision of law enforcement officers to maintain order. While further noting that the Government points to two instances, in October 2017 and January 2018, in which the FTUC obtained a permit and undertook marches, the Committee observes that, according to the FTUC, its recent requests to march from May, August and November 2019 were all refused. The ITUC and the FTUC denounce that permission for union meetings and public gatherings continues to be arbitrarily refused and that section 8 of the POAD has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. ***The Committee urges the Government to take the necessary measures to bring section 8 of the POAD into line with the Convention by fully repealing or amending this provision so as to ensure that the right to assembly may be freely exercised.***

Political Parties Decree. The Committee had previously noted that, under section 14 of the 2013 Political Parties Decree, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party; and that sections 113(2) and 115(1) of the Electoral Decree prohibit any public officer from conducting campaign activities, and any person, entity or organization that receives any funding or assistance from a foreign government, intergovernmental or non-governmental organization to engage in, participate in or conduct any campaign (including organizing debates, public forums, meetings, interviews, panel discussions, or publishing any material) that is related to the election. In its previous comments, the Committee further observed that the Political Parties Decree was unduly restrictive in prohibiting membership in a political party or any expression of political support or opposition by officers of employers' or workers' organizations, and requested the Government once again to take measures to amend the above provisions, in consultation with the representative national workers' and employers' organizations. ***Observing that the Government does not provide any new information and noting the ITUC concerns about the restrictive effect of the Political Parties Decree on legitimate trade union activities, the Committee reiterates its request in this respect.***

Article 4. Dissolution and suspension of organizations by administrative authority. The Committee notes the ITUC allegations that in February 2020, the Government suspended five trade unions for failing to submit their annual audited reports and indicated that they faced penalties and deregistration if they continued to fail to comply with the legislation (the Hot Bread Kitchen Employees Trade Union, the Fiji Maritime Workers Association, the Viti National Union of I-taukei Workers, BPSS Co Limited Workers and Carpenters Group of Salaries Association and the I-taukei Land Trust Board Workers Union). According to the ITUC, such arbitrary measures represent a clear attempt at quashing independent trade unions and the legislation does not provide for sufficient guarantees for trade unions to operate without undue interference by the authorities, as demonstrated by section 128(3) of the ERA, which gives the Registrar excessive power to request detailed and certified accounts from the treasurer at any time. The Committee notes that the Government refutes this allegation as baseless and untrue and asserts that any suspension of trade union activity is done in accordance with section 133(2) of the ERA. With regard to the mentioned trade unions, the Government informs that: (i) in June 2019, the Registrar issued notices to 11 unions for failure to submit their annual returns under section 129 of the ERA; in August 2019, the Registrar issued a follow-up notice; and in September 2019, seven trade unions, which had not rectified their breach, were issued a notice of suspension; (ii) the notice of suspension provided the unions two months to show cause as to why their registration should not be suspended; (iii) despite the notice, four unions failed to rectify their breach and in June 2020, the Registrar published a notice of cancellation concerning the four unions; and (iv) the unions were again given two months to rectify their breach and the Registrar only cancelled

the registration of those unions that failed to respond to the notice, whereas the remaining three suspended unions were able to submit their annual reports. The Government adds that there are currently 46 active unions in Fiji, which freely conduct their activities and the Registrar does not have the authority to dictate how they operate or function under their constitution, thus ensuring absolute freedom for trade unions to deal with their affairs. The Committee takes due note of the steps taken by the Registrar before suspending or cancelling the registration of the above trade unions and recalls that under section 139 of the ERA, a trade union may appeal a decision against suspension or cancellation of registration to the competent court. ***Further recalling however that the dissolution and suspension of trade union organizations constitute extreme forms of interference and should be reserved for serious breaches of the law after exhausting other possibilities with less serious effects for the organizations, and observing the ITUC's allegations that these measures constitute an attempt at quashing independent trade unions, the Committee requests the Government to consider, in consultation with the most representative organizations, any measures that are appropriate to ensure that the procedures for suspension or cancellation of trade union registration are, both in law and in practice, in full accordance with the guarantees set out in the Convention.***

Document No. 196

ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 97-98 (Albania)

Report III (Part A)

Application of International Labour Standards 2022

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

International Labour Conference
110th Session, 2022

Freedom of association, collective bargaining, and industrial relations

Albania

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)

The Committee takes note of the Government's comments in reply to the observations of the International Trade Union Confederation (ITUC), received in 2020, denouncing the persistence of restrictions on the right of workers to establish trade unions. The Committee observes that these matters are being examined by the Committee on Freedom of Association (Case No. 3388). ***Noting that the Government has not provided its comments on the ITUC's observations received in 2019, which alleged violations of trade union rights in practice, the Committee once again requests it to provide its comments in this respect.***

Article 2 of the Convention. Right to organize of foreign workers. Further to its previous comments on the exercise of trade union rights by all foreign workers irrespective of their residence status, the Committee notes that the Government indicates in its report that the Act on Foreigners (No. 108 of 2013), as amended by Act No. 13 of 2020, does not address whether foreigners who do not have a working permit have the right to organize in unions. The Committee notes that Act No. 13 of 2020 did not amend section 70 of the Act on Foreigners, which provides that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as nationals. The Committee also notes that the Government has not provided any information on foreign workers' exercise of trade union rights in practice. ***The Committee requests the Government to take, without delay, the necessary measures, including consideration of possible legislative amendments, to ensure that all foreign workers, whether or not they have a residence or a working permit, benefit from the trade union rights provided by the Convention, particularly the right to join organizations which defend their interests as workers. The Committee requests the Government to provide information on any progress made in this respect.***

Article 3. Right of organizations to organize their activities and formulate their programmes. In its previous comments the Committee requested the Government to indicate any legal exceptions to the right to strike other than those provided in section 35 of the Act on civil servants (No. 152 of 2013) as well as to take any necessary measures to ensure that the legislation be amended so as not to unduly curtail the right of unions to organize their activities to defend the interest of workers. The Committee notes the Government's indication that the exercise of the right to strike by civil servants must be in full compliance with section 35 of the Act on civil servants, as well as with the regulations set out in the Labour Code concerning the exercise of this right, which include providing for the possibility of requiring minimum services in essential services like water and electricity supply, as well as in other services of fundamental public importance. The Committee takes note that section 35 of the Act on civil servants remains in force and provides that the right to strike shall not be permitted for a list of services that includes both essential services in the strict sense of the term (such as water and electricity), as well as services which may not be considered essential services in the strict sense of the term – namely transport and public television. The Committee recalls in this regard that the right to strike may be restricted for public servants exercising authority in the name of the State, but as to other public servants and for services which are not considered essential in the strict sense of the term, the introduction of a negotiated minimum service, as a possible alternative to the full prohibition of strike action, could be appropriate in circumstances where strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population, or in public services of fundamental importance in which it is important to deliver the basic needs of users (see the

2012 General Survey on the fundamental Conventions, paragraphs 129 and 136). ***The Committee requests the Government to indicate whether civil servants not exercising authority in the name of the state and working in the transport and public television services may exercise the right to strike, subject to the possible establishment of minimum services; and if these civil servants are not able to exercise said right, to take the necessary measures to amend the legislation in light of the above.***

Document No. 197

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 307-309 (United Kingdom of Great Britain and Northern Ireland)

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

United Kingdom of Great Britain and Northern Ireland

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

Previous comment

The Committee notes the observations made by the Trades Union Confederation (TUC), received on 31 August 2022, which refer to the issues examined by the Committee below.

The Committee had previously requested the Government to comment on the allegations relating to police surveillance of trade unions and trade unionists submitted by the TUC in 2018. The Committee notes the Government's indications that the exercise of covert investigatory powers under the Investigatory Powers Act, 2016 (IPA) and the Regulation of Investigatory Powers Act, 2000 (RIPA) are subject to numerous stringent safeguards and robust independent oversight, and are carried out only if they are necessary for specific statutory grounds, proportionate to the outcome sought, and the information required cannot be reasonably obtained through less intrusive means. The Government points out that it would therefore never be necessary and proportionate to use investigatory powers merely to interfere with legitimate trade union activity. The Government adds that the RIPA grants victims of improper exercise of covert investigatory powers recourse to the Investigatory Powers Tribunal (IPT) for redress. The Government further informs that there is an Investigatory Powers Commissioner who exercises independent oversight over investigatory powers and has the mandate to audit, inspect and report the use of such powers by the authorities. The Committee notes the Government's indication that an Undercover Policing Inquiry was established in 2015 to inquire into and report on undercover police operations conducted in England and Wales since 1968 and their effects upon individuals in particular and the public in general. A number of trades unions and trades unions members have been granted core participant status in the Inquiry*. **The Committee expects that the inquiry will be concluded in the very near future and requests the Government to provide information on any conclusions arrived at in relation to the above-mentioned allegations.***

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. In its previous comment, the Committee had requested the Government to provide information on the measures taken to facilitate electronic balloting (e-balloting) for industrial action ballots. The Committee notes both the TUC's and the Government's indications that the review of e-balloting conducted in 2017 resulted in certain recommendations, including pilots of e-balloting in non-statutory areas as a first step. According to the Government, round table consultations on the recommendations were held both with experts and with trade unions. The Government indicates that details will be provided after the finalization of its consideration of the recommendations. ***The Committee trusts that this work will be finalized without further delay and that the Government will provide information thereon in its next report.***

The Committee had also requested the Government to review section 3 of the Trade Union Act, 2016 with the social partners to ensure that the requirement of support by 40 per cent of all workers for strike ballot did not apply to the education and transport sectors. The Committee notes the Government's indication that the Act, including the ballot thresholds, will be reviewed with the social partners in the future. The TUC indicates that the imposition of the ballot threshold of 40 per cent to the two above-mentioned sectors imposes a requirement of 80 per cent voting support if only 50 per cent of the members vote and poses a significant barrier to union members exercising their right to strike. ***The Committee urges the Government to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 per cent of all workers is not required for a strike ballot in the education and transport services.***

In its previous comment, the Committee had requested the Government to provide information on the practice of notifying the police of the identity of activists; the details of any complaints regarding the handling of this information or its impact on lawful industrial action; and information on the blacklisting of individuals engaged in lawful picketing. The Committee notes the Government's indication that the Trade Union Act, including provisions on picketing requirements, will be reviewed in the future, and the Government will take into consideration the comments of the Committee. The Government indicates that it does not have any information on the blacklisting of individuals engaged in lawful picketing but adds that claims against blacklisting could be pursued before the Employment Tribunal within three months of the commission of the offence, or longer at the discretion of the Tribunal. The Government adds that the usage of personal data is protected by the Data Protection Act, 2018, with breaches of the Act being investigated by the Information Commissioners Office. The Committee takes note of the TUC allegation that additional restrictions are being planned. ***The Committee once again requests the Government to provide information on the application of this notification in practice, including any complaints made in relation to the handling of this information or its impact on lawful industrial action, and any information on the blacklisting of individuals engaged in lawful picketing. It also requests the Government to provide information on the additional restrictions planned, if any.***

The Committee had further requested the Government to review the impact of sections 16–20 of the Trade Union Act with the social partners to ensure that the expansion of the role of the Certification officer does not interfere with the rights of workers' and employers' organizations under *Article 3* of the Convention. The Committee notes the Government's indication that the Certification officer reforms were implemented in April 2022, after engaging with the social partners in June and July 2021, in addition to the 2017 consultations on the levy. The Government indicates that no consultation was needed in relation to the proposed new investigatory powers since these were contained in the Trade Union Act. While noting the Government's indication that the new legislation would bring the powers of the Certification Officer in line with other regulators and provide confidence both to union members and the wider public, the Committee notes the TUC's indication that the changes would render trade unions vulnerable to interference by non-members including hostile employers or campaign groups, particularly during legitimate industrial disputes. The TUC adds that the consultation in 2017 was a

general consultation inviting input from the general public and not a specific review with the social partners. The Committee notes the TUC's concerns that the changes obstruct and hinder trade unions in their core functions, since they grant the Certification Officer undue discretion in exercising the powers while the threshold for the exercise of the powers is extremely low and their scope is uncertain. The changes vest in the Certification Officer the power to act upon a third-party complaint, which, according to the TUC, could create a risk of interference in the functioning of trade unions; and to demand documents with sensitive information which are protected by data protection laws. The TUC further indicates that the changes allow unduly high financial penalties to be imposed for statutory breaches, and that there is no ceiling imposed on the newly introduced levy which requires unions to cover the majority of the costs of the Certification Officer. ***The Committee requests the Government to provide its comments on the TUC observations, as well as detailed information on the reform implemented with regard to the Certification Officer's new investigatory powers, financial penalties that may be imposed, the amount of any penalties that have been imposed since April 2022, and the ceiling on the levy introduced.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Document No. 198

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 170-172 (Nicaragua)

International Labour Conference
71st Session 1985

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

. . .

Nicaragua (ratification: 1967)

With reference to its previous comments, the Committee notes the information contained in the Government's report.

It particularly notes with satisfaction that the right to strike, which had been suspended by several successive Decrees under the National Emergency Act, was re-established by Decree No. 1480 of 6 August 1984.

The Committee also made comments on several provisions of the Labour Code and the Occupational Associations Regulations concerning the following points:

- the exclusion of independent workers in urban and rural sectors, persons working in family workshops and public officials from the scope of the Labour Code (sections 2, 3, 9 and 175 of the Code);
- the requirement of an absolute majority of workers of an undertaking or a workplace to constitute a trade union (section 189 of the Code);
- the general prohibition of political activities by trade unions (section 204(b) of the Code);
- the restrictions on the right to strike (sections 225(3), 228(1), and 314 of the Code);
- the possibility of obliging trade union leaders to present the trade union's books and registers at the request of any of the members of the trade union (section 36 of the Regulations).

The Committee recalls that during the direct contacts which took place between the national authorities and a representative of the Director-General in December 1983, the authorities had indicated that sections 204(b), 225 and 314 could be modified as desired by the Committee.

The Committee notes with interest the information provided by the Government in its report to the effect that, to bring the legislation into line with the Convention, the Government envisages amending section 189 of the Code in order to recognise the possibility of a multiplicity of trade unions in the undertaking and amending section 204(b) of the Code in order to eliminate the prohibition of political activities by trade unions. It also envisages amending section 36 of the Regulations on Trade Union Associations so as to require that requests for the presentation of the trade union's books and registers should be made by at least 10 per cent of the members of the trade union.

The Committee also takes due note that under section 187 of the Labour Code state employees, whether they are workers or officials (except those whose responsibilities are of a public nature), enjoy the same benefits as those set out in the Code for workers in the private sector.

Regarding independent workers in urban and rural sectors and workers in family workshops, the Committee notes that, according to the Government, although these persons are excluded from the Labour Code which governs the relations between employers and workers, this exclusion does not prevent the persons in question from forming trade unions. The Government adds that the right of all persons to found occupational associations is recognised by the Statute of Rights and Guarantees of Nicaraguans (section 24) and that section 5 of the Regulations on Occupational Associations describes social and occupational associations as groups whose objective is the promotion of mutual assistance between workers and farmworkers, even when the latter are not involved in a worker-employer relationship. The Committee also takes due note of these explanations.

The Committee, however, notes with regret that the Government wishes to maintain as they are sections 225, 228 and 314 of the Labour Code concerning restrictions on the right to strike. According to the Government, it is necessary to maintain the requirement of a majority of 60 per cent to call a strike, to prohibit strikes in rural occupations when there is a risk of the products' deteriorating if

they are not handled immediately and to be able to end a strike that has lasted 30 days through compulsory arbitration if no solution has been found after the date of authorisation of the strike.

In this respect, the Committee is bound to point out that recourse to strike action is one of the essential means that must be available to workers and their organisations in order to promote and defend their interests and that restrictions on strikes are only acceptable in the public service for public servants acting in their capacity as agents of the public authority and in essential services or sectors in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

Consequently, the Committee invites the Government to re-examine its position on these points so as to enable a simple majority of the voters involved in a labour dispute in a bargaining unit (and not 60 per cent of the workers) to be able to decide on a strike, and to ensure that recourse to arbitration to end a strike is only used at the request of the two parties or when the strike affects an essential service in the strict sense of the term.

The Committee expresses the hope that legislation conforming to the Convention will be adopted in the near future and requests the Government to keep it informed of all developments in this respect.

Document No. 199

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 218-219 (Honduras)

International Labour Conference
79th Session 1992

Report III
(Part 4A)

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

Honduras (ratification: 1956)

The Committee takes note of the Government's report and the discussions that took place at the Conference Committee in 1991.

The Committee wishes to remind the Government of the sections of the Labour Code which must be amended in order to bring them into conformity with the Convention:

- the amendment of section 2 of the Labour Code, so as to extend the right to join trade unions expressly to workers in agricultural or stock-raising enterprises not regularly employing more than ten workers, with a view to bringing this provision into conformity with Article 2 of the Convention;
- the amendment of section 472 of the Labour Code, which is inconsistent with Article 2 in not permitting the existence in a given enterprise, institution or establishment of more than one works union and in providing that, where there is already more than one union, only the one with the greatest number of members shall remain in existence;
- the amendment of section 510 of the Labour Code, which is inconsistent with Article 3, in requiring that union officers shall, at the moment of election, be normally engaged in the occupational function characteristic of the union and have exercised it for more than six months during the preceding year;

- the alignment of section 537 of the Code with Article 6, which provides that federations and confederations are not entitled to call strikes, and section 541, which provides that the leaders of federations and confederations shall have been engaged in the corresponding occupation or function for more than one year before election;
- the amendment of provisions that require a majority of two-thirds at the general assembly of a trade union in order to call a strike (sections 495 and 563 of the Labour Code);
- the need for government authorisation or six months' notice for any suspension or work stoppage in public services that do not depend directly or indirectly on the State (section 558 of the Labour Code). This provision is open to criticism in so far as it applies to certain services - such as transport or services connected with petroleum - that are not essential in the strict sense of the term, that is to say, services whose interruption would endanger the life, personal safety or health of the whole or part of the population;
- the power of the Minister of Labour and Social Security to end a dispute between employers and workers on the application of either party in services for the production, refining, transport and distribution of petroleum (section 555(2) of the Code).

The Committee notes the information supplied by the Government concerning the first meeting of the Seminar on the reform of the Labour Code attended by delegates from the trade union organisations, representatives of the Honduran Private Enterprise Council and directors-general of the Ministry of Labour and Social Security; and the creation of the project "Modernisation and institutional reinforcement of the labour administration in support of the economic reorganisation programme", whose objectives are: to modernise, update and develop labour legislation so that it is more consistent with the Constitution of the Republic of 1982 and ratified international labour Conventions.

However, the Committee regrets that, although it has been pointing out to the Government for many years that a number of provisions of the existing Labour Code require amendment so as to bring them into line with the provisions of the Convention, the necessary reforms have still not been carried out.

Accordingly, the Committee cannot but trust that the Government will examine its observations carefully and reiterates the firm hope that it will take the necessary measures to give full effect to the Convention, and it again asks the Government to report any developments in this respect.

[The Government is asked to supply full particulars at the 79th Session of the Conference.]

Document No. 200

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 223-225 (Nicaragua)

International Labour Conference
79th Session 1992

Report III
(Part 4A)

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

Nicaragua (ratification: 1967)

The Committee takes note of the Government's report and observes that it contains information concerning compliance with the recommendations made by the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the complaint against Nicaragua concerning the application of Conventions Nos. 87, 98 and 144.

With regard to the information given in connection with paragraph 541 of the report of the Commission of Inquiry (amendment and updating of the Police Functions Act, the Police Code and the Code of Criminal Procedure), the Committee notes with interest that the National Assembly has promulgated Act No. 124 of 25 July 1991 on the reform of criminal procedure, which makes local judges competent to try and punish the perpetrators of minor criminal offences and district judges to try the perpetrators of offences that carry more severe penalties than correctional penalties, but provides that they may not pronounce sentence until a jury has delivered its verdict. The Committee takes note of the Government's statement that it does not propose to promulgate legislation on social communications since there is complete and unrestricted freedom to receive and disseminate information without limitation.

The Committee further notes with satisfaction, with regard to the information given by the Government in connection with the recommendation of the Commission of Inquiry concerning expropriations (paragraph 542 of the report of the Commission of Inquiry) that the properties have been returned to the leaders of COSEP.

The Committee takes due note that the Government has prepared a draft Labour Code taking into account the observations of the Committee of Experts, of the Commission of Inquiry and of the ILO advisers. As regards tripartite consultations provided for in Convention No. 144, the Committee notes the Government's statement that it has had extensive recourse to tripartism in different labour activities.

In this connection the Committee reminds the Government of its observations concerning certain provisions of or omissions from the legislation that are not in accordance with the Convention. The Committee had referred in particular to the need to:

- guarantee, by a specific provision, the right of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops to associate for the defence of their occupational interests;
- abolish the requirement of an absolute majority of the workers of an enterprise or work centre for the formation of a trade union (section 189 of the Labour Code);
- amend the provision on the general prohibition of political activities by trade unions (section 204(b) of the Code);
- amend the obligation placed on trade union leaders to present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36 of the Regulations on Trade Union Associations);
- lift the excessive limitations on the exercise of the right to strike, requiring a majority of 60 per cent for calling a strike, prohibiting strikes in rural occupations when the produce may be damaged if it is not immediately available, and enabling the authorities to end a strike that has lasted 30 days through compulsory arbitration if no settlement has been reached after the date authorised for the strike (sections 225, 228 and 314 of the Code).

The Committee asks the Government to send it a copy of the draft Code in question. Since the questions raised are of great importance

and it has been pressing them for many years, the Committee expresses the firm hope that at its next session it will be able to take note of tangible results with regard to the reconciliation of the legislation with the Convention and that the recommendations made by the Commission of Inquiry in its report (paragraphs 543 and 544) will be embodied in the future Labour Code.

Document No. 201

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 240-241 (Trinidad and Tobago)

International Labour Conference
79th Session 1992

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

Trinidad and Tobago (ratification: 1963)

The Committee takes note of the Government's report and recalls that its previous observations have addressed the following issues:

1. the need to amend provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (sections 24(3) of the Civil Service Act, 28 of the Fire Service Act and 26 of the Prison Service Act);
2. the need to amend section 59(4)(a) of the Industrial Relations Act, as amended in 1978, so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike;
3. the need to amend sections 61 and 65 of the same Act to ensure that any resort to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say, those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis.

In its report, the Government indicates that the high-level review committee that it had appointed to undertake a global review of all the Service Acts and regulations has accomplished a considerable amount of work. In particular, the Fire Service (Amendment) Bill, 1990 and the Prison Service (Amendment) Bill, 1990, both of which amend the relevant Service Acts to bring them into line with the observations of the Committee of Experts, have been completed after extensive consultations with the relevant associations, and are soon to be submitted for the Government's approval. Moreover, a draft Civil Service (Amendment) Bill has been submitted to the Public Services Association, prior to discussions to be held thereon.

The Committee hopes that the Government will be in a position to indicate in its next report whether the above-mentioned Bills have been promulgated and, if so, to provide copies of these amendments.

The Government states that it is still actively considering the questions of amending sections 59(4)(a) and 65 of the Industrial Relations Act, Chapter 88:01, along the lines suggested by the Committee. It is also studying the comments of the Committee with respect to the amendment made to section 61 of the same Act, by the promulgation of Act No. 5 of 1987.

The Committee strongly hopes that the Government will implement legislation along the lines it has been suggesting for many years and urges the Government once again to indicate in its next report the measures taken to bring its legislation into conformity with the Convention.

In addition, in the light of the comments made by the Staff Association of the Central Bank of Trinidad and Tobago in a letter dated 7 November 1990 relating to the insufficient observance of the Convention in this sector, the Government indicates that in the context of a revision of the Central Bank Act, 1964, which is currently being undertaken by the Government, consideration will be given to the establishment of an appropriate mechanism to deal with the grievances of Central Bank employees.

The Committee requests the Government, in its next report, to keep it informed of any developments in this respect.

Document No. 202

ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 70–72 (Armenia)

International Labour Organization

Report III /Addendum (Part A)

Application of International Labour Standards 2021

Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
109th Session, 2021

Armenia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2006)

The Committee notes the observations of the Republican Union of Employers of Armenia (RUEA) and of the Confederation of Trade Unions of Armenia (CTUA) transmitted with the Government's report, which refer to the issues raised by the Committee below. The Committee further notes the CTUA observations received on 30 September 2020 referring to the issues raised by the Committee below and to the application of the Convention in practice***. The Committee requests the Government to provide its comments thereon.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously requested the Government to take the necessary

measures to amend the Constitution and the Law on Trade Unions so as to ensure that the following categories of workers could establish and join organizations of their own choosing: (i) employees of the Prosecutor's Office, judges and members of the Constitutional Court; (ii) civilians employed by the police and security service; (iii) self-employed workers; (iv) those working in liberal professions; and (v) workers in the informal economy. The Committee notes the Government's indication that constitutional amendments were adopted on 6 December 2015. The Committee notes with ***interest*** that pursuant to article 45, paragraph 1, of the amended Constitution everyone has the right to freedom of association, including the right to establish and join trade union organizations.

The Committee further notes the Government's indication that while the issue of amending the Law on Trade Unions will be discussed with the social partners, the right of civilian personnel in the police and security services to join trade unions is not restricted by section 6 of the Law on Trade Unions, by the Law on the Police Service or by the Law on the Service in the National Security Bodies. The Committee notes, however, that it stems from section 6 of the Law on Trade Unions, as amended in 2018, that only those with employment contracts can be members of a trade union and that pursuant to paragraph 3 of the same section, employees of the armed forces, police, national security, prosecutor's office, as well as judges, including judges of the Constitutional Court, cannot be members of a trade union organization. The Committee once again recalls that all workers, without distinction whatsoever, should have the right to establish and join organizations of their own choosing. It further recalls that the only authorized exceptions concern members of the police and the armed forces. It considers, however, that civilians employed in such services should be granted the right to establish and join organizations to further and defend their interests. ***The Committee therefore urges the Government to take the necessary measures to amend the Law on Trade Unions to ensure that employees of the Prosecutor's Office, judges (including of the Constitutional Court), civilians employed by the police and security services, self-employed workers, those working in liberal professions, and workers in the informal economy can establish and join organizations for furthering and defending their interests. It requests the Government to provide information on all progress made in this respect.***

Minimum membership requirement. The Committee recalls that it had previously requested the Government to amend section 4 of the Law on Employers' Unions, providing for the number of employers required to form employers' organizations at the national level (over half of employers' organizations operating at the sectoral and territorial levels), sectoral level (over half of employers' organizations operating at the territorial levels) and territorial level (majority of employers in a particular administrative territory or employers' organizations from different sectors in a particular administrative territory); and to also amend section 2 of the Law on Trade Unions, setting out similar prerequisites for federations of trade unions at the territorial, sector and national levels, so as to lower the required minimum membership requirements. The Committee had considered that the minimum membership requirements as set out in the above legislative provisions are too high given that they would appear to ensure that in fact there is only one national level organization, one organization per sector and one territorial level organization per territory or a particular sector in the territory. The Committee notes the Government's indication that the Ministry of Labour and Social Issues has received draft amendments to the Law on Trade Unions and the Law on Employers' Unions. ***Recalling that it has been raising the issue of minimum membership requirement for the last ten years, the Committee expects that, in consultation with the social partners, both the Law on Trade Unions and the Law on Employers' Unions will be amended in the near future so as to lower the minimum membership requirements and to ensure that more than one organization can be established at various levels. The Committee requests the Government to provide information on the developments in this regard.***

Article 3. Right of organizations to organize their administration and activities in full freedom. The Committee recalls that it had previously requested the Government to amend:

– sections 13(2)(1) and 14 of the Law on Employers' Unions, which regulate in detail matters that should be decided upon by organizations themselves (such as the obligatory use of the words "employers' union" for all employers' organizations and "Armenia" for a national organization and the rights and responsibilities of the congress of an employers' organization);
– section 74(1) of the Labour Code, which requires a vote by two-thirds of an organization's (enterprise's) employees to declare a strike (or a vote by two thirds of employees of the subdivision if a strike is declared by a subdivision of an organization, as the case may be), so as to ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level; and
– section 77(2) of the Labour Code, according to which, minimum services are determined by the corresponding state and local self-governance entities, so as to ensure that social partners are able to participate in the definition of what constitutes a minimum service.

The Committee takes note of the Government's indication that in its view, sections 13(2)(1) and 14 of the Law on Employers' Unions are not inconsistent with *Article 3* of the Convention and do not limit the right of the employers' unions to independently draft their regulations or by-laws, freely elect their

representatives and organize their administration and activities. ***Recalling that the fundamental notion of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations, the Committee once again requests the Government to consider amending the above-mentioned provisions in consultation with the social partners to ensure that only formal requirements are laid down by the national legislation with regard to the functioning of organizations.***

The Committee further notes the Government's indication that the Labour Code is currently being reviewed to determine whether its above-mentioned sections should be amended. The Government informs, in particular, that it is suggested to amend section 74(1) of the Labour Code so as to require a favourable vote by the majority of employees who have participated in the closed ballot to call a strike if at least two-thirds of the total number of the employees of an organization/undertaking (or its subdivision) have participated in the ballot. The Government indicates that the question of acceptable quorum will be further discussed with the social partners. As regards section 77(2) of the Labour Code, the Committee notes that the Government's indication that a new proposal for amendments contains reference to the negotiation of minimum services between employers and workers' representatives. ***While welcoming the proposed amendments, the Committee recalls that the observance of a quorum of two-thirds of the total number of employees may also be difficult to reach and could restrict the right to strike in practice. It therefore requests the Government to ensure that the quorum and majority required for voting on a strike as well as to call a strike are fixed at a reasonable level. The Committee requests the Government to provide information on the developments regarding the amendment of the Labour Code.***

The Committee encourages the Government to pursue its efforts in addressing the issues raised above with the assistance of the ILO and in consultation with the social partners.

Document No. 203

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 266 (Seychelles)

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

Seychelles

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1978)

Previous comment

The Committee notes the observations of the Association of Seychelles Employers (ASE) and the Seychelles Chamber of Commerce and Industry (SCCI), communicated with the Government's report, as well as the Government's statement pertaining to the status of the review of the Industrial Relations Act (IRA) set out below.

In its previous comment, the Committee had requested the Government to provide information on the developments regarding the review of the IRA, particularly the amendments of its following provisions:

- section 9(1), so as to repeal the Registrar 's discretionary power to refuse registration;
- section 52(1)(a)(iv), so as to reduce the majority required to declare a strike to a simple majority;
- section 52(1)(a)(iii), so as to consider shortening the length of the cooling-off period;
- section 52(4), so as to ensure that the responsibility for declaring a strike illegal does not lie with the government authorities, but with an independent body which has the confidence of the parties involved; and
- section 56(1), which imposes penalties of up to six months of imprisonment for organizing or participating in a strike declared unlawful.

The Committee notes the Government's indications that a report with the recommendations for amendments developed by an ILO consultant in 2021 is currently under review by the Ministry of Employment and Social Affairs. According to the Government, the report contains recommendations: to repeal section 9; to provide that the strike ballot "shall be successful where it obtains the support of a majority of the workers in the bargaining unit concerned by the labour dispute"; to amend section 56(1) so as to limit the penalty to solely a monetary fine, as opposed to a monetary fine combined with imprisonment; and to set up a Commission for Conciliation and Mediation which will have statutory powers to create a deadlock breaking mechanism and prevent strike action. No recommendation has been made regarding the authority to declare a strike unlawful. The Government indicates that it is yet to finalize its position on the proposals. While taking due note of the work carried out with the technical assistance of the ILO, the Committee recalls that it has been requesting the Government to amend the IRA for a number of years. ***It therefore urges the Government to take all necessary steps to expedite the legislative review, in consultation with the social partners, and to take into account the Committee's previous comments, including its expectation that the amendment of section 52(1)(a)(iv) will continue to ensure that account is taken only of votes cast, as well as its comments on provisions apparently not mentioned in the consultant's report. The Committee requests the Government to provide information on the developments in this regard.***

The Committee notes the Government's indication that while the 45 days cooling-off period is not preceded by compulsory prior mediation or conciliation procedure and begins at the time of the reporting of the dispute to the Minister, in its view, it is possible to further shorten it to 30 days, in consultation with the social partners. ***Recalling that the period of advance notice should not be an additional obstacle to bargaining, the Committee requests the Government to provide information of developments in this respect.***

Document No. 204

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 100-101 (Chad)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

Labour Code have been proposed with a view to giving effect to the provisions of the Convention, in accordance with the comments of the Committee.

The Committee asks the Government to report any development in the situation and to provide a copy of the amendments as soon as they have been adopted.

Chad (ratification: 1960)

Following the discussion on the application of this Convention that took place in 1979 in the Conference Committee, the Committee regrets to note that once again the report of the Government has not arrived. It is therefore bound to repeat its previous observation, which was worded as follows:

> In its previous observations, the Committee has made comments on section 36 of the Labour Code, which prohibits trade unions from undertaking any political activities. The Committee has, in particular, stated that a wide interpretation of this provision could lead to the conclusion that trade unions were going beyond their statutory competence if they ventured to make suggestions or criticisms concerning the Government's economic and social policy, for instance, the Government's wages policy. The Committee considered that it would be desirable not to prohibit completely any activity which, while directed essentially to the defence of members' interests, might have some political aspects, and to leave it to the courts to repress any abuses by occupational organisations which might attempt to transform unions into political instruments.
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> In addition, the Committee takes note of Ordinance No. 001 of 8 January 1976. This Ordinance provides that the exercise of trade union rights is exclusively reserved for the private sector and is prohibited in regard to public officials and equivalents. The Committee recalls in this connection that under Article 2 of the Convention, workers, without distinction whatsoever, including public officials, have the right to establish and to join organisations of their own choosing.
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> The Committee has also taken note of Ordinance No. 30 of 26 November 1975. This Ordinance provides that by reason of the overriding necessity to maintain order and in view of the positive abuses in the practice of freedom of association, all strike activity on the entire national territory is suspended until further notice. The Committee considers in this connection that, to be permissible, a prohibition from striking applied to all workers owing to special circumstances should not last longer than is strictly necessary. In addition, the Committee recalls that a general prohibition from striking considerably restricts the possibilities that trade unions have of furthering and defending the interests of their members (Article 10 of the Convention) and of organising their activities (Article 3).
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> The Committee trusts that the Government will take, in the very near future, the action necessary to modify the legislation in the light of the comments made above.
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> In addition, in its previous direct requests, the Committee had noted the statement of the Government that trade unions may affiliate with organisations provided that these have African allegiance. The Committee again requests the Government to indicate whether organisations of workers and employers have the right to affiliate with international organisations of workers

and employers, in general, as provided for in Article 5 of the Convention.[1]

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[1] The Government is asked to supply full particulars to the Conference at its 67th Session.

Document No. 205

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 290-294 (Türkiye)

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

Türkiye

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)

Previous comment

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK), received on 31 August 2022; as well as those of the International Trade Union Confederation (ITUC), and the Confederation of Progressive Trade Unions of Türkiye (DİSK) received on 1 September 2022 which concern questions examined in this comment, and the Government's reply thereto**.** The Committee also notes the observations of Turkish Confederation of Employers' Associations (TISK) communicated with the Government's report.

Civil liberties. In its previous comment, the Committee had requested the Government to provide its detailed comments on the lengthy and serious allegations of violations of civil liberties and trade union rights that date back to 2016. The Committee notes that the Government reiterates its previous general indications citing a number of constitutional and legal provisions guaranteeing freedom of association and, in particular, section 118 of the Penal Code concerning the offence of forcing someone to join or leave a union or to prevent the activities of a union; and indicates that there are both administrative and penal sanctions against those who violate these provisions which aim to protect trade union activities from all kinds of violence, pressure and a threatening environment. The Government also once again refers to the constitutional and statutory framework governing the freedom of assembly in Türkiye, indicating that everyone has the right to hold unarmed and peaceful meetings and demonstrations without prior authorization – however, with prior notification to administrative authorities – and that this right shall be restricted only by law on grounds of national security, public order, prevention of commission of crime, protection of public health and public morals, or the rights and freedoms of others. Act No. 2911 on Meetings and Demonstrations and the relevant

Regulation set the legal framework for exercising this right. In this framework, meetings and demonstrations can be organized in determined places, with notification made to the administrative authorities in order to ensure that the necessary security measures are taken. Security measures are planned and implemented regardless of the affiliation of the organizers, with a view to protecting the life and property of the organizers and other citizens. The Government indicates that all kinds of peaceful meetings and demonstrations take place in a safe and free environment, but when some trade union members transgress the law, destroy public and private property and seek to impose their own rules during the meetings and demonstrations, then security forces are obliged to intervene to preserve public order and safety. The Government adds that for the latest May Day, celebrations were held by all trade unions and confederations all around the country. According to the Government, the rate of intervention in demonstrations and meetings has decreased from 3.2 per cent in 2015 to 0.6 per cent in 2021 and the number of persons subjected to judicial and administrative proceedings in the same period decreased from 11,330 to 2,640 persons. The Government finally adds that since the enactment of Act No. 6356 and the substantial amendment of Act No. 4688, the rate of unionization has steadily increased, reaching 72.36 per cent in the public sector and 14.32 per cent in the private sector. There are currently seven trade unions' confederations and 12 public servants' trade unions' confederations. Taking due note of this information, the Committee notes with ***deep regret*** that the Government does not provide any concrete information in response to the many specific and very serious allegations of violations of civil liberties made by the social partners in the past years. The Committee notes that in their latest observations, the KESK, the DİSK and the ITUC denounce more cases of arrest, detention and prosecution of trade unionists including the imprisonment of six KESK members and executives, among them Mr Mehmet Ali Köseoğlu, secretary of Collective Bargaining Agreement and legal affairs of Yapi-Yol-Sen, a KESK affiliate, arrested on 3 June 2022 and still held in pre-trial detention, without being informed of the charges against him or having a trial date; and the arrest in Ankara of eight leaders of the Trade Union of Employees in Public Health and Social Services (SES) on unspecified charges on 25 May 2021. The Committee notes the Government's indication that there is no information in the records of the Ministry of Labour regarding these cases. The Committee recalls that the alleged instances of denial of freedom of assembly and demonstration include: an absolute ban on all forms of public gatherings in the city of Van, declared on 21 November 2016 and regularly extended since by the Governor's office; a Government ban on May Day celebrations in Istanbul Taksim square; the arrest of 212 demonstrators in Istanbul for attempting to hold a May Day protest in defiance of the coronavirus lockdown rules, including members of several DİSK affiliates; intervention of security forces in the awareness raising action of KESK women leaders on the occasion of the International day for the elimination of violence against women on 22 November 2021; a ban on a public gathering of KESK and other union representatives in Antalya, planned to express views on the annual budget that was being discussed in Parliament, on 12 December 2021; use of tear gas and physical force to disperse a gathering of KESK leaders and members to protest low wages in front of the Turkish Statistical Institute on 1 July 2022; intervention with tear gas and violence in the demonstration organized by KESK women representatives to protest against the withdrawal of Türkiye from the Council of Europe's Istanbul convention on violence against women in Ankara on 26 July 2022; and violent police intervention in the sit-in organized inside Farlplas Automotive factory on 31 January 2022 to protest against the dismissal of nearly 150 workers. The police went to seek protesting workers on the rooftop of the factory, where it arrested them with violence, using pepper gas, risking their fall from the roof, using foul language against women, dragging them on the ground by the hair and breaking their bones. Reportedly 106 workers and union members and two officers of the DGD-SEN union were arrested by the police and released after giving their statements. ***The Committee urges the Government to provide detailed comments on these serious allegations of violations of civil liberties.***

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

The Committee notes that in March 2021, the Governing Body approved the report of the tripartite committee set up to examine the representation submitted by the Action Workers' Union Confederation (Aksiyon-Is) under article 24 of the ILO Constitution (GB.341/INS/13/5). The Committee notes that the tripartite committee issued conclusions and made recommendations in relation to: (i) dissolution of trade unions pursuant to the Decree-Law No. 667; (ii) the situation of workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions; and (iii) the situation of the imprisoned leaders and members of the dissolved unions. The Committee will examine measures taken by the Government in respect of the recommendation of the tripartite committee below.

The Committee recalls that the tripartite committee found that the workers dismissed for membership in dissolved unions were punished for having exercised their right to join organizations of their own choosing guaranteed by *Article 2* of the Convention without any possibility of review of their individual situation. The Inquiry Commission, which is mandated to examine the applications of workers dismissed under the state of emergency decrees, did not review the legality of the closure of the relevant trade union or any of the individual's own activities; membership in a closed union was considered sufficient ground to reject an application against dismissal. The tripartite committee found that this amounted to a denial of the right of dismissed workers to an effective remedy. Concerning the allegation of imprisonment of the chairperson of Aksiyon-Is and the Chairpersons of PAK MADEN IS, PAK TEKSIL IS, PAK EGITIM IS, PAK TASIMA IS, PAK SAGLIK IS, and PAK HIZMET IS, as well as many members of administrative committees, the tripartite committee stressed the importance of the right to freedom and security of person and freedom from arbitrary arrest and detention, as well as the right to a fair trial by an independent and impartial tribunal, in accordance with the provisions of the Universal Declaration of Human Rights. The tripartite committee urged the Government to ensure that a full, independent and impartial review be made with regard to all those workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions, in order to determine whether, independently of their membership in such unions, they had carried out any unlawful activity that would justify their dismissal. The tripartite committee also expected that the imprisoned trade unionists receive a swift and impartial trial and requested the Government to submit copies of the relevant judgments to this Committee. The Committee notes the following information provided by the Government on the review mechanism of the Inquiry Commission: (i) the Inquiry Commission on the State of Emergency initiates its investigations on the ground that the member concerned has a membership, affiliation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State; (ii) the investigations on the applicants from the confederations and trade unions which were closed by the decree laws are ongoing; (iii) as an effective remedy, the Commission delivers individualized and reasoned decisions after speedy and extensive examination; it is aimed that all application files whose examination process are ongoing will be concluded during the Commission's mandate period.

The Committee ***deeply regrets*** that the Government does not refer to any measures taken to address the concerns and recommendations of the tripartite committee regarding the denial of the rights of members and leaders of dissolved unions to an effective remedy and a fair trial. The Committee further ***deeply regrets*** that the Government does not provide any information on the situation of imprisoned union leaders. ***In view of the foregoing, the Committee urges the Government to take all necessary measures to implement the recommendations of the tripartite committee and to ensure that the right to an effective remedy and to a fair trial of the members and leaders of dissolved unions is duly respected. The Committee requests the Government to provide information thereon.***

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Senior public employees, magistrates and prison staff. The Committee recalls that for a number of years it has been requesting the Government to amend section 15 of Act No. 4688 which excludes senior public employees, magistrates, and prison staff from the right to organize. The Committee notes that in the Government's view, section 15 was designed in line with legal regulations, judicial decisions, and ILO Conventions. The Committee recalls in this regard that it has always considered that: (i) to bar senior public officials from the right to join trade unions which represent other workers in the public sector is not necessarily incompatible with freedom of association on the condition that they should be entitled to establish their own organizations to defend their interests; and (ii) while the exclusion of the armed forces and the police from the right to organize is not contrary to the Convention, the same cannot be said for prison staff.

Locum workers (teachers, nurses, midwives, etc), public servants working without a contract of employment and pensioners. The Committee had previously requested the Government to provide its comments on the observations of MEMUR-SEN concerning the need to ensure freedom of association for these categories of workers. The Government indicates in this regard that: (i) only public servants as defined in section 3 of Act No. 4688 on Public Servants' Trade Unions and Collective Agreement can join trade unions established within the scope of the Act and locum workers cannot be employed under any cadre or position as specified in section three; and (ii) retired public servants cannot establish or join public servants' unions, as sections 6 and 14 of Act No. 4688 restrict these rights to active public servants. According to the Government, they have, however, formed several associations that can bring the issues concerning them to the attention of the Government. The Committee recalls in this respect that: (i) with regard to the right to establish and join organizations, the Convention does not allow any distinction based on whether the employees are engaged on a permanent or temporary basis, or with regard to their contractual status or the lack thereof; and (ii) legislation should not prevent former workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union.

The Committee requests the Government to take necessary measures to review the legislation with a view to ensuring that senior public employees, magistrates and prison staff, locum workers, public servants working without a contract of employment and retirees can enjoy and exercise their right to establish and join organizations. The Committee requests the Government to provide information thereon.

Article 3. Right of workers' organizations to organize their activities and formulate their programmes. Suspension and prohibition of strikes. The Committee recalls that section 63(1) of Act No. 6356 provides that a lawful strike or lockout that had been called or commenced may be suspended by the President of the Republic for 60 days by a decree if it is prejudicial to public health or national security and that if an agreement is not reached during the suspension period, the dispute would be submitted to compulsory arbitration. For a number of years, the Committee has been requesting the Government to ensure that section 63 of Act No. 6356 is not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. While observing that in a decision dated 22 October 2014, the Constitutional Court ruled that the prohibition of strikes and lockouts in banking services and municipal transport services under section 62(1) was unconstitutional, the Committee noted that pursuant to a Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The Government indicates in this regard that the decision of the President to postpone a strike is taken within its context and its rationale is clearly stated in the decision, hence this authority is exercised within clearly stated boundaries. Furthermore, pursuant to article 125 of the Constitution, this decision is subject to judicial review as an administrative decision. The Government indicates that 14 strikes have been postponed since 2012 and in the regular reporting period only one postponement decision was accepted, which resulted in the agreement of the parties and the signing of a CBA. The Committee

further notes the observation of the DİSK, indicating that between 2015-2019, nine strikes concerning 235 workplaces and 169,705 workers were postponed with a cabinet decree. ***Recalling that strikes can be suspended only in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in the event of an acute national crisis, the Committee once again requests the Government to ensure that these principles are taken into consideration in the application of section 63 of Act No. 6356 and KHK No. 678.***

The State Supervisory Council. The Committee had previously requested the Government to provide information on any investigations or audits of trade unions undertaken by the Council, pursuant to Decree No. 5 or article 108 of the Constitution, and their results including any sanctions assessed**.** The Committee notes the Government's indication that the Constitutional Court annulled the phrase "may apply a measure or" in section 6(ç) of the Presidential Decree No. 5, which provided that the State Supervisory Council may apply a measure of removal from duty or propose the application of this measure to the competent authorities for officials of all levels and ranks who are deemed inconvenient to remain on duty in terms of the requirements of public service. The Government explains that following that decision, the State Supervisory Council no longer has the authority to dismiss or suspend any trade union official but can only propose the application of these measures to the competent authorities, which, in the case of trade unions, refers to the trade union's own supervisory bodies and disciplinary committees. The Committee takes due note of the Government's indication that the Council has not carried out any investigation or audit against any trade union.

Article 4. Dissolution of trade unions. The Committee notes the conclusions of the tripartite committee referred to above about the situation of trade unions dissolved pursuant to Decree-Law No. 667. The tripartite committee noted that these unions were dissolved by the executive branch of the Government, while under *Article 4* of the Convention, any dissolution of workers' or employers' organizations can only be carried out by the judicial authorities, which alone can guarantee the rights of defence. The tripartite committee further noted that while according to the Government, the representatives of these unions had failed to file applications with the Inquiry Commission mandated to examine their cases, the dissolved organizations had a limited capacity to present their claims due to the imprisonment of their leaders and members and seizure of their funds pursuant to the state of emergency Decree-Laws. The tripartite committee noted that as the time for filing an application challenging the closure of the unions has elapsed, it would now appear impossible to bring the dissolution of trade unions before a normal judicial procedure and added that the Government itself does not provide any explanation or details concerning the actions of the trade unions justifying their dissolution other than a declaration set out in Decree-Law No. 667 indicating that they were connected to FETÖ/PDY. The tripartite committee therefore urged the Government to take the necessary measures to ensure that the dissolution of trade unions pursuant to Decree-Law No. 667 is reviewed through the normal judicial procedures, which should also enable those unions to be able to be fully represented to defend their case. The Committee ***regrets*** that the Government merely indicates in this respect that two confederations and ten trade unions dissolved due to their connections to the FETO terrorist organization have applied to the Inquiry Commission and their cases are pending. ***Recalling that the dissolution and suspension of trade unions constitute extreme forms of interference by the authorities in the activities of organizations, and that Article 4 of the Convention prohibits the imposition of such measures by administrative authority, the Committee urges the Government to take all necessary measures to comply with the recommendation of the tripartite committee and to provide detailed information thereon. The Committee further requests the Government to provide information on the outcome of the cases concerning dissolved unions and confederations that are pending before the Inquiry Commission as well as on the number and outcome of any appeals against the negative decisions of the Inquiry Commission.***

[The Government is asked to reply in full to the present comments in 2023.]

Document No. 206

ILC, 59th Session, 1974, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 136 (Costa Rica)

International Labour Conference
59th Session 1974

Report III
(Part 4A)

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)

Volume A:

General Report and Observations concerning Particular Countries

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International Labour Office Geneva

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Congo (ratification: 1960)

Further to its earlier observations, the Committee notes with satisfaction the information supplied by the Government to the Conference Committee in 1973 and in its latest report, to the effect that Ordinance No. 13/73 of 18 May 1973 repealed Acts Nos. 40/64 and 3/65 setting up a single trade union organisation, which the Committee had found not to be compatible with the Convention.

Costa Rica (ratification: 1960)

In its earlier observation the Committee expressed the hope that, in view of the importance of the exercise of trade union rights in plantations, the right of trade union leaders to have access to them and the right of the workers to hold meetings, the Government would, as soon as possible, adopt legislative and administrative measures to ensure that all concerned may exercise these rights fully and effectively.

The Committee notes with interest the information given by the Government in its latest report, to the effect that it will submit to the Legislative Assembly a Bill to guarantee the right to hold trade union meetings in public places inside plantations. The Committee would ask the Government to supply information on any development in this matter and on the measures that have been taken to ensure that trade union leaders have access to plantations for the purpose of legitimate trade union activities.

The Committee also notes the statements made by a Government representative and by the Worker member of Costa Rica to the Conference Committee in 1973 regarding section 334 of the Criminal Code, which imposes penal sanctions for incitement to strike in the public services. According to the Worker member, the Government is an important employer, and this fact has led it to restrict the exercise of the rights laid down in the Convention. According to the Government representative, the Government has never made use of the section in question and has submitted to Parliament proposals for, among other things, the repeal of section 334 of the Criminal Code.

The Committee notes that, according to the Labour Code, strikes are not permitted in the public services, which include all work performed by persons in the employment of the State or a state institution, if the work in question is not of the same nature as work performed also by private undertakings carried on for profit.

In this connection the Committee would point out, as it has done before with regard to public officials, that the recognition of freedom of association does not necessarily imply the right to strike as well. However, if strikes are prohibited for those officials, and also in essential services, it is important that they should have adequate guarantees that their rights will be safeguarded as, for example, appropriate conciliation and arbitration procedures which are impartial and speedy and in which the parties concerned can participate at every stage.

Cuba (ratification: 1952)

The Committee notes that the Government's last report contains no new information.

The Committee remains prepared to consider further the points raised in preceding years at such time as any new elements shall have been brought to its attention. The Committee would be grateful if the Government would supply information on any developments in this connection.

Document No. 207

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 138-140 (Ecuador)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Ecuador (ratification: 1967)

With reference to its previous comments, the Committee takes note of the information supplied by the Government in its report. It, nevertheless, considers that several provisions of the national legislation continue to impair the application of the Convention:

- the prohibition placed on public servants from setting up trade unions (section 10(g) of the Act on the civil service and administrative careers of 8 December 1971), although they have the right to associate and to appoint their representatives (section 9(h) of the above-mentioned Act). Articles 2 and 10 of the Convention guarantee to all workers without distinction whatsoever (and therefore to all public servants) the right to establish organisations to further and defend their occupational and economic interests and not merely simple associations;

- the obligation to belong to the undertaking for election to the managing committee of a workers' association (section 445 of the Labour Code of 1978). The legislation ought to allow the candidature of persons who have previously belonged to the undertaking or occupation. In addition, the Committee asks the Government to indicate whether any other form of first-level trade union exists other than works unions, for example, unions of workers in the same profession or grouping workers of several undertakings.
- the obligation to be Ecuadorian for membership of the managing committee of a works council (section 455 of the Code). The legislation ought to permit organisations to choose their leaders without hindrance and foreign workers working legally in the country to attain trade union office, at least after a reasonable period of residence in the host country;
- the administrative dissolution of a works council when its membership drops below 25 per cent of the total number of workers (section 461 of the Code). In undertakings employing a large number of workers the legislation should not permit the dissolution of the works council on the pretext that the level of unionisation in the undertaking is less than 25 per cent;
- the prohibition of strikes by public employees (section 503, final subsection, of the Code) and public servants (section 10(g) of the Act on the civil service and administrative careers). Prohibitions on the exercise of the right to strike are compatible with the Convention only in respect of public servants acting in their capacity as agents of the public authority or in essential services in the strict sense of the term (and not the public services in general) where the interruption of such activities due to a strike would endanger the life, personal safety or health of the whole or part of the population;
- the prohibition placed on unions from taking part in the activities of political or religious parties, with the requirement that provisions to this effect shall be included in the by-laws of the unions (section 443(11)). The legislation should not impair the right of trade unions to express in public their opinions on the economic and social policy of the Government for purposes of furthering and defending the interests and the social and economic welfare of the workers;
- the penalty of imprisonment laid down by Decree No. 105 for the instigators of collective work stoppages.
- the granting of exclusive rights to bargain collectively, to "works councils" (sections 457 and 501 of the Code) whereas the Committee considers that this right should be accorded specifically to federations and confederations.

The Government explains, in respect of public servants, that only public employees - and not the workers of public institutions, who have the right to strike under section 453 of the Labour Code - do not have the right to form unions and go on strike, but that in practice associations exist in all public institutions. Collective agreements have therefore been signed between several public or semi-public institutions and their employees. The Government admits that public servants do not have the right to strike, but states that workers in

the public sector covered by the Labour Code do enjoy this right, provided that they have given notice and set up a minimum service (section 503 of the Code). Moreover, the Government considers that it is unnecessary to amend sections 443(11) (which prohibits trade unions from engaging in party politics) and 461 (which concerns the dissolution of works councils covering a very small number of workers), and states that the repeal of Decree No. 105 would require action by the legislative authority.

The Committee takes note of these statements but can only express once again the hope that the Government will re-examine the situation in the light of the above considerations and asks it to indicate in its next report the measures taken or under consideration to bring the legislation into full conformity with the Convention.

[The Government is asked to supply full particulars to the Conference at its 71st Session.]

Document No. 208

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 140-142 (Egypt)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Egypt (ratification: 1957)

The Committee has studied the written and oral information supplied by the Government to the Conference Committee in June 1984 and also in the report of the Government.

It observes that several provisions of the national legislation affect the application of the Convention:

- the single-trade-union system laid down by law in favour of an organisation mentioned by name, the Confederation of Egyptian Trade Unions (sections 7, 13, 14, 16, 17, 31, 41, 52 and 65 of Act No. 35 of 1976 on trade unions as amended by Act No. 1 of 1 January 1981);
- the denial of the right to belong to a trade union committee on persons occupying managerial posts in the public and private sectors (section 19(e) of the Trade Union Act);
- the regulation of the internal management and the activities of trade unions (exclusion from the right to vote and election to trade union office of the unemployed and the retired: section 23; obligation to have been a member of the trade union organisation for a year for election to office: section 36(c); need for the approval of the Confederation of Trade Unions to be a candidate: section 41; and supervision of the financial administration of trade unions by the Confederation: section 62 of the Trade Union Act);
- the power of the Public Prosecutor to call for the removal from office of the executive committee of a trade union organisation responsible for the abandonment of work or deliberate absenteeism in a public service or a service meeting a public need (section 70(2)(b) of the Trade Union Act) and the establishment of a system of compulsory conciliation and arbitration for collective labour disputes (sections 93 to 106 of the Labour Code, Act No. 137 of 6 August 1981).

The Committee has taken note of the repeated statements by the Government on the historical nature of Egyptian trade union unity, which is due to the fact that the Trade Union Act has been drafted by the Egyptian workers and discussed by the workers themselves and that

it is the workers' members of the People's Council who placed it before this Council, bearing in mind the obligations of the Confederation of Trade Unions to the Organisation of African Trade Union Unity, which favours a single-trade-union system at the national level.

The Committee, while appreciating the Government's statements on this point, can only point out once more that, even where a de facto monopoly exists as a consequence of the grouping together of all the workers, national legislation should not institutionalise this factual situation by mentioning by name the single central organisation, even if the existing trade union so requests. Even where, at some point in the history of a nation, all workers have preferred to unify the trade union movement they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions that are able to group together in higher-level trade union organisations outside the established trade union structure (see paragraph 137 of the the General Survey of the Committee of Experts of 1983 on Freedom of Association and Collective Bargaining).

The Committee therefore asks the Government to indicate the measures taken or under consideration to eliminate in its legislation all reference to the Confederation of Egyptian Trade Unions.

With regard to the denial of the right to belong to a trade union committee on persons occupying managerial posts in the public or private sector, the Committee takes note of the information supplied by the Government to the effect that these workers, representing the administration or the employers, have been excluded from the right to membership of a trade union committee in order to prevent all interference by employers in trade union activities. Nevertheless, according to the Government, these persons are entitled to join occupational associations.

With regard to the regulation of the internal administration and the activities of trade unions, the Government states that the legislation has taken account of the wishes of the Confederation of Egyptian Trade Unions to lay down certain rules that the Confederation considers necessary in the interests of the workers, but that the Ministry of Labour has sent a letter to the Confederation of Trade Unions asking it to consider the possibility of amending these provisions in accordance with the comments of the Committee.

The Committee notes this information with interest and hopes that the next report will mention the progress made in this connection.

With regard to the system of compulsory arbitration for the settlement of collective disputes, the Committee notes the Government's statement that in practice it is the workers who generally call for arbitration and that in most cases the efforts of the Ministry of Labour result in a decision in favour of the workers. Furthermore, some strikes took place in 1983 and 1984 and no worker who had participated in a strike has been prosecuted.

The Committee takes note of this information, but observes that the legislation does not guarantee the right to strike to the workers and that, on the contrary, the Public Prosecutor can obtain the removal of a trade union committee that has provoked the abandonment of work or deliberate absenteeism in a public service.

The Committee can only point out that the peaceful exercise of the right to strike is one of the essential means that must be available to the workers and their organisations for furthering and defending their occupational, economic and social claims. Restrictions on its exercise are compatible with the Convention only in respect of public servants acting in their capacity as agents of the public authority and in essential services in the strict sense of the term (and not in the public services in general) where the interruption of activities due to a strike would endanger the life, personal safety or health of the whole or part of the population.

The Committee therefore urges the Government to indicate in its next report the measures taken or under consideration to bring the legislation into conformity with the Convention in the light of the above considerations.

Document No. 209

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 158-160 (Japan)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

Japan (ratification: 1965)

The Committee notes the information supplied by the Government in its report and to the Conference Committee in 1984, as well as the comments made by the General Council of Trade Unions of Japan (SOHYO) on 5 November 1984, by the Japanese Confederation of Labour (DOMEI) on 14 December 1984 and in a communication from the National Railway

Workers' Union (KOKURO) on 15 February 1985 transmitted by SOHYO on 19 February 1985.

1. The Committee first notes that the KOKURO's observations on the situation of employees of the Japanese National Railways were transmitted to the Government on 1 March 1985. The Government has not yet transmitted its comments thereon. The Committee hopes that full information on these matters will be available from the Government at its next session so that the Committee may examine the issues raised by KOKURO.

2. The Committee observes that SOHYO repeats its observations of past years concerning the acquisition of legal personality by the National Union of Local and Municipal Government Employees (JICHIRO) and the legislative definition of public servants at the managerial, supervisory and confidential level. It also takes note of the Government's detailed replies to these two issues. In the Committee's opinion, no new information has been made available to warrant any change in the conclusions it reached on these matters in its observations of 1981, 1983 and 1984, namely that these two situations do not involve infringements of freedom of association.

3. Both DOMEI and SOHYO contest the strike ban contained in the National Public Service Law and the latter supplies detailed statistics on sanctions which have been applied between October 1982 and October 1983 to public servants who have participated in strike action, ranging from warnings, reprimands, admonitions and wage cuts to dismissals. The Government replies, as it has in the past, that disciplinary sanctions are inevitable in a legal situation where strikes are prohibited and it points out that reductions in pay increments after repeated warnings, being an indication of the quality of the public servant's work, are agreed upon beween the labour and management involved and provided for in a collective agreement. The Government repeats that penal sanctions for strike action are imposed only on those who conspire, instigate or incite other public servants to strike and not on strike participants. It adds that no case leading to the imposition of penal sanctions was reported in the last decade (although one case involving a 1974 teachers' strike is before the Tokyo High Court).

Given that there is no change in this situation on which the Committee made detailed comments in 1984, it would repeat its previous conclusions, namely 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. In the view of the Committee such a prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Moreover, if strikes are prohibited or restricted in the public service or in essential services, appropriate guarantees must be afforded to workers who are thus denied one of the essential means of defending their occupational interests. Restrictions should be offset by adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can take part at every stage and in which the awards should

in all cases be binding on both parties. Such awards, once rendered, should be rapidly and fully implemented (see the observation under Convention No. 98). Moreover, the Committee has stated that, as regards strikes, penal sanctions should only be imposed where there are violations of strike prohibitions that are in conformity with the principles of freedom of association. In addition, in these cases, the sanctions should be proportionate to the offences committed, and penalties of imprisonment should not be imposed in the case of peaceful strikes. Generally, as regards the question of the right to strike and the application of disciplinary sanctions, the Committee would again request the Government to re-examine the situation in the light of the above principles and to continue to supply information on any action that may be taken concerning the application of these principles.

4. As regards the denial of the right to organise for fire-fighters, the Committee notes that the Government heard the opinions from the parties concerned at the Inter-Ministerial Conference on Public Employees' Problems and that it approached a cross-section of fire defence personnel for their views on this matter. According to the Government's summary of the latters' opinions, if the right to organise were recognised, the spirit of solidarity and unity between organisations would be weakened and if such personnel had the right to strike this would cause anxiety to the public and would damage the co-operation between volunteer fire-fighting teams and fire defence personnel; moreover, the working conditions of fire defence personnel were discussed at various levels and there have been positive improvements through mutual communication between labour and management. The Government adds that it has never interferred with the National Council of Fire-Fighting Personnel, and would not do so unless the Council committed any illegal activity. Although SOHYO states that there is discrimination by employers against members of the Council, the Government maintains that fire defence personnel have never met with unfair treatment because of belonging to the Council.

The Committee notes that extensive deliberations are taking place concerning the right to organise of this category of workers with the participation of SOHYO and DOMEI affiliates from the public sector. It requests the Government to keep it informed in future reports on any developments in the matter.

Document No. 210

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 160-161 (Rwanda)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Rwanda (ratification: 1988)

The Committee notes with regret that the Government's report does not contain a reply to its previous observation.

1. *Prohibition of the right to strike in the public service.* The Committee recalls that whereas it has always acknowledged that the right to strike may be limited or even prohibited in the public service, such a prohibition would be nonsensical if legislation adopted a too broad definition of the concept of public service. The Committee cannot disregard the peculiarities or legal and social traditions of each country but it must

nevertheless attempt to identify relatively uniform criteria permitting examination of the compatibility of a legislation with the principles of freedom of association. In these circumstances, the prohibition of the right to strike should not be imposed on public servants who are not exercising authority in the name of the State (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 158).

The Committee therefore requests the Government to indicate the measures which have been taken, or are envisaged, to amend section 26 of the Legislative Decree of 19 March 1974 to issue the general conditions of service of employees of the State (which, under its present wording, continues to forbid state employees to take part in strikes or in activities aimed at causing a strike in the state services) with a view to limiting the restrictions on the right to strike to those which accord with the principles of freedom of association.

2. *Hindrance with respect to the election of trade union representatives*. The Committee recalls that under *Article 3 of the Convention* workers' and employers' organizations shall have the right to elect their representatives in full freedom.

The Committee therefore requests the Government to indicate the measures which have been taken or are envisaged to amend section 8 of the Labour Code which prohibits election of non-Rwandans to trade union office, in order to permit foreign workers to hold trade union office at least after a reasonable period of residence in the country (see paragraph 118 of the General Survey).

The Committee reminds the Government that the ILO is at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention and hopes that the Government will make every effort to take the necessary action in the very near future. It requests the Government to communicate in its next report information on any progress made in these fields.

Document No. 211

ILC, 109th Session, 2020, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 73-74 (Benin)

International Labour Organization

Report III (Part A)

Application of International Labour Standards 2020

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

International Labour Conference
109th Session, 2020

Benin

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) *(ratification: 1960)*

The Committee notes the observations of the General Confederation of Workers of Benin (CGTB) dated 3 April 2019 and those of the Trade Union Confederation of Workers of Benin (CSTB) dated 12 June 2019, regarding Act No. 2018-34 amending and supplementing Act No. 2001-09 of 21 June 2002 on the exercise of the right to strike, which refer to the matters examined below by the Committee. The Committee also notes the response of the Government in this respect.

Article 2 of the Convention. Right to establish trade unions without previous authorization. The Committee has, on numerous occasions, insisted upon the need to amend section 83 of the Labour Code, which requires trade unions to deposit their by-laws with numerous authorities, in particular the Ministry of the Interior, in order to obtain legal status. The Government reiterates that the Committee's recommendations have been taken into account in the most recent version of the draft revised Labour Code, the revision of which is ongoing. ***Observing that the Government has been referring to amending this legislation for several years, the Committee firmly expects that the revision process of the Labour Code will be concluded rapidly and that the Government will very shortly report the amendment of section 83 of the Labour Code. The Committee requests the Government to provide a copy of the revised Labour Code once it is adopted.*** The Committee also notes the information provided by the Government indicating that Act No. 98-015 of 12 May 1998, issuing the general conditions of seafarers, is still in force and the right to organize is thereby recognized for all seafarers.

Article 3. Right of workers' organizations to organize their activities. The Committee notes the below provisions of Act No. 2001-09 on the exercise of the right to strike, as amended by Act No. 2018-34.

Scope of the Act in terms of the persons covered. The Committee notes that military personnel, paramilitary personnel (police, customs, water, forestry, hunting, etc.) and healthcare staff may not exercise the right to strike (new section 2). In this regard, the Committee wishes to recall that it considers that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State", for example, civil servants in government ministries and other comparable bodies, and ancillary staff and that, when they are not exercising authority in the name of the State, they should benefit from the right to strike without being liable to sanctions, except in the case that the maintenance of a minimum service may be envisaged. This principle should also apply to civilian personnel in military institutions when they are not engaged in the provision of essential services in the strict sense of the term (see the 2012 General Survey on the fundamental Conventions, paragraphs 130 and 131).

Requisitioning in the event of a strike. The Committee notes that public service employees and employees of public, semi-public or private institutions of an essential nature, whose stoppage of work would cause serious damage to peace, security, justice, the health of the population or the public finances of the State, may be requisitioned in the event of a strike (new section 17). Taking into account the general wording of the criteria set out in section 17, the Committee recalls that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis (see the 2012 General Survey, paragraph 151).

Duration of the strike. The Committee notes that the exercise of the right to strike is subject to certain conditions of duration. Strikes may not exceed ten days in any one year; seven days in a six-month period; and two days in the same month. Regardless of the duration, the stoppage of work during a day shall be considered as a full day of strike action (new section 13). The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish (see the 2012 General Survey, paragraph 146).

Sympathy strikes. The Committee notes that sympathy strikes are prohibited (new section 2). The Committee recalls that it considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful (see the 2012 General Survey, paragraph 125).

In light of the foregoing, the Committee urges the Government to take the necessary measures in the near future to amend the provisions in question of Act No. 2001-09 on the exercise of the right to strike, as amended by Act No. 2018-34, and to ensure that they give full effect to the provisions of the Convention with regard to the above.

Document No. 212

ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 195-200 (Japan)

Report III (Part A)

Application of International Labour Standards 2022

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

International Labour Conference
110th Session, 2022

Japan

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)

The Committee notes the following observations concerning matters addressed in this comment, as well as the Government's replies to them: the observations of the Japanese Trade Union Confederation (JTUC–RENGO), transmitted with the Government's report; of the National Confederation

of Trade Unions (ZENROREN), received on 31 August 2021; and of the Rentai Union Suginami, the Rentai Workers' Union, Itabashi-ku Section, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union), received on 1 September 2021. The Committee further notes the observations from Education International (EI), received on 9 September 2021, and the reply of the Government thereto.

Article 2 of the Convention. Right to organize of firefighting personnel. The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel. For the past years, the Government had been referring to the operation of the Fire Defence Personnel Committee (FDPC) system, which was presented as an alternative. The role of the FDPC was to examine proposals on working conditions by the personnel and to submit its conclusions to the chief of the fire department. The Government further indicated that surveys, directed to fire defence headquarters, were regularly conducted to gather information on the deliberations and results of the FDPC. The Government also mentioned a specific survey, conducted in January 2018, aiming at assessing the operation of the FDPC system and eventually seeking improvement. The results of the survey were discussed in the Fire and Disaster Management Agency. While the outcome of this survey was that the FDPC system is operated properly, the workers' representatives in the Fire and Disaster Management Agency called for improvement in the operation of the FDPC, including procedural transparency, and a more conducive environment for personnel to provide their opinions to the FDPC. In its previous report, the Government indicated that a new implementation policy of the FDPC, developed with the social partners, came into force in April 2019. In this regard, the Committee notes the observations from ZENROREN that the Japan Federation of Prefectural and Municipal Workers' Union (JICHIROREN), joined by the Firefighters' Network (FFN), had requested the Ministry for Internal Affairs and Communications and the Fire and Disaster Management Agency to come up with concrete measures to ensure that firefighters' opinions regarding working conditions and workplace safety are heard in the operation of the FDPC. JICHIROREN and FFN conducted a survey among firefighters in June 2021; the result indicated that the FDPC system is still considered to give discretionary power to the head of the fire department. ZENROREN regretted that, despite such result, the Government's response was merely to indicate that the FDPC system runs appropriately.

Furthermore, the Government indicates in its latest report that, since January 2019, the Ministry of Internal Affairs and Communications held six consultations with the workers' representatives where it discussed the Government's opinion that fire defence personnel are considered as police in relation to the implementation of the Convention. In the Government's view, the four consultations held in April, July and December 2019 enabled a substantive exchange on its opinion and on the Firefighting Staff Committee system. The fifth and sixth consultations, held in August 2020 and January 2021 respectively, enabled discussion of the situation of modern fire administration and the issue of harassment. The Government indicates that the employees voiced their appreciation for the regularity of the consultations and were willing to continue to hold regular consultations. The Committee notes, on the other hand, that JTUC–RENGO deplores the Government's continued failure to respond to the Committee's longstanding recommendation to grant the right to organise to firefighting personnel. JTUC–RENGO states that the establishment of reporting systems and consulting services brought up by the Fire and Disaster Management Agency amount to nothing more than makeshift measures and the Government's denial of the right to organize hampers fire and emergency services by lowering morale among the personnel.

The Committee wishes to recall its prior emphasis that the implementation policy for the FDPC remains distinct from the recognition of the right to organize under *Article 2* of the Convention. It notes the divergent views on the meaningfulness of the consultations held since January 2019, and understands that no progress was made towards bringing positions closer together on the right to organise of firefighting personnel. ***The Committee is bound to express again its firm expectation that continuing consultations will contribute to further progress towards ensuring the right of firefighting***

personnel to form and join an organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide detailed information on any developments in this regard.

Article 2. Right to organize of prison staff. The Committee recalls its long-standing comments concerning the need to recognize the right to organize of prison staff. The Committee notes that the Government reiterates its position that prison officers are included in the police, that this view was accepted by the Committee on Freedom of Association in its 12th and 54th Reports, and that granting the right to organize to the personnel of penal institutions would pose difficulty for the appropriate performance of their duties and the proper maintenance of discipline and order in the penal institutions. The Government also reiterates its view that, in cases where any emergency occurs in a penal institution, it is required to promptly and properly bring the situation under control, by force if necessary; thus granting the right to organize to the personnel of penal institutions could pose a problem for the appropriate performance of their duties and the proper maintenance of discipline and order. The Government recalls that it decided to grant expanded opportunities for the personnel of penal institutions to express their opinions in the eight Regional Correctional Headquarters across the country in 2019 and 2021, with the participation of 228 general staff members (from 77 penal institutions) in 2019, and 233 general staff members (from 78 penal institutions) in 2021. The participants exchanged opinions on improving the work environment, on the nature of staff recreation as a way to contribute to a more open workplace and on the promotion of a better work–life balance for staff.

On the other hand, the Committee notes the observations from JTUC–RENGO regretting that the Government did not follow up on the Committee's previous comments to consider the different categories of prison officers in determining, in consultation with the social partners, whether they are part of the police. JTUC–RENGO is of the view that: (i) the different measures described by the Government to provide opportunities to the personnel of penal institutions to express their opinions on their working conditions are irrelevant to union rights, including the right to organize. They merely constitute an exchange of views with individual employees and cannot be considered as negotiation; (ii) these measures described by the Government serve as substitutes for a meaningful discussion on granting the right to organize to the personnel of penal institutions; and (iii) it is unlikely the Government can report any concrete example of measures taken that have improved the work environment based on the exchange of opinions described above.

The Committee considers it useful to recall that, in previous reports, the Government referred to the following distinction among staff in penal institutions: (i) prison officers with a duty of total operations in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. The Committee observes in this regard that the Government has not engaged, despite reiterated calls from this Committee and the Conference Committee, in any consultation with the social partners to consider the different categories of prison officers. Furthermore, the Committee wishes to recall that, in its view, the Government initiatives to give opportunities to the personnel of penal institutions to provide their opinions on various aspects, including on their working conditions, remain distinct from the recognition of the right to organize under *Article 2* of the Convention. ***The Committee is bound to urge once again the Government to take, in consultation with the social partners and other concerned stakeholders, the necessary measures to ensure that prison officers, other than those with the specific duties of the judicial police, may form and join an organization of their own choosing to defend their occupational interests, and to provide detailed information on the steps taken in this regard.***

Article 3. Public service employees. The Committee recalls its long-standing comments on the need to ensure basic labour rights for public service employees, in particular that they enjoy the right to industrial action without risk of sanctions, with the only exception being public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. The Committee notes the general information provided by the Government on its overall approach, which remains to continue to hear opinions from employee organizations. The Committee further notes the information on the reduction of the number of national public service employees, as a result of the creation of Incorporated Administrative Agencies and the privatization of public departments or divisions. According to the Government, the number of employees in Governmental Administrative Agencies has diminished from 807,000 in March 2003 to 302,000 in March 2021. The Government thus considers that presently the restrictions on the basic labour rights for national public service employees, whose number is decreasing, is considerably limited.

The Committee recalls that the Government has been referring over the years to the procedures of the National Personnel Authority (NPA) as a compensatory guarantee for public service employees whose basic labour rights are restricted. Previously, the Committee had noted the persistent divergent views on the adequate nature of the NPA as a compensatory measure, and had requested the Government to consider, in consultation with the social partners, the most appropriate mechanism that would ensure impartial and speedy conciliation and arbitration. In its report, the Government indicates that the NPA held 185 official meetings with employees' organizations in 2020, making recommendations enabling working conditions of public service employees to be brought in line with the general conditions of society. The Government invokes the example of the use of the NPA recommendation system for revision of the remuneration of public service employees, implemented since 1960. Thus, the Government restates that these compensatory measures maintain appropriately the working conditions of public service employees.

The Committee notes, on the other hand, the observations from the JTUC–RENGO regretting that the Government's position on the autonomous labour–employer relations system has not evolved and the Government's failure to take action as requested by the ILO supervisory bodies. JTUC–RENGO, recalling the obligation of the Government under Section 12 of the Basic Act on the National Civil Service Reform (2008), regrets that the Government gives the same response it has been repeating for many years, that "there are wide-ranging issues regarding autonomous labour–employer relations systems, so while exchanging views with employees organizations, it is necessary to continue to consider this carefully". Furthermore, JTUC–RENGO reiterates that the NPA recommendations are left to political decision, making it obvious that such mechanism is defective as a compensatory measure. JTUC–RENGO denounces the statement from the Government that the privatization of national administrative agencies had left fewer public service employees without their basic labour rights as an attempt to seek acceptance of these restrictions. The Committee notes that JTUC–RENGO deplores the evident lack of intention on the part of the Government to reconsider the legal system with regard to the basic labour rights of public service employees, and once again requests that the ILO supervisory bodies call into question the Government's attitude and investigate these matters.

The Committee, noting that the report fails to provide any additional information on the matter, is therefore bound to urge once again that the Government indicate tangible measures taken or envisaged to ensure that public service employees, who are not exercising authority in the name of the State, enjoy fully their basic labour rights, in particular the right to industrial action. In view of persistent divergent views, the Committee also urges the Government to resume consultations with the social partners concerned for the review of the current system with a view to ensuring effective, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, will be fully and promptly implemented. It requests the Government to provide information on steps taken in this regard. It also

requests the Government to continue providing information on the functioning of the NPA recommendation system.

Local public service employees. The Committee had previously noted the observations of Rentai Union Suginami, Rentai Workers' Union, Union rakuda and Apaken Kobe referring to the adverse impact of the entry into force of the revised Local Public Service Act in April 2020 on their right to organize, and stating that: (i) non-regular local public service employees and their unions are not covered by the general labour law that provides for basic labour rights and their ability to appeal to the labour relations commission in case of alleged unfair labour practice; (ii) the new system, which aimed at limiting the use of part-time staff on permanent duties (through special service positions appointed by fiscal year just as regular service employees), has the effect of increasing the number of workers stripped of their basic labour rights; (iii) the conditional yearly employment system in place has created job anxiety and weakens union action and (iv) these situations further call for the urgent restoration of basic labour rights to all public service employees. The Committee notes the latest observations provided by these trade unions, as well as by JTUC–RENGO and ZENROREN, deploring that the situation described remains unaddressed. Additionally, these observations allege that the increase in consultation on harassment at the workplace and non-renewal of employment, is part of a new framework making it difficult for non-regular employees to join municipal unions, which in turn makes it more urgent to ensure basic labour rights to local public service employees.

The Committee notes the Government's statement that the legal amendments ensure proper appointment of special service personnel and temporary appointment employees, and that the change of basic labour rights conditions is a direct consequence. The Government asserts that, based on the examination of the autonomous labour–employer relations system of national public service employees, it will carry out careful examination of measures for local public service employees, listening to opinions from related organizations. The Committee recalls its view that the legal amendments that entered into force in April 2020 for local public service employees have the effect of broadening the category of public sector workers whose rights under the Convention are not fully ensured. ***The Committee therefore urges the Government to expedite its consideration of the autonomous labour–employer relations system so as to ensure that municipal unions are not deprived of their long-held trade union rights through the introduction of these amendments. It requests the Government to provide detailed information on the measures taken or envisaged in this regard.***

Articles 2 and 3. Consultations on a time-bound action plan of measures for the autonomous labour–employer relations system. In its previous comments, the Committee noted the Government's statement that it was examining carefully how to respond to the conclusions and recommendations formulated by the Committee on the Application of Standards of the International Labour Conference (Conference Committee) in 2018 and the various concerns regarding measures for the autonomous labour–employer relations system, while continuing to hear opinions from the social partners. The Committee observes with ***regret*** that no tangible progress seems to have been made in this respect. In its report, the Government merely indicates that it exchanged opinions with JTUC–RENGO and will provide information on initiatives taken in this regard in good faith. The Committee notes, on the other hand, that JTUC–RENGO denies such exchange of opinions took place and deplores that, despite the time that elapsed since the Conference Committee called on the Government to develop a time-bound action plan together with the social partners in order to implement its recommendations, the Government has taken no step towards its materialization. The Committee also notes ZENROREN's view that, based on how consultations were held with its affiliated organizations on the pending matters, it is clear that the Government has no willingness to draw up the action plan requested by the ILO supervisory bodies. ***Recalling the Conference Committee conclusions, including as to the lack of meaningful progress in taking necessary measures regarding the autonomous labour–employer relations system, the Committee once again strongly encourages the Government to take meaningful***

steps to elaborate, in consultation with the social partners concerned, a time-bound plan of action to implement the recommendations made above and to report on any progress made in this respect.

[The Government is asked to reply in full to the present comments in 2023.]

Document No. 213

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 104-106 (Gabon)

International Labour Conference
67th Session 1981

Report III
(Part 4A)

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

Ethiopia (ratification: 1963)

The Committee has noted the indications given by the competent national authorities to the representative of the Director-General of the ILO during the course of the direct contacts that took place in January 1980. It has also noted the information supplied by a Government representative to the Conference Committee in 1980, according to which everything possible would be done as regards the matters raised by the Committee and discussed during the direct contacts. It further notes from the Government's last report that the new draft Labour Proclamation, which is to replace the Labour Proclamation of 1975, has yet to be finalised.

The Committee recalls that its earlier comments related to the following provisions of the Labour Proclamation of 1975 which it had considered incompatible with the Convention: sections 51(2), 52(3)(b), 50(4) and (7) and 49(2), establishing the system of a single trade union; sections 106 and 99(3), placing restrictions on the right to strike, and sections 51(2) and 109(13) restricting the right of international affiliation.

The Committee had furthermore observed that certain categories of workers (such as public service employees and domestic servants) were not covered by the Labour Proclamation.

Finally, the Committee has stressed the need for the Government to take measures to ensure that not only workers but also employers may exercise freely the right to organise, and had expressed the view that it did not appear that the organisations mentioned in the Chamber of Commerce Proclamation of 1978 constitute employers' organisations in the sense of the Convention, that is to say, organisations to further and defend the interests of the employers (Article 10). In this regard the Committee notes the information provided by the Government during the direct contacts in 1980, according to which a special committee was currently examining the Chamber of Commerce Proclamation with a view to its amendment in certain respects.

The Committee hopes that the elaboration of the new Labour Proclamation and the amendment of the Chamber of Commerce Proclamation will be completed at an early date and that the new texts will ensure full compliance with the Convention on all the points enumerated above.[1]

Gabon (ratification: 1960)

The Committee notes the information provided by the Government in its report. It has also examined the constitution of the COSYGA, the single trade union central organisation.

1. The Committee has commented on the compulsory affiliation of the organisations to the central occupational organisations (COSYGA for the workers and CPG for the employers), provided for by the Labour Code, section 174.

The Government states that the revision of various sections of the Code, including section 174, is under consideration. The Committee again points out that the compulsory affiliation, under penalty of

[1] The Government is asked to supply full particulars to the Conference at its 67th Session and to report in detail for the period ending 30 June 1981.

illegality, of existing or future workers' or employers' organisations to the single central organisation of workers or of employers is contrary to the rights guaranteed by the Convention in Articles 2, 3, 5 and 6, under which, in particular, workers and employers have the right to establish the organisations <u>of their own choosing</u>.

2. The Committee has also commented on the concilication and arbitration procedures (sections 239, 240, 245 and 249 of the Labour Code). It notes that a decision of the arbitration board is subject to appeal by either party, failing which it becomes executory. In the event of an appeal the arbitration decision may either be confirmed or be amended. It understands that the total effect of the various provisions mentioned might be to make any legal strike practically impossible. However, restrictions of this kind considerably limit the opportunities of trade unions of furthering and defending the interests of their members (Article 10 of the Convention) and the right of trade unions to organise their activities (Article 3 of the Convention).

The Committee requests the Government to take the appropriate measures in these matters.

Document No. 214

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 113 (Mauritania)

International Labour Conference
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Report III
(Part 4A)

Third Item on the Agenda:
Information and Reports on the Application
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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

Mauritania (ratification: 1961)

The Committee notes that the proposed amendments referred to in its previous observation are to be re-examined during the revision of the Labour Code that is now going on. The Committee points out that it has been commenting for several years on various provisions of the Labour Code (section 1 of Book III, prohibiting the setting up of more than one union in any trade or occupation and similar trades or occupations; sections 40 and 48 of Book IV, under which a strike or lockout can be prohibited by submitting the collective dispute to an arbitration procedure).

The Committee hopes that the revision of the Labour Code that is now being carried out will take account of its comments and asks the Government to provide information on any development in the matter.

Document No. 215

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 118 (Paraguay)

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(Part 4A)

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International Labour Office Geneva

Paraguay (ratification: 1962)

In its previous comments the Committee has noted that, although sections 347 et seq. of the Labour Code contain certain provisions relating to the right to strike, the Code of Labour Procedure renders these provisions inoperative by establishing a system of conciliation and arbitration whose awards the parties are bound to accept. This results in prohibition of the right to strike in practice, which seriously restricts trade union activities and is thus contrary to Articles 3, 8 and 10 of the Convention.

In its report the Government simply indicates that no new provision has been adopted in this connection.

Since the Committee has been raising the question of the exercise of the right to strike for many years, it hopes once again that measures will be adopted in the near future to bring the legislation into conformity with the Convention in this matter.

The Committee further points out that under the Convention public servants must enjoy the right to associate for trade union purposes. It again asks the Government to state how associations of public servants can defend their members' interests and what kind of trade union activities these associations carry on, since section 31 of Act No. 200/70 expressly confines the activities of associations of public servants to cultural and social ends.

The Committee again asks the Government to state what procedures are applicable in respect of labour disputes in public undertakings, since section 2 of the Labour Code provides that labour disputes involving officials or manual or non-manual workers in undertakings producing public goods and services shall be settled by administrative action.

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[1] The Government is asked to supply full particulars to the Conference at its 67th Session and to report in detail for the period ending 30 June 1981.

Document No. 216

ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 155-156 (Haiti)

International Labour Conference
71st Session 1985

Report III
(Part 4A)

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

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General Report
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International Labour Office Geneva

Haiti (ratification: 1979)

The Committee notes with regret that no report has been received from the Government. It has, however, examined the information furnished by a government representative to the Conference Committee in June 1984 and the text of the Decree of 24 February 1984 to revise the Labour Code of 12 September 1961.

1. The Committee notes, in connection with the action taken on the report of the Commission of Inquiry instituted to examine, among other things, the application by Haiti of Conventions Nos. 87 and 98 in respect of Haitian workers in the sugar plantations of the Dominican Republic, that the Government has again declared, before the Committee of the International Labour Conference in June 1984, its intention of including in the text of employment contracts concerning these workers a special clause guaranteeing their rights to freedom of association and collective bargaining.

The Committee asks the Government to state whether this clause has actually been included in the contracts of employment for the 1984-85 season and whether it will be included in future contracts.

2. The Committee observes, moreover, that the legislation as a whole still contain certain restrictions that may affect the exercise of the freedom of association guaranteed by the Convention:

- the obligation to obtain the approval of the Government, on such conditions as may please the public authority, before establishing an association of more than 20 persons (section 236 of the Penal Code), whereas the legislation should permit the establishment of trade union organisations, federations and confederations without previous authorisation (Articles 2 and 5 of the Convention);
- the wide powers of supervision by the authorities over the trade unions (section 34 of the Decree of 4 November 1983, formerly section 400 of the Act of 28 August 1967 respecting the Department of Social Affairs), whereas the public authorities should refrain from any interference that would restrict the rights of trade union organisations (Article 3);
- the imposition of compulsory arbitration by the Arbitration Board, automatically or at the demand of the Secretary of State for Labour or of only one of the parties to a dispute, with a view to ending a strike (sections 185, 190, 199 and 200 of the amended Labour Code), whereas workers and their organisations should have the right to further and defend their interests by means including recourse to strikes, and the public authorities should refrain from restricting this right (Articles 3 and 10). The Committee therefore considers that it is desirable that recourse to compulsory arbitration with a view to ending a strike be confined to cases of strikes in essential services in the strict sense of the term, that is to say those whose interruption would endanger the life, personal safety or health of the whole

or part of the population, and arbitration should be possible when both parties call for it.

3. The Committee asks the Government to state whether there are at present in Haiti trade union organisations affiliated to international workers' organisations and, if so, to indicate their names.

4. Lastly, the Committee observes that public servants are governed not by the Labour Code but by special laws set forth in section 389 of the Labour Code as amended.

The Committee therefore asks the Government to state whether public servants have the right to organise and, if so, by virtue of what text.

Document No. 217

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 204 (Antigua and Barbuda)

International Labour Conference
79th Session 1992

Report III
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General report
and observations concerning particular countries

International Labour Office Geneva

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Antigua and Barbuda (ratification: 1983)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

> The Committee refers to its previous comments on the need to amend sections 19, 20 and 21 of the Industrial Courts Act, 1976, which can be applied in practice to place a general prohibition on the right to strike at the initiative of one party, as illustrated by the decision of the Committee on Freedom of Association in Case No. 1296. The Committee notes that this question has been forwarded to the Cabinet for a re-examination of the provisions on the right to strike.
>
> The Committee has acknowledged that the right to strike may be limited in essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population. In view of the fact that the Act provides that arbitration may be compulsory and can be invoked by only one of the parties, for these provisions to be in accordance with the Convention, the arbitration award would have to be accepted by both parties to the dispute and, failing agreement, the workers should still have the right to strike. With respect to the provisions allowing the grant of an injunction putting an end to a legal strike, the Committee recalls that such measures can only be justified in situations of acute national crisis, and then only for a limited period.
>
> The Committee trusts that the Government will adopt the necessary measures to amend sections 19, 20 and 21 of the Industrial Courts Act, taking into account the above comments. It requests the Government to transmit to it rapidly the text of the amendments and to keep it informed of any new development in this respect.

Document No. 218

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 217-218 (Guyana)

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Report III
(Part 4 A)

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(Articles 19, 22 and 35 of the Constitution)

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International Labour Office Geneva

Guyana (ratification: 1967)

The Committee takes note of the Government's report and recalls that its comments have addressed the following issues:

- the adoption of a Trade Union Recognition Bill;
- the need to amend the Public Utility Undertakings and Public Health Services Arbitration Act (Cap. 54:01) which confers on the Minister broad powers to refer a dispute in the services listed in the schedule (which may be revised at the discretion of the Minister) to a tribunal for arbitration without having previously obtained the agreement of the two parties, and renders workers who take part in an illegal strike liable to a fine or two months' imprisonment (section 19).

1. The Committee takes note of the contents of the Trade Union Recognition Bill which contains provisions on the establishment of an independent body for the certification of trade unions and the determination of the most representative union in a given unit by majority vote. The Committee notes that under section 27(a) of the Bill, the recognised majority union has exclusive authority to negotiate on behalf of workers in the bargaining unit. The Committee requests the Government to state whether, where no union regroups 40 per cent of the persons in a unit as is required by section 20(2) or, where no union regroups 51 per cent after the period of time stipulated in section 20(3)(b), collective representation is granted to workers in such unions, at least for their members. The Committee stated in paragraph 141 of its 1983 General Survey on Freedom of Association and Collective Bargaining that minority organisations

should be allowed to function and at least have the right to make representations on behalf of their members and to represent them in the case of individual grievances. The Committee further requests the Government to indicate whether, in the situation mentioned above, collective bargaining rights are granted to trade unions in these units on behalf of their own members, as it stated would be desirable in paragraph 295 of its General Survey.

2. In a previous comment, the Committee urged the Government to ensure that measures were taken to amend Act Cap. 54:01 to limit recourse to compulsory arbitration in respect of strikes relating to essential services in the strict sense of the term, namely services whose interruption is liable to endanger the life, personal safety or health of the whole or part of the population.

The Committee notes from the Government's report that the Minister has not invoked the provisions of the Act that permit him to refer disputes to arbitration without the consent of the parties for many years, that all the disputes referred to arbitration in recent years were at the instance of the unions and that the penal sanction contained in the Act has never been enforced. The Committee also notes the Government's statement that it is currently examining the legislation in view of the comments and observations made by the Committee of Experts with a view to adopting the necessary amendments.

The Committee again expresses the hope that, as part of the present review of the legislation, Act Cap. 54:01 will be amended to take account of its comments. It asks the Government to provide detailed information on developments in this respect.

Document No. 219

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 225 (Nigeria)

International Labour Conference
79th Session 1992

Report III
(Part 4 A)

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

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General report
and observations concerning particular countries

International Labour Office Geneva

Nigeria (ratification: 1960)

The Committee takes note of the Government's report and the information supplied by a Government representative at the Conference Committee in 1991.

1. Article 5 of the Convention (affiliation to international workers' and employers' organisations). With reference to its previous comments, the Committee notes with satisfaction that Decree No. 35 of 1989 prohibiting the international affiliation of trade unions has been repealed by Decree No. 32 of 1991.

2. Articles 2 and 3. The Committee recalls, however, that, for several years, the fundamental discrepancies between the national legislation and the Convention concerned the following points:

- the single trade union system established by law under which any registered trade union is compulsorily affiliated to the Nigerian Labour Congress, the only central organisation, which is designated by name; the establishment of a single trade union for each category of workers in accordance with a pre-established list; too high a number of members for the establishment of a trade union;
- non-recognition of the right to organise of certain categories of workers (employees in the customs service, in mints, in the Central Bank of Nigeria and in the External Telecommunications Company);
- broad powers of the Registrar to supervise the accounts of trade unions at any time;
- the possibility of restricting the exercise of the right to strike through the imposition of compulsory arbitration beyond essential services in the strict sense of the term.

The Committee observes that, in its latest report, the Government merely indicates that it notes the comments of the Committee and that the subcommittee of the National Labour Advisory Council responsible for the review of the labour laws has not yet concluded its work. The Committee again expresses the hope that the Government will examine very closely the observations that it has been making for several years in this respect, and urges the Government to indicate in its next report the measures taken to give full effect to the provisions of the Convention.

Document No. 220

ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 240-241 (Malta)

Report III (Part A)

Application of International Labour Standards 2022

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

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110th Session, 2022

Malta

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)

The Committee takes note of the observations of the General Workers' Unions (GWU) received on 31 August 2019, which denounce violations of the right to organize in practice. The GWU alleges that various employers and contractors circumvent the legislative provisions on freedom of association by depriving their workers of their right to join trade unions. ***The Committee requests the Government to provide its comments in this regard.***

Article 2 of the Convention. Right to establish organizations without previous authorization. The Committee previously observed that section 51 of the Employment and Industrial Relations Act, 2002 (EIRA) provides that a trade union or an employers' association and any member, officer or other official thereof, may not perform any act in furtherance of any of the purposes for which it is formed unless such union or association has first been registered, and that the penalty for contravention of this provision is a fine not exceeding €1,165. It requested the Government to take the necessary measures to repeal section 51 of the EIRA. The Committee notes that the Government indicates that: (i) registration is important so that trade unions, employers' associations and their members can be officially recognized and able to effectively engage in collective bargaining; (ii) registration is free; and (iii) the annual reporting system provides data on the above-mentioned organizations, which helps determine their activity level. The Committee recalls once again that the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively. At the same time, the Committee also recalls that the exercise of legitimate trade union activities should not be dependent upon registration, nor should the exercise of such legitimate activities be subject to penalties. ***The Committee reiterates its request for the Government to take the necessary measures to repeal section 51 of the EIRA.***

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. In its previous observations, the Committee requested the Government to amend section 74(1) and (3)

of the EIRA – according to which, if an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister, who shall refer the dispute to the Industrial Tribunal for settlement – so as to ensure that compulsory arbitration to end a collective labour dispute is only possible in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term. The Committee notes the Government's indication that: (i) the mechanism provided by the above-mentioned section is to be used in case of failure of conciliation as facilitated under section 69 of the EIRA; (ii) the purpose of the Industrial Tribunal would be gravely undermined if a party could not challenge another party unless the latter agrees; and (iii) since the Industrial Tribunal has exclusive jurisdiction on trade disputes, the parties cannot resort to other means such as the civil courts. The Committee once again recalls that recourse to compulsory arbitration to bring an end to a collective labour dispute is only acceptable when the two parties to the dispute so agree, or when a strike may be restricted or prohibited – that is, in the case of disputes concerning public servants exercising authority in the name of the State, essential services in the strict sense of the term or situations of acute national crisis. It further recalls that accordingly, the failure of conciliation and the existence of protracted disputes are not per se elements which justify the imposition of compulsory arbitration. ***The Committee urges the Government to take the necessary measures to modify section 74(1) and (3) of the EIRA to ensure that compulsory arbitration may only take place with the approval of both parties or in circumstances in which a strike can be restricted or prohibited. The Committee requests the Government to inform on any developments in this respect.***

Article 9. Armed forces and the police. The Committee previously noted with interest the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amended the EIRA by adding a new section 67A, which gave members of the disciplined forces the right to become members of a registered trade union of their choice. It invited the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions have been formed and registered under this provision and the number of their members, and also whether any requests for such trade union registration are under consideration or have been rejected. The Committee notes the Government's indication that 1,189 members have registered with the Malta Police Association, 1,356 members have registered with the Police Officers Union and 165 members have registered with the Union of Civil Protection. It also notes that the Government points out that there have been no further requests for such unions to be registered, and no requests have been rejected. ***The Committee invites the Government to continue providing information on the practical application of section 67A of the EIRA.***

Document No. 221

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 179-181 (Madagascar)

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

Madagascar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1960)

Previous comment

The Committee notes the observations of the General Confederation of Workers' Unions of Madagascar (FISEMA), received on 1 September 2022, which refer to the issues examined in the present comment.

The Committee also notes the observations of the Randrana Sendikaly Alliance, received on 19 October 2022, alleging the arrest and sentencing to a 12-month prison term and a fine of 400,000 ariarys (about US$92) of Mr Zotiakobanjinina Fanja Marcel Sento, a leader of the trade union Trade unionism and life of societies (SVS Etoile), for having posted on Facebook the results of meetings held with the management of an enterprise in the textile sector in the performance of his trade union duties. ***The Committee requests the Government to provide its comments on these serious allegations.***

The Committee notes that the Government has not responded to the 2021 observations of the Autonomous Trade Union of Labour Inspectors (SAIT) alleging the violation of the right of trade unions to organize their activities in line with *Article 3* of the Convention. ***The Committee once again requests the Government to provide its comments in this regard.***

In its previous comments, the Committee noted the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA) containing allegations of restrictions on the right to organize, and

especially the right of trade unions to organize their management and training activities, and also on the difficulties encountered in establishing trade unions. The Committee notes that the Government, in response to these allegations, indicates that freedom of association is protected under section 136 et seq. of the Labour Code and that Decree No. 2011-490 and its implementing order No. 28968-2011 provide for the promotion of trade union rights in the country. ***Recalling the Government's responsibility to ensure that the rights provided for in the Convention are respected both in law and in practice, the Committee requests the Government to provide information on the measures taken to ensure the implementation of the above-mentioned provisions in practice.***

Restrictions on trade union activities in the maritime sector. The Committee previously urged the Government to ensure that the independent inquiry being conducted into anti-union acts in the maritime sector was concluded as soon as possible. The Committee notes the Government's indication that the Ministry of Transport and Meteorology is organizing a meeting with the General Maritime Union of Madagascar (SYGMMA) with a view to ending the conflict between the union and an enterprise in the maritime sector. ***Noting the Government's brief reference to the above-mentioned inquiry, the Committee requests the Government to clarify whether the meeting with SYGMMA has been concluded and, if so, to provide detailed information on its outcome. The Committee also requests the Government to provide detailed information on the outcome of any meeting organized by the Ministry of Transport and Meteorology concerning allegations of anti-union acts in the maritime sector.***

Article 2 of the Convention. Workers governed by the Maritime Code. In its previous comments, the Committee noted that a new Maritime Code was to be adopted and requested the Government to ensure that the Code provided for the right of seafarers to establish and join trade unions. The Committee notes the Government's indications that the fundamental rights and freedoms of seafarers were taken into account in the preparation of the draft Maritime Code, which is currently in the process of adoption. ***The Committee expects that the new Maritime Code will be adopted soon and will contain specific provisions providing for the right of seafarers to form and join trade unions. The Committee requests the Government to provide information on any developments in this regard and to transmit a copy of the Maritime Code once adopted.***

Article 3. Representativeness of workers' and employers' organizations. The Committee previously noted the adoption of Decree No. 2011-490 on workers' organizations and representativeness, which provides for the holding of elections for staff delegates at the enterprise level, and requested the Government to provide information on any progress made in such elections and their impact on the determination of the employers' and workers' organizations that participate in dialogue at the national level. The Committee notes the Government's indication that it is left to the workers and employers to organize the elections for staff representatives and to forward the results to the Ministry of Labour and Social Legislation, the role of which is limited to issuing a decree confirming that representativeness has been established. In this regard, the Government indicates that the Order No. 34-2015, issued on 19 February 2015, is in a state of tacit renewal since certain factors prevent the organization of new elections. The Committee also notes that FISEMA, in its observations, alleges that in 2019, when appointing workers' representatives to the boards of directors and management committees of the National Social Insurance Fund (CNAPS), the Antananarivo Inter-Enterprise Health Organization (OSTIE) and the Inter-Enterprise Medical Association of Antananarivo (AMIT), the Ministry of Labour and Social Legislation unilaterally changed the names of the representatives who were to sit on the boards and committees. FISEMA says it has filed a complaint with the Council of State, which issued three rulings in its favour in 2021 and 2022. ***The Committee requests the Government to provide specific information on the factors that have prevented the holding of elections for staff representatives since 2015. Furthermore, recalling the importance of avoiding interference by public authorities in the determination of the representativeness of professional organizations, the Committee requests the Government to provide its comments on the serious allegations of FISEMA.***

Right of workers' organizations to organize their activities and formulate their programmes. Compulsory arbitration. The Committee previously requested the Government to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Ministry of Labour and Social Legislation to a process of arbitration and that the arbitral award ends the dispute and the strike, as well as section 228 of the Labour Code which provides for the possibility of requisitioning striking employees in the event of disruption of public order. The Committee notes with ***regret*** that the Government merely indicates that prolonged disputes and strikes cause difficulties for society, workers and the economy, and provides information about the composition and functioning of its arbitration board. The Committee recalls that compulsory arbitration in the context of a collective labour dispute and the requisition of workers in the case of a strike are only acceptable when the strike in question may be restricted, or even prohibited, namely in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term, or in situations of acute national crisis (2012 General Survey on the fundamental Conventions, paragraphs 151 and 153). ***Recalling that the above-mentioned issues have been the subject of its comments for several years, the Committee urges the Government to take the necessary measures to amend sections 220, 225 and 228 of the Labour Code in the near future. The Committee requests the Government to provide information on any developments in this regard, and reminds it that it may avail itself of the technical assistance of the Office, if it so wishes.***

Document No. 222

ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 109 (Ireland)

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Ireland (ratification: 1955)

With reference to its earlier comments, the Committee takes note of the information provided by the Government to the Conference Committee in 1979 and in its report and also the comments submitted by the Irish Congress of Trade Unions. These comments relate to the absence of protection for certain classes of workers, the result of which might be that workers taking part in peaceful strike picketing during a strike would be sued for damages.

The Committee notes the statement by the Government that new legislation will be adopted shortly to extend the provisions of the Trade Disputes Act, 1906, as the Trade Union Congress has requested.

The Committee hopes that the Government will shortly adopt the appropriate measures and it asks the Government to continue to provide information on the matter and to send copies of the amendments to the Act as soon as they have been adopted.

Document No. 223

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 242-249 (United Kingdom)

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79th Session 1992

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(Part 4 A)

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

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International Labour Office Geneva

United Kingdom (ratification: 1949)

The Committee takes note of the Government's report. It also notes the extensive discussion which took place in 1991 at the Conference Committee concerning the issue of the Government Communications Headquarters (GCHQ), as well as the comments made by the Trades Union Congress (TUC) and the Council of Civil Service Unions (CCSU) in several communications in 1991 and 1992.

I. Dismissal of workers at the GCHQ

In its communication of 10 January 1992, to which is attached a series of letters to and from the Government, the CCSU and itself, the TUC states that following the debate at the Conference Committee in 1991 it wrote to the Prime Minister proposing discussions on this issue in the light of the recommendations made by the Committee of Experts and the Conference Committee. The TUC had referred then to the readiness of the trade unions to accept arrangements meeting the Government's requirements, and to the possibility to take the issue to the International Court of Justice, which is open to the Government under the ILO Constitution. According to the TUC, the CCSU intend to raise the issue of the GCHQ workers at the earliest opportunity with the Head of the Home Civil Service, but are pessimistic about a positive outcome in view of the attitude of the Government which has declared it found it difficult to see that any useful purpose would be served by such discussions.

In its report, the Government basically reiterates the arguments put forward at the Conference Committee in 1991, and asks the Committee of Experts to reconsider their views in light of the following points:

- GCHQ is part of the national security and intelligence service;
- under Convention No. 151 there would be no problem of interpretation;
- in many other countries the same activities would be carried out entirely within the military apparatus and would therefore be exempt, even under Convention No. 87;
- out of all the workers involved only 13 eventually did not accept the revised conditions or alternative employment, and they were given generous financial compensation;
- other international bodies concerned with fundamental human rights have ruled in the UK Government's favour; and
- workers at GCHQ are able to join an effective and indeed active trade union organisation, and the majority of staff have in fact done so.

Whilst reiterating that the trade unions concerned may raise the issue at any of their regular meetings with the Head of the Home Civil Service - an offer they have not taken up so far according to it - the Government reaffirms its belief that its action in respect of GCHQ was in line with its obligations under the ILO Conventions.

Having carefully examined the Government's report and the comments made by the trade unions, the Committee is bound to note that it was not provided with any new element which might lead it to modify its previous observation on the merits of this issue. The Committee

further notes that the Conference Committee was almost unanimous as to the necessity of a renewal of the dialogue. Since then, while reiterating that the trade unions could raise the issue at their regular meetings with the Head of the Home Civil Service, the Government indicated twice to the TUC (letters of 25 June and 20 December 1991) that it found it difficult to see that any useful purpose would be served by such discussions, which probably explains why the issue was apparently not raised during these regular meetings.

The Committee deplores that it has been unable to note any tangible progress on this question or even a resumption of discussions, despite the very broad consensus that has emerged in the supervisory bodies.

It recalls that the only exclusions provided for in the Convention concern the armed forces and police, that workers have the right to establish organisations of their own choosing, and that the right to organise does not prejudge the right to strike.

The Committee consequently urges the Government to resume in the very near future constructive discussions calculated to lead, through genuine dialogue, to a compromise acceptable to both sides.

II. Article 3 of the Convention

General

In its observation of 1991, the Committee had made a number of comments concerning the Employment Acts of 1980, 1982 and 1988 and the Trade Union Act of 1984. These comments concerned the following issues:

- unjustifiable discipline (section 3 of the Act of 1988);
- indemnification of union members and officials (section 8 of same Act);
- immunities in respect of civil liability for strikes and other industrial action;
- dismissals in connection with industrial action; and
- complexity of the legislation.

The Committee notes the extensive observations communicated by the Government on these issues, both at the Conference Committee and in its report. It further takes note of the comments of the TUC in its communication of 22 January 1992, concerning the Employment Act of 1990.

1. Unjustifiable discipline (section 3 of the Act of 1988)

In its previous observation, the Committee concluded that those parts of section 3 which deprive trade unions of the right to discipline their members who refuse to participate in lawful strikes and other industrial action or who seek to persuade fellow members to refuse to participate in such action, constituted an impermissible incursion upon the guarantees provided by Article 3. While recognising that the guarantees provided by Article 3 are conditioned by respect for fundamental human rights, the Committee considered that it is not compatible with the Convention to prevent the members of a

impose disciplinary penalties on those of their members who refuse to participate in a strike. It also requests the parties to provide it with examples of the way the provision is applied in practice.

2. Indemnification of union members and officials (section 8 of the Act of 1988)

Section 8 of the 1988 Act makes it unlawful for the property of any trade union to be applied so as to indemnify any individual in respect of any penalty which may be imposed upon that individual for an offence or for contempt of court. In its 1991 observation, while recognising that section 8 does not expressly state that unions may not adopt rules to this effect, the Committee had concluded that it appears to achieve the same effect by virtue of the fact that any payments made in accordance with any such rule may be recovered in accordance with subsections (2) and (3) of section 8. Accordingly, the Committee considered that the legislation should be amended so as to allow the adoption and implementation of rules which permit the indemnification of members or officials in respect of legal liabilities they may have incurred on behalf of the union.

In its report, the Government:

(a) points out that section 8 only applies to fines or other financial penalties imposed on an individual for a criminal offence or contempt of court - conduct which is self-evidently in breach of the law of the land;

(b) points out that where an individual merely acts as a passive "agent" of a trade union, any penalty is likely to be imposed on the union, but that where a penalty is imposed on an individual this would imply a clear finding of wilful and unlawful action by that individual;

(c) having regard to Article 8(1) of the Convention in particular, cannot accept that provisions which declare unlawful the application of union funds or property to indemnify such individuals from the consequences of their own unlawful acts, and the consequential right of recovery of the money or property paid over, amount to a denial of any guarantee in the Convention.

Accordingly, the Government cannot agree that there is any need to amend the legislation as suggested by the Committee, since its present terms are not incompatible with any guarantee afforded by the Convention.

The Committee notes that, according to the Government, these provisions apply in extreme cases, i.e. cases in which a person is sentenced by a tribunal to a fine or another financial penalty for an illegal and wilful act manifestly constituting a breach of the national law (a criminal offence or contempt of court); in other cases, the penalties would probably be imposed on the trade union.

The Committee considers that indemnification of union members or officials in respect of legal liabilities they may incur on behalf of the trade union should be possible.

In order to be able to take a fully informed decision, the Committee asks the parties to supply it with information on the practical application of these provisions, in particular by providing

the texts of quasi-judicial or judicial decisions issued in these matters.

3. Immunities in respect of civil liability for strikes and other industrial action

In its 1991 observation, whilst recognising that British legislation provides a significant measure of protection against common law liability for individuals and trade unions who organise or participate in certain forms of industrial action, and that workers cannot be ordered to return to or remain at work, the Committee maintained that some of the legislative changes which have been introduced since 1980 have had the effect of withdrawing statutory protection from various forms of industrial action which, in its opinion, ought not to attract legal liability. Therefore, it repeated its request that the Government introduce legislation to enable workers and their unions to engage in industrial action in the circumstances discussed in detail in the Committee's 1989 observation.

In its report, the Government:

(a) points out that UK law (i) continues to provide special protection against civil law liability that would otherwise arise wherever a trade union or any other person calls on workers to break contracts in contemplation or furtherance of a trade dispute with their employer; and (ii) provides a wide-ranging definition of "trade dispute" for this purpose;

(b) observes that no change since 1979 to the law relating to the organisation of industrial action has in any way affected the position of workers - who remain free to choose to engage in industrial action whether in relation to a trade dispute with their employer, or in support of other workers or of some other objective;

(c) cannot find in the provisions of the Convention any authority for the Committee of Experts' conclusion that the Convention requires that calling for, or otherwise organising, the particular forms of industrial action which it mentions ought to have legal protection.

Accordingly, the Government cannot accept that there is any need for further legislation concerning protection against civil liability for acts of calling for, or otherwise organising, industrial action on the grounds that this is necessary to ensure compliance with any guarantee afforded by the Convention.

The Committee is bound to note that no new arguments have been submitted to it that are likely to affect its previous comments; it continues to consider that some amendments to the law introduced since 1980 have had the effect of reducing or withdrawing legal protection against liability for various forms of strike and industrial action which ought not to give rise to legal liability. It refers in particular to the detailed observations it made on this question in its 1989 and 1991 reports, and again asks the Government to amend its legislation so as to enable workers and their organisations to take the forms of industrial action in question without incurring civil liability at common law.

In its communication of 22 January 1992, the TUC also submits that section 4 of the Employment Act of 1990 removes immunity in tort from all secondary action other than that arising in the course of peaceful picketing by workers at their own place of work.

Since the Government did not reply on this point which had already been raised in its 1991 observation, the Committee would ask it once again to provide full details on the objective and the effects of this provision in its next report.

4. Dismissals in connection with industrial action

In its 1991 observation the Committee had asked once again the Government to introduce legislative protection against dismissal and other forms of discriminatory treatment in connection with strikes and other industrial action so as to bring law and practice into conformity with the requirements of the Convention. In addition, adopting the conclusions of the Committee on Freedom of Association in Case No. 1540, it invited the Government to modify section 62A of the Employment Protection (Consolidation) Act [inserted by section 9 of the 1990 Act].

In its communication of 22 January 1992, the TUC emphasises that section 62A enables an employer to dismiss selectively those taking part in unofficial action; thus, persons dismissed during an unofficial strike, even if they had not participated in the action, would have no right to complain of unfair dismissal. In addition, section 6 of the 1990 Employment Act [which amended section 15 of the 1982 Employment Act] widens the definition of what constitutes official action and extends unions' liability in tort; unions could now be held responsible for actions of their members over which they have no control.

In its report, the Government points out that Convention No. 87 is concerned with protection of the freedom to form employers' and workers' organisations and the rights of such organisations, but that the treatment of individual workers (including the matter of dismissal or disciplinary penalties being imposed by an employer) is a matter dealt with expressly in other Conventions notably Convention No. 98 - and are, accordingly, unable to see how the law relating to such dismissals or discipline of individuals falls to be covered by Convention No. 87.

The Government however replies on the merits and gives the following details on the law and practice:

(a) it has always been the case that an employer is entitled to impose disciplinary penalties on workers who choose to take industrial action, including for example, denying them payment to which they would have been entitled if they had worked during the period they in fact took such action - and there appears to be no basis in the provisions of Convention No. 87 to deny employers' freedom to respond in this way to industrial action;

(b) UK law has never included the principle for which the Committee of Experts contend, namely that any employer should be prevented from dismissing or imposing a penalty on workers during industrial action; since the UK law on unfair dismissal was

introduced in 1971 it has always contained an exception relating to dismissals during industrial action;

(c) UK law does not permit workers to be ordered, in any circumstances, to return to or remain at work; this freedom to decide whether to take industrial action - which, by its nature, must always be an individual decision on the part of any employee - applies regardless of the nature or scale of the effect of that action on their employers' business (either in absolute terms or in relation to the nature of the issues involved in the dispute);

(d) moreover, where employees are taking part in official industrial action - that is to say, action which is called for or otherwise organised by their trade union - an employee who is discriminated against by being dismissed while others taking part in the action are not dismissed can complain of unfair dismissal to an industrial tribunal; the same is true if all employees are dismissed but some are offered re-engagement within three months while others are not;

(e) in addition, UK employment law provides special protection for any employee who takes strike action by preserving any "qualifying period of employment" which the employee may have accumulated prior to taking such action - thereby protecting his or her future entitlement to many statutory employment rights (for example to redundancy pay), even though the employee has chosen to go on strike in breach of the terms of his employment contract;

(f) while workers' terms and conditions may be established by collective agreements made between employers and trade unions, in the UK there are not known examples of collective agreements legally enforceable between a union and an employer - which leaves UK employees free to decide to take industrial action without having to take into account potential consequences for their union in terms of its contractual obligations;

(g) it has long been a fundamental principle of UK arrangements that courts or tribunals should not be asked to adjudicate on the merits of a particular industrial dispute - and there is nothing in the provisions of any Convention ratified by the UK which would require different arrangements to apply in this respect.

Accordingly, the Government cannot accept that there is any justification for an argument that legislation along the lines suggested by the Committee of Experts is necessary to ensure that UK law is compatible with either (i) guarantees afforded by Convention No. 87, or (ii) respect for "the principles of freedom of association" in so far as these are identifiable in the provisions of that Convention itself.

The Committee must note in this connection as well that no new element has been brought forward and, in view of the fundamental importance of this question, remains convinced that conformity with the Convention requires that workers should enjoy real and effective protection against dismissal or any other disciplinary measure taken by reason of their participation, whether actual or proposed, in strikes or other forms of industrial action. It again invites the Government to amend its legislation on these lines. Furthermore it

repeats its recommendation that section 62A of the Employment Act of 1990 be amended.

5. Complexity of the legislation

In its previous observations the Committee expressed its concern at the volume and complexity of legislative change since 1980 in relation to the matters covered by the Convention, and suggested that some reconsideration of the form and contents of the legislation would be advantageous.

In its report the Government confirms that it is willing to bring forward a "consolidation" measure as and when resources and the legislative timetable permit. Recalling the distinction between such a consolidation and a measure which would effect substantive changes to the present law, the Government reiterates its belief that nothing in UK general employment law is incompatible with any guarantee afforded by any ILO Convention ratified by the UK. Accordingly, it rejects the suggestion that there is any need for such a "consolidation" measure to include provisions which would effect substantive changes to the present law applying to industrial relations and trade union affairs.

The Committee notes that the Government is prepared to adopt measures of codification of the law on industrial relations and invites it to keep it informed, in its future reports, of the measures taken or contemplated in that respect.

The Committee refers to its foregoing comments with regard to the substantive provisions that present a problem in relation to the Convention.

Document No. 224

ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 149-150 (Guatemala)

International Labour Conference
83rd Session 1996

Report III
(Part 4A)

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

Guatemala (ratification: 1952)

The Committee notes the information supplied by the Government representative to the Conference Committee on the Application of Standards in June 1995 and the ensuing debate. The Committee also notes the interim conclusions concerning, among other matters, the violation of basic human rights and obstacles to the establishment of trade union organizations, which were adopted by the Committee on Freedom of Association (Cases Nos. 1512, 1539, 1595, 1740, 1778 and 1786) and approved by the Governing Body at its 263rd Session in June 1995 (see 299th Report, paras. 402 to 427), as well as the report of the direct contacts mission between representatives of the Government and a representative of the Director-General, undertaken from 13 to 17 February 1995.

In the same way as the Committee on Freedom of Association, the Committee of Experts wishes to signal that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against these organizations' leaders and members and that it is for governments to ensure that this principle is respected (see paragraph 407 of the 299th Report, referred to above).

The Committee recalls that its previous comments referred to:

— the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);
— the requirement of Guatemalan nationality in order to form part of the provisional founding executive committee of a trade union or to be eligible for trade union office (new paragraph "d" of section 220 and section 223(b));
— the requirement of a sworn statement from members of the provisional founding executive committee of a trade union to the effect that, amongst other matters, they have no criminal record and are active workers within the enterprise or are working on their own account (new paragraph "d" of section 220);
— the requirement that candidates must be active workers at the time of election and that at least three of them must be able to read and write (section 223(b));
— the requirement of a majority of two-thirds of the workers in the enterprise or production centre (section 241(c)) and of the members of a trade union (section 222(f) and (m)) for the calling of a strike;
— the prohibition of strikes or work stoppages by agricultural workers at harvest time, with a few exceptions (sections 243(a) and 249);

— the prohibition of strikes or work stoppages by workers in enterprises or services in which the Government considers that a suspension of their work would seriously affect the national economy (sections 243(d) and 249);
— the possibility of calling upon the national police to ensure the continuation of work in the event of an unlawful strike (section 255);
— the detention and trial of persons who call for an illegal strike (section 257);
— the sentence of one to five years' imprisonment for persons who carry out acts intended not only to cause sabotage and destruction (which do not come within the scope of the protection provided by the Convention), but also to paralyse or disturb the functioning of enterprises contributing to the development of the national economy, with a view to jeopardizing national production (section 390, paragraph 2, of the Penal Code).

The Committee takes due note that, in accordance with the indications provided by the Government representative to the Conference Committee on the Application of Standards in June 1995, the Ministry of Labour will shortly convene a meeting with the social partners to analyse the comments made by the Committee of Experts with a view to overcoming the above divergencies. Nevertheless, the Committee notes with concern that the Government representative gave no assurance that such divergencies would be resolved and indicated that it is the Congress of the Republic that is competent to take legislative action. The Committee also regrets to note that the Government has not replied to its comments.

In the same way as the Conference Committee on the Application of Standards, the Committee of Experts urges the Government to take the necessary measures to guarantee in both law and practice that the provisions of the Convention are fully applied and that the principles of freedom of association are observed.

The Committee requests the Government to provide a detailed report on the specific measures adopted in this respect.

[The Government is asked to supply full particulars to the Conference at its 83rd Session.]

Document No. 225

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 104-105 (Bahamas)

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

Bahamas

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2001)

Previous comments: observation and direct request

The Committee recalls that for a number of years it has been requesting the Government to amend the Industrial Relations Act (IRA), and other texts, so as to bring the national legislation into conformity with the Convention. In particular, the Committee referred to the need to amend the following provisions:

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization.

- Section 3 of the IRA and sections 39 and 40 of the Correctional Officers (Code of Conduct) Rules, 2014, so as to ensure that prison staff enjoy all rights and guarantees under the Convention; and
- section 8(1)(a) and the First Schedule of the IRA, so as to ensure that, beyond the verification of formalities, the Registrar has no discretionary powers to refuse the registration of trade unions and employers' organizations.

Article 3. Right of workers' organizations to draw up their constitutions and rules and to elect their representatives in full freedom and to freely organize their activities and to formulate their programmes.

- Section 20(2) of the IRA, so as to ensure that trade unions can conduct ballots for election or removal of trade union officers and for amendment of the constitution of trade unions without interference from the authorities;
- section 20 (3) of the IRA, so as to ensure that trade unions can conduct strike ballot without supervision by the authorities;
- sections 73, 76(1) and 77 (1) of the IRA providing for compulsory arbitration to bring an end to a collective labour dispute and a strike, so as to not excessively restrict the right of organizations to formulate their programmes and organize their activities;
- sections 74(3), 75(3), 76(2)(b) and 77(2) of the IRA, so as to ensure that no penal sanctions may be imposed for having carried out a peaceful strike; and
- section 75, so as to allow organizations responsible for defending socio-economic and occupational interests to use strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members.

Article 5. Right to affiliate to an international federation or confederation.

- Section 39 of the IRA, so as to ensure the right of workers' and employers' organizations to affiliate with international organizations of workers and employers.

The Committee notes the Government's indication that the National Tripartite Council is continuing to review the IRA and that no amendments have yet been made to any of the above-

mentioned sections, or to article 31 of the Constitution (which, among others, defines prison services as “disciplined force” along with the police and military). The Government indicates that priority has been given to sections 20(2), 74(3), 75(3), 76(2)(b) and 77(2) of the IRA in the reviewing exercise and that it is examining the possibility of repealing section 39 of the IRA. The Committee welcomes the Government’s indication that it will request ILO technical assistance to finalize any relevant pieces of legislation. ***The Committee urges the Government to take all necessary measures, in consultation with the social partners, to amend its legislation in the near future, so as to ensure its full conformity with the Convention without further delay, and requests the Government to provide information on all developments in this respect.***

Document No. 226

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 128-133 (Ecuador)

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

Ecuador

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)

Previous comment
Discussion at the International Labour Conference, May–June 2022

The Committee notes the observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), received on 30 August 2022, which refer to issues that the Committee will examine in this comment. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which refer to issues examined in this comment and allege the murder on 24 January 2022 of Mr Sandro Arteaga Quiroz, secretary of the Union of Workers of the Manabi Provincial Government, who had allegedly received death threats hours before his murder. The ITUC also alleges clashes between police and protesters in the context of a nationwide strike in October 2021 that culminated in the arrest of 37 protesters. The Committee recalls that the authorities should not resort to arrest and detention measures in cases of organization or participation in a peaceful strike. The Committee ***deplores*** the murder of Mr Arteaga Quiroz. ***Recalling that freedom of association can only be exercised in conditions in which fundamental human rights, in particular those relating to life and personal safety, are fully respected and guaranteed, the Committee strongly urges the Government to take without delay all necessary measures to determine responsibility and punish those guilty of this crime.***

The Committee also notes the joint observations of the Ecuadorian Confederation of Free Trade Unions (CEOSL), the Federation of Petroleum Workers of Ecuador (FETRAPEC), the National Federation of Education Workers (UNE) and Public Services International (PSI) in Ecuador, received on 1 September 2022, which in addition to dealing in detail with issues that the Committee addresses in this comment, allege unjustified delays in the registration of union organizations and new union officers, as well as the refusal to register union organizations for reasons not provided for in the Constitution or in the law. They also point out that the Government is seeking to table in the National Assembly a Bill on a Basic Employment Act, still in draft form, which contravenes the Committee’s comments. ***The Committee requests the Government to send its comments on all the above-mentioned observations. It also requests the Government to send a copy of the Bill and to keep it informed of any further developments.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes that in the discussion that took place in the Conference Committee on the Application of Standards (hereinafter referred to as the Conference Committee) in June 2022 on the

implementation of the Convention by Ecuador, the Conference Committee noted with regret that no action had been taken to follow up on the technical assistance provided by the Office in December 2019 and also noted the long-standing issues regarding compliance with the Convention. The Conference Committee urged the Government to take action to foster an environment conducive to the full enjoyment of the right of workers and employers to freedom of association. The Conference Committee noted that both the Government and the social partners raised the importance of labour law reform and expressed the hope that the Government would seize this opportunity to bring its legislation and practice fully into line with the Convention in consultation with the social partners. The Conference Committee urged the Government to take effective and time-bound measures, in consultation with the social partners, to:

- ensure full respect for the right of workers, including public servants, to establish organizations of their own choosing, for the collective defence of their interests, including protection against administrative dissolution or suspension;
- amend legislation to ensure that the consequences of any delays in convening trade union elections are set out in the by-laws of the organizations themselves;
- resolve the registration of the National Federation of Education Workers (UNE);
- give effect to the road map presented in December 2019 by the ILO technical assistance mission; and
- initiate a process of consultation with the social partners to reform the current legislative framework in order to enhance coherence and bring all the relevant legislation into compliance with the Convention.

The Conference Committee invited the Government to avail itself of technical assistance from the Office and requested that the Government accept a direct contacts mission and submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of the Convention in law and practice, in consultation with the social partners.

Application of the Convention in the private sector

Article 2 of the Convention. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees. Possibility of creating trade union organizations by branch of activity. For several years the Committee has been drawing the Government's attention to the need to revise sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and enable the establishment of primary-level unions comprising workers from several enterprises. The Committee notes that in its report the Government does not refer to the revision of the articles relating to the number of workers required to form workers' associations and enterprise committees. The Committee notes that CEOSL, FETRAPEC, the UNE and PSI stress that the number of no less than 30 workers for the establishment of trade union organizations is disproportionate and unreasonable in view of the Ecuadorian business structure, stating that persons working in 88.1 per cent of the business sector are not able to form trade union organizations. With regard to the creation of organizations that bring together workers from several enterprises, in its previous comment, the Committee had welcomed the 2021 ruling by the Provincial Court of Justice of Pinchincha ordering the Ministry of Labour to register ASTAC as a branch union, despite the fact that it was made up of workers from several enterprises and also ordering the Ministry to regulate the registration of unions by branch of activity. The Committee notes that the Government, ASTAC and the ITUC report that although ASTAC was granted legal personality on 11 January 2022, in compliance with the ruling, the Ministry and the State Attorney General's Office filed an extraordinary protection order against the ruling for lack of adequate grounds and legal certainty and non-compliance with due process. The Committee notes that the extraordinary protection order, which has the support of

business associations, is pending a decision by the Constitutional Court. It also notes that ASTAC states that the Government has not fully complied with the ruling since, although it has applied it with respect to ASTAC, it has refused to regulate the establishment of branch unions, stating that the ruling is not applicable erga omnes or inter communis (applicable to other parties). The Commission notes with ***interest*** the registration of ASTAC as a branch union. ***Recalling that, under the terms of Articles 2 and 3 of the Convention, workers must be able, if they so wish, to establish primary-level organizations at a level higher than the enterprise, the Committee firmly hopes that the above-mentioned ruling will contribute to enabling the creation of trade union organizations by branch of activity, and also hopes that the Committee's assessment of this important development in the application of the Convention will be brought to the attention of the Constitutional Court of Justice. The Committee urges the Government to take the necessary steps, in consultation with the social partners, to revise the sections of the laws referred to above in the manner indicated and to keep it informed of developments in this respect. The Committee also requests the Government to report on the proceedings before the Constitutional Court regarding the extraordinary protection order.***

Article 3. Compulsory time limits for convening trade union elections. The Committee has been asking the Government to amend section 10(c) of the Regulations on Labour Organizations No. 0130 of 2013, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their term of office, as set out in their respective union constitutions, to ensure that the consequences of any delay in holding elections shall be determined by the union constitutions themselves, subject to the observance of democratic rules. The Committee notes that the Government reports that a draft reform of the Regulations on Labour Organizations is currently being reviewed particularly with regard to section 10(c). ***Recalling that under Article 3 of the Convention, trade union elections are an internal matter for organizations, and observing that the consequences under the Regulations if the deadlines are not respected—the loss of powers and competencies for trade union committees—risk paralyzing the capacity for trade union action, the Committee firmly hopes that the draft reform will take into consideration its comments, and that the section in question will be modified along the lines indicated. The Committee requests the Government to report on any developments in this regard***.

Requirement of Ecuadorian nationality to be eligible for trade union office. The Committee recalls that, while in 2015 it had noted that section 49 of the Labour Justice Act had amended section 459(4) of the Labour Code and removed the requirement of Ecuadorian nationality to be eligible to be an officer of an enterprise committee, in its most recent comment it observed that section 49 was declared unconstitutional by a ruling of 2018 because it violated the principle of trade union independence by providing that the legislation determined how the executive bodies of the enterprise committees were constituted and who had the right to vote in their elections. The Committee notes with ***regret*** that as a result of the declaration of unconstitutionality, section 459(4) has reverted to its original wording and requires Ecuadorian nationality to be eligible to be an officer of an enterprise committee. The Committee notes the Government's indication that Ecuadorian nationality is required to be an officer of an enterprise committee, but not to be a leader or member of other forms of association. The Committee notes that enterprise committees are one of the forms that trade unions can take within an enterprise. The Committee emphasizes that under *Article 3* of the Convention all workers' and employers' organizations shall have the right to elect their representatives in full freedom and that national legislation should allow foreign workers to take up trade union office, if permitted under the organization's constitution and rules, at least after a reasonable period of residence in the host country. ***The Committee therefore urges the Government to amend section 459(4) of the Labour Code and to keep it informed of any developments in this regard.***

Elections as officers of enterprise committees of workers who are not trade union members. The Committee had previously indicated to the Government the need to amend section 459(3) of the Labour Code, which provided that the role of officer of an enterprise committee may be filled by any worker,

whether or not a union member, who stands for office. The Committee notes the Government's indication that the above-mentioned Constitutional Court ruling of 2018 also had an impact on the wording of section 459(3), and that it reverted to its original wording which does not provide for the possibility for non-unionized workers to participate in enterprise committee elections. ***Taking due note of this information, the Committee requests the Government to hold consultations with the social partners in relation to the need to review section 459(3) of the Labour Code to bring it into full compliance with the principle of trade union autonomy.***

Application of the Convention in the public sector

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and to join organizations of their own choosing. The Committee previously noted that although section 11 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act), adopted in 2017, establishes the right to organize for public servants, certain categories of public employees were excluded from that right, especially those under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts. Recalling that under *Articles 2* and *9* of the Convention, with the sole possible exception of members of the police and of the armed forces, all workers, including permanent or temporary public servants and those under fixed-term or occasional services contracts, have the right to establish and to join organizations of their own choosing, the Committee asked the Government to take the measures required to bring the legislation into line with the Convention. The Committee notes that, with regard to public servants under fixed-term or occasional services contracts, the Government merely reiterates that the public institutions of the State are working to ensure that public servants have their respective definitive appointments, provided that their activities are not temporary. The Committee notes with ***regret*** that no progress has been made in taking its comments into account in relation to the need to bring the legislation into line with the Convention in such a way that all workers, with the sole possible exception of the members of the police and of the armed forces, have the right to establish and to join organizations of their own choosing. ***The Committee urges the Government to take the necessary measures to bring the legislation into line with the Convention.***

Right of workers to establish organizations of their own choosing without previous authorization. Organizations of public servants other than the committees of public servants. The Committee observed that, according to the provisions of the Basic Reform Act, the committees of public servants, which must comprise 50 per cent plus one of the staff of a public institution, are responsible for defending the rights of public servants and are the only bodies that can call a strike. Underlining the fact that all organizations of public servants must be able to enjoy the various guarantees established in the Convention, the Committee requested the Government to provide information on organizations of public servants other than the committees of public servants and to indicate in detail what means they have for defending the occupational interest of their members. The Committee notes the Government's indication that public servants, when forming their organizations, have the right to draft their statutes in which they may establish any means to defend their interests, emphasizing that public servants' organizations are legal entities under private law, and therefore may establish any regulation that is not prohibited by law. The Committee notes that it is precisely the Basic Reform Act that indicates that the committees of public servants are responsible for defending the rights of public servants and are the only bodies that can call a strike. It is on this basis that the Committee requested the Government to provide information on organizations of public servants other than the committees of public servants and to indicate what means they have for defending the occupational interest of their members. ***The Committee regrets that it has not received this information and reiterates its request to the Government to provide information in this respect. Recalling that under Article 2 of the Convention, trade union pluralism must be possible in all cases, and that no organization of public servants should be deprived of the essential means for defending the occupational interests of its members, organizing its administration***

and activities, and formulating its programmes, the Committee once against requests the Government to take the necessary steps to ensure that the legislation does not restrict recognition of the right to organize to the committees of public servants as the sole form of organization.

Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. The Committee previously drew the Government's attention to the need to amend section 346 of the Basic Comprehensive Penal Code, which provides for a term of imprisonment of one to three years for stopping or obstructing the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. The Committee notes that according to the Government, no progress has been made in this regard. The Committee ***regrets*** that no action has been taken in this respect and notes that, according to CEOSL, FETRAPEC, the UNE and PSI, the provision in question is being used to criminalize social protest. ***The Committee strongly urges the Government to take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code is amended in the manner indicated and, until such measures are taken, to ensure that this provision is not used to criminalize social protest.***

Article 4. Dissolution of associations of public servants by the administrative authorities. The Committee previously asked the Government to take the necessary measures to ensure that Decree No. 193 of 2017, which retains engagement in party-political activities as grounds for dissolution and provides for administrative dissolution, does not apply to associations of public servants whose purpose is to defend the economic and social interests of their members. The Committee notes the Government's indication that labour and social organizations are governed by civil law and that it falls to their members to exercise the rights and obligations recognized by their statutes. The Committee notes that, according to CEOSL, FETRAPEC, the UNE and PSI, the provision of Decree No. 193 that maintained as grounds for dissolution the development of party-political activities was declared unconstitutional by a judgment issued on 27 January 2022 in which the Constitutional Court held that it was not admissible that an open and indeterminate provision could limit the right of social organizations to participate in matters of public interest and to oversee the actions of the public authorities. The Committee notes that these organizations further state that: (i) Decree No. 193 regulates only social organizations and not trade union organizations; (ii) the Labour Code and the Basic Reform Act establish that public servants' organizations can only be dissolved by judicial decision; and (iii) without prejudice to the foregoing, the Government applies the grounds for forced dissolution of social organizations to trade union organizations. ***Recalling that Article 4 of the Convention prohibits the suspension or administrative dissolution of the associations of public servants, the Committee urges the Government to ensure that the rules of Decree No. 193 are not applied to associations of public servants that have the purpose of defending the economic and social interests of their members.***

Administrative dissolution of the National Federation of Education Workers (UNE). In its last comment, having noted the registration of social organizations related to the UNE, (which was dissolved by an administrative act issued by the Under-Secretariat of Education in 2016), the Committee asked the Government to: (i) indicate whether the registration of the UNE-E with the Under-Secretariat of Education of Quito meant that the UNE had been able to resume its activities of defending the occupational interests of its members; (ii) take all necessary measures to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the UNE so wished; and (iii) ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution of the UNE. The Committee notes that, after summarizing the events that have taken place in recent years, the Government indicates that the UNE filed several legal actions against the dissolution resolution and that, to date, although all the actions filed by the UNE have been rejected, the Constitutional Court's ruling on an extraordinary protection order is still pending, and that, with the Constitutional Court's decision, the national judicial instances will have been exhausted. The Committee notes that, according to the CEOSL, FETRAPEC, the UNE and PSI, the Government has not complied with the Committee's request in its previous comments. ***The Committee requests the***

Government to provide information on the ruling handed down by the Constitutional Court on the pending extraordinary protection order and to provide the information requested by the Committee in its previous comment.

Technical assistance. Both the Committee and the Conference Committee have noted with regret that the Government has not given follow-up to the technical assistance provided by the Office in December 2019 regarding measures to address the comments of the supervisory bodies. The Committee notes that the Government shows interest in receiving technical assistance to restart tripartite social dialogue and establish a new road map in that regard. ***The Committee expresses the firm hope that, with the technical assistance in which the Government has shown interest, social dialogue will be restarted and progress will be made in taking concrete, effective and time-bound measures, in consultation with the social partners, to bring the legislation into conformity with the Convention. Like the Conference Committee, this Committee hopes that the Government will accept a direct contacts mission and also hopes that the implementation of the measures referred to in this comment will contribute to guaranteeing greater respect for the rights enshrined in the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

Document No. 227

ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 212-213 (Ecuador)

International Labour Conference
79th Session 1992

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

Ecuador (ratification: 1967)

The Committee notes the Government's report, and particularly the adoption of Act No. 133 to reform the Labour Code published on 21 November 1991.

The Committee takes due note of the new wording of section 490 of the Labour Code, under which the number of cases in which a strike can be called has been extended (paragraphs 4 to 7); the Committee nevertheless notes that the new Act introduces the following provisions which may raise problems with regard to the application of the Convention:

- the increase from 15 to 30 of the minimum number of workers required for the establishment of trade union associations, including works councils. Even though the minimum number of 30 workers would be acceptable in the case of sectoral trade unions, the Committee considers that the minimum number should be reduced in the case of works councils so as not to hinder the establishment of such bodies, particularly when it is taken into account that the country has a very large proportion of small enterprises and that the trade union structure is based on enterprise unions;
- decision by the Ministry of Labour, in the event of disagreement between the parties, on the minimum services to be provided in the event of a strike in services that are considered to be essential, even when the State is a party to the dispute.

The Committee also regrets that the above text does not contain amendments relating to the following provisions, which it has been pointing out for many years are incompatible with the requirements of the Convention:

- the prohibition placed on public servants from setting up trade unions (section 10(g) of the Civil Service and Administrative Careers Act of 8 December 1971);
- the penalty of imprisonment laid down by Decree No. 105 of 7 June 1967 for the instigators of collective work stoppages and for those who participate in them;
- the requirement that members of the executive committee of a works council be Ecuadorian (section 455 of the Labour Code);
- the administrative dissolution of a works council when its membership drops below 25 per cent of the total number of workers (section 461 of the Code);

- the prohibition placed on unions from taking part in religious or political activities, with the requirement that provisions to this effect shall be included in the by-laws of the unions (section 433(11) of the Code).

The Committee notes the information supplied by the Government concerning the presentation on 22 May 1990 to the Secretariat of the National Congress by a member of the Congress of four draft amendments and two legal interpretations, the purpose of which is to bring the national legislation into conformity with the Convention. The Committee requests the Government to keep it informed of the progress of the draft texts before the legislature and to supply copies of them once they are adopted.

The Committee once again urges the Government to take the necessary measures in the near future to bring the law and practice into full conformity with the Convention and requests it to supply detailed information in this respect in its next report.

In addition, the Committee is addressing a request directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 79th Session.]

Document No. 228

ILC, 109th Session, 2020, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 85 (Burkina Faso)

International Labour Organization

Report III (Part A)

Application of International Labour Standards 2020

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

International Labour Conference
109th Session, 2020

Burkina Faso

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) *(ratification: 1960)*

The Committee notes the joint observations of six trade union confederations (General Labour Federation of Burkina Faso (CGT–B); National Confederation of Workers of Burkina (CNTB); Trade Union Confederation of Burkina Faso (CSB); Force Ouvrière/National Union of Free Trade Unions (FO/UNSL); National Organization of Free Trade Unions (ONSL) and the Trade Union of Workers of Burkina Faso (USTB)) received on 29 August 2019, concerning the administrative suspension of two trade unions in the transport sector and the ban on the activities of a prison officials' union. ***The Committee requests the Government to provide its comments in this regard.***

In its previous comments, the Committee requested the Government to amend certain legislative and regulatory provisions relating to the right to strike in order to bring them into conformity with *Articles 2* and *3* of the Convention:

– section 386 of the Labour Code, under the terms of which the exercise of the right to strike shall on no account be accompanied by the occupation of the workplace or its immediate surroundings, subject to the penal sanctions established in the legislation in force. In this regard, the Committee recalled that restrictions on strike pickets and the occupation of the workplace are acceptable only where the action ceases to be peaceful. However, it is necessary in all cases to ensure observance of the freedom of non-strikers to work and the right of management to enter the premises;

– the Order of 18 December 2009, issued under section 384 of the Labour Code, which lists establishments that may be subject to requisitioning for the purpose of ensuring a minimum service in the event of a strike. The Committee observed that certain of the services contained in the list could not be considered essential services or require the maintenance of a minimum service in the event of a strike, such as mining and quarrying, public and private slaughterhouses, university centres. The Committee therefore requested the Government to revise the list of establishments which may be subject to requisitioning for the purpose of ensuring a minimum service in the event of a strike to ensure that requisitioning is only possible in: (i) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (ii) services which are not essential in the strict sense of the term, but in which strikes of a certain scope and duration could give rise to an acute crisis threatening the normal living conditions of the population; or (iii) public services of fundamental importance.

The Committee notes the Government's indication that the process of revising the Labour Code has not yet been completed, that the draft bill issuing the Labour Code was discussed at a validation workshop in October 2017 and that, once the revision process is complete, the above-mentioned Order of 18 December 2009 on requisitions could be amended.

With regard to its previous comments on the need to amend section 283 of the Labour Code, which provides that children of at least 16 years of age may join a trade union unless their father, mother or guardian objects, the Committee welcome's the Government's indication that the draft revising the Labour Code no longer refers to objections by parents or guardians.

The Committee expresses the firm hope that the Labour Code will be adopted in the near future and that it will give full effect to the provisions of the Convention on the matters recalled above. It requests the Government to provide a copy of the Code once promulgated, as well as any relevant implementing texts.

Document No. 229

ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 188-190 (Hungary)

International
Labour
Organization

Report III (Part A)

Application of International Labour Standards 2022

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

International Labour Conference
110th Session, 2022

Hungary

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1957)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations received on 1 September 2017 from the International Trade Union Confederation (ITUC), which are reflected in the present observation. It also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which relate to issues under examination by the Committee and contain allegations that Act XLII of 2015 resulted in trade unions formerly established in the area of civilian national security not being able to operate properly. ***The Committee requests the Government to provide its comments in this respect.***

Freedom of expression. In its previous comments, the Committee had noted with concern that sections 8 and 9 of the 2012 Labour Code prohibit workers from engaging in any conduct, including the exercise of their right to express an opinion – whether during or outside working time – that may jeopardize the employer's reputation or legitimate economic and organizational interests, and explicitly provide for the possibility to restrict workers' personal rights in this regard. The Committee had requested the Government to provide detailed information on the results of the "For Employment" project, under which an assessment of the impact of the Labour Code on employers and workers had been undertaken, as well as on the outcome of the consultations on the modification of the Labour Code within the framework of the Permanent Consultation Forum of the Market Sector and the Government (VKF). The Committee had expressed the hope that the review of the Labour Code would fully take into account its comments with respect to the need to take any necessary measures to ensure respect for freedom of expression. The Committee notes that the Government confines itself to indicating that the negotiations in question have not been closed yet. The Committee ***regrets*** that no information has been provided by the Government on the outcome of the "For Employment" project (completed in August 2015) or on the consultations undertaken since 2015 within the framework of the VKF with a view to elaborating consensus-based proposals for the review of the Labour Code. ***The Committee highlights once again the need to take all necessary, including legislative, measures to guarantee that sections 8 and 9 of the Labour Code do not impede the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members, and expects that its comments will be fully taken into account in the framework of the ongoing review of the Labour Code. It requests the Government to provide information on any progress achieved in this respect.***

Article 2 of the Convention. Registration of trade unions. In its previous comments, the Committee had noted the allegation of the workers' group of the National ILO Council that numerous rules in the new Civil Code concerning the establishment of trade unions (for example, on trade union headquarters and the verification of its legal usage) obstructed their registration in practice. The Committee had requested the Government to: (i) assess without delay, in consultation with the social partners, the need to simplify the registration requirements, including those relating to union headquarters, as well as the ensuing obligation to bring the trade union by-laws into line with the Civil Code on or before 15 March 2016; and (ii) take the necessary steps to effectively address the difficulties signalled with respect to registration in practice, so as not to hinder the right of workers to establish organizations of their own choosing. The Committee had also requested the Government to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

The Committee notes the Government's indication that Act CLXXIX of 2016 on the amendment and acceleration of proceedings regarding the registration of civil society organizations and companies, which entered into force on 1 January 2017, amended the 2011 Association Act, the 2013 Civil Code and the 2011 Civil Organization Registration Act. The legislative amendments were adopted to: (i) simplify the contents of association statutes; (ii) rationalize the court registration and change registration procedures of civil society organizations (court examination limited to compliance with essential legal requirements on number of founders, representative bodies, operation, mandatory content of statutes, legal association objectives, etc.; notices to supply missing information no longer issued on account of minor errors); and (iii) accelerate the registration by courts of civil society organizations (termination of the public prosecutor's power to control the legality of civil society organizations; maximum time limit for registration). The Committee notes, however, that the ITUC reiterates that trade union registration regulated by the Civil Organization Registration Act is still being subjected to very strict requirements and numerous rules that operate in practice as a means to obstruct the registration of new trade unions, including the stringent requirements on trade union headquarters (unions need to prove that they have the right to use the property), and alleges that in many cases judges refused to register a union because of minor flaws in the application form and forced unions to include the enterprise name in their official names. The Committee further notes that the workers' group of the National ILO Council states that, when the new Civil Code entered into force, all trade unions had to modify their statutes to be consistent with the law and at the same time report the changes to the courts, and reiterates that these regulations pose a serious administrative burden on trade unions.

The Committee observes the persisting divergence between the statements of the Government and the workers' organizations. The Committee requests the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council concerning in particular the stringent requirements in relation to union headquarters, the alleged refusal of registration due to minor flaws, the alleged imposition of including the company name in the official name of associations, and the alleged difficulties created or encountered by trade unions because of the obligation to bring their by-laws into line with the Civil Code. The Committee recalls that, although the formalities of registration allow for official recognition of workers' or employers' organizations, these formalities should not become an obstacle to the exercise of legitimate trade union activities nor allow for undue discretionary power to deny or delay the establishment of such organizations. Accordingly, the Committee requests the Government to: (i) engage without delay in consultations with the most representative employers' and workers' organizations to assess the need to further simplify the registration requirements, including those relating to union headquarters; and (ii) take the necessary measures to effectively address the alleged obstacles to registration in practice, so as not to impede the right of workers to establish organizations of their own choosing. In the absence of the solicited information, the Committee also requests the Government once again to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

Article 3. Right of workers' organizations to organize their administration. The Committee notes that the ITUC alleges that trade union activity is severely restricted by the power of national prosecutors to control trade union activities, for instance by reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices; and further alleges that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law. The Committee notes the Government's indication that, while public prosecutors no longer have the right to control the legality of the establishment of the civil society organizations, they retain the power to control the legality of their operation. The Committee generally recalls that acts as described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in *Article 3* of the Convention. ***The Committee requests the Government to provide its comments with respect to the specific ITUC allegations above.***

Right of workers' organizations to organize their activities. The Committee had previously noted that: (i) the Strike Act, as amended, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, 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; and (ii) excessive minimum levels of service are fixed for passenger transportation public services by Act XLI of 2012 (Passenger Transport Services Act), both at the local and suburban levels (66 per cent) and at national and regional levels (50 per cent); as well as with regard to postal services by Act CLIX of 2012 (Postal Services Act), for the collection and delivery of official documents and other mail. The Committee trusted, in view of the consultations undertaken on the modification of the Strike Act, that due account would be taken of its comments during the legislative review.

The Committee notes that the Government refers again to the relevant provisions of the Strike Act (section 4(2) and (3)) and to the Passenger Transport Services Act and Postal Services Act. In the Government's view, by regulating the extent of sufficient services in respect of two basic services that substantially affect the public and thus creating a pre-clarified situation, the legislature promoted legal certainty in the context of the exercise of the right to strike. The level of sufficient services was determined seeking to resolve the potential tension between the exercisability of the right to strike and the fulfilment of the State's responsibilities to satisfy public needs. The Government further indicates that negotiations on the amendment of the Strike Act took place in the framework of the VKF throughout 2015 and 2016, in the course of which the trade unions considered that the extent of sufficient services in the passenger transport sector was excessive. The employees' and employers' sides managed to agree on a few aspects of the amendment of the Strike Act, but failed to reach an agreement regarding, inter alia, which institution should be authorized to determine the extent of sufficient services in the absence of a legal provision or agreement. Stressing the importance of a compromise of the social partners on the amendment proposals of the Strike Act, the Government adds that, since the trade unions had announced proposals at the end of 2016 but had not submitted them during the first half of the year, no further discussions have taken place in 2017. The Committee further notes that the workers' group of the National ILO Council reiterates that the strike legislation contains an obligation to provide sufficient service during strike action which in some sectors virtually precludes the exercise of the right to strike (for example by requiring 66 per cent of the service to be provided during the strike and ensuring the feasibility of this rate through extremely complicated rules).

The Committee recalls that, since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities; and emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on such services should be resolved by a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions. The Committee further recalls that the minimum service must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and that, in the past, it has considered that a requirement of 50 per cent of the volume of transportation may considerably restrict the right of transport workers to take industrial action. ***The Committee therefore once again highlights the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act) in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body. The Committee expects that the consultations on the modification of the Strike Act undertaken within the framework of the VKF will continue. It requests the Government to provide up-to-date information on the status or results of the negotiations with particular regard to the manner of determining minimum services and the levels imposed in the postal and passenger transport sectors, and expects that the Committee's comments will be duly taken into consideration during the legislative review.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Document No. 230

ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 148 (Guinea)

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

Guinea

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1959)

Previous comment

Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes. In its previous comment, the Committee requested the Government to provide information on the work of the National Social Dialogue Council (CNDS) in resolving disagreements concerning the determination of minimum wages. The Committee also requested the Government to indicate the minimum services determined in the transport and communications services. The Committee notes the adoption of the new Decree of 31 May 2022 on the organization and functioning of the CNDS. The Committee notes that the Government indicates that it is in the process of adopting the measures necessary to render the CNDS operational and that the social partners have been requested to designate their members to allow the body to be up and running as soon as possible. According to the Government, as it is not yet operational, the CNDS has not intervened in resolving the disagreements concerning the determination of minimum wages. The Committee also notes that, according to the Government, following a number of collective disputes, minimum services have been determined at the level of certain institutions and that minimum services exist in the communication and transport sectors. ***In light of the above, the Committee once again requests the Government to provide information on the work of the CNDS, once operational, in the resolution of disagreements concerning the determination of minimum services. The Committee also once again requests the Government to provide information on the minimum services determined in the communication, transport and other sectors.***

In its previous comment, the Committee welcomed the establishment of the commission to review the Labour Code and hoped that sections 431.5 and 434.4 of the Labour Code, on minimum service in case of strikes and compulsory arbitration respectively, would be amended in conformity with the Convention. The Committee notes the Government's indication that the amendment process of the Labour Code is under way, in consultation with the social partners, and that the next step is to establish a commission which will be responsible for bringing together the different observations made regarding the inadequacies, shortcomings, legal gaps and desired rectifications in certain articles of the Labour Code. On completion of that task, a "sharing" workshop will be organized, at the latest in the month of November 2022. The Committee notes that the Government indicates that it has requested ILO technical assistance in this regard. ***The Committee requests the Government to report on all progress made in this respect and encourages the Government to continue to avail itself of the technical assistance of the Office in this connection.***

Document No. 231

ILC, 40th Session, 1957, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 161–173

REPORT III

(PART IV)

INTERNATIONAL LABOUR CONFERENCE

FORTIETH SESSION
GENEVA, 1957

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)

INTERNATIONAL LABOUR OFFICE
GENEVA, 1957

09661

be considered not only as reflecting but also as underpinning a government's efforts in the field of labour protection.

58. Viewed in this light, the Labour Inspection Convention assumes its full significance, and the encouragingly wide echo which this instrument has found during the decade since its adoption—ratification by half the I.L.O. membership is now a distinct possibility for the near future—confirms the Committee in the belief that its own work of supervision rests on an increasingly solid foundation. The progress yet to be made in improving the efficiency of labour inspection depends, in many cases, on the elimination of material and technical difficulties, which may be facilitated by assistance on the spot, and it is interesting to note that, as already indicated above, reference is made to such assistance in the reports of several countries engaged in economic development programmes. Experience has shown that large-scale industrialisation must be accompanied by parallel action, through the adoption and effective implementation of protective labour standards, to ensure that those whose labour makes economic progress possible receive adequate protection in the process.

(B) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Introduction

1. For the second time since the entry into force of the amended Constitution, the Committee has been called upon to examine reports furnished by the States Members of the Organisation, under article 19 of the Constitution, on the position of their law and practice in regard to the matters dealt with in the Freedom of Association and Protection of the Right to Organise Convention, 1948. Whereas the examination made by the Committee in 1953 related to reports furnished by 23 States, the remarks of the Committee this year are based on information contained in reports furnished by 57 States, that is, 74 per cent. of the States Members of the Organisation; 41 of these reports were furnished in accordance with the provisions of article 19 of the Constitution relating to the making of reports on unratified Conventions, and 16 were annual reports furnished in accordance with article 22 by States which have ratified this instrument.

2. In accordance with the new procedure adopted in 1956, the Committee's remarks relate not only to the information furnished by States which have not ratified the Convention but also to the various annual reports transmitted by those States which have ratified it.

3. The larger number of reports from which information has on this occasion been drawn has enabled the Committee to present a much more complete picture in the form of a general survey of the position of States Members in regard to the matters dealt with in the Convention. Such a picture may assist the Conference and the Governing Body in judging the extent to which their concern to see the institution or maintenance throughout the world of necessary guarantees for ensuring freedom of association, which constitutes one of the principal aspects of civil rights, has been met. The concern which the Organisation has felt in regard to this matter has been expressed in particular by the adoption of several resolutions in which the States Members are, *inter alia*, invited to ratify and ensure the application of the two international labour Conventions relating to freedom of association.

4. When outlining briefly in 1953 the history of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Committee mentioned that following the establishment in 1950 of the " Fact-Finding and Conciliation Commission on Freedom of Association ", the Governing Body of the International Labour Office had in 1951 instituted a " Committee on Freedom of Association " for the purpose of making a preliminary examination of allegations relating to infringements of trade union rights. The Committee noted then that the Committee on Freedom of Association had itself defined its functions by declaring that it was not called upon " to formulate general conclusions concerning the position of trade unions in particular countries ", but that its function was simply " to evaluate specific allegations ".[1]

5. Subsequently, a new body which, in carrying out its mandate, also based itself upon the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948—the " Committee on Freedom of Employers' and Workers' Organisations "—was set up, following a resolution adopted by the Governing Body at its 128th Session (March 1955). This Committee of three members specially appointed for this purpose—and presided over by Lord NcNair, whom the Committee of Experts was fortunate to count among its members for many years—was instructed " to prepare a report covering the membership of the I.L.O. regarding the extent of the freedom of employers' and workers' organisations from government domination and control ". This report was presented in March 1956.

6. It would therefore seem necessary for the Committee to point out once again that it has to make its own examination from a different point of view. As already indicated in 1953, it bases its conclusions on the information contained in the reports furnished by the various member States on their law and practice in regard to the matters dealt with in the Freedom of Association and Protection of the Right to Organise Convention, 1948.

7. In this connection, and although the remarks of the Committee relate to all the member States which have presented reports, whether they have ratified the Convention or not, the Committee must emphasise that, under its mandate, the scope of its conclusions is obviously different with respect to these two categories of States. With regard to those States which have ratified the Convention and for which the Convention is in force—States which have, therefore, voluntarily undertaken more precise international obligations with respect to freedom of association and protection of the right to organise—the Committee is called upon to indicate, where appropriate, provisions of the national legislation which are not in conformity with the Convention. On the other hand, with respect to those States which have not ratified the instrument or for which it has not entered into force, the Committee's conclusions must be limited to findings in respect of the position of law and practice

[1] See *Sixth Report of the I.L.O. to the United Nations* (Geneva, I.L.O., 1952), Appendix V, First Report of the Committee on Freedom of Association, paragraph 30.

in regard to the matters dealt with in the Convention, in so far as this is possible on the basis of the information contained in the reports supplied under article 19.

8. The Freedom of Association and Protection of the Right to Organise Convention, 1948, guarantees to individuals, workers and employers, without distinction whatsoever, the right freely to establish and join organisations, and accords to these organisations certain rights and guarantees permitting them to determine their objects and to develop their activities without interference. For this purpose, the Convention is not limited to a more or less negative definition of the obligations of the State towards employers, workers and their respective occupational organisations. Article 11 of the Convention obliges States which have ratified it " to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise ". All States which ratify the Convention, whatever legal methods may be employed to apply the standards contained in the instrument (constitutional provisions, laws or regulations or other means such as case law, common law, current practice or even collective agreements) are therefore under the obligation to take such measures as may be necessary to ensure the protection of the right to organise in all circumstances. The protection of this right, which relates especially to actions of the State in its capacity as public authority, must also extend to acts by the State in its capacity as an employer (in relation to its officials and to workers employed in undertakings in the public sector) and to acts by other bodies which might infringe, directly or indirectly, the free exercise of the right to organise.

9. The Freedom of Association and Protection of the Right to Organise Convention, 1948, entered into force on 4 July 1950. It has so far been ratified by the following 26 States: Austria, Belgium [1], Burma, Byelorussia, Cuba, Denmark [2], the Dominican Republic, Finland, France [3], the Federal Republic of Germany, Guatemala, Honduras, Iceland, Ireland, Israel, Mexico, the Netherlands [4], Norway, Pakistan, the Philippines, Poland, Sweden, Ukraine, the U.S.S.R., the United Kingdom [5] and Uruguay.

[1] According to the declaration communicated by the Government of Belgium pursuant to article 35 of the Constitution, this Convention is not applicable to the Belgian Congo and to Ruandi-Urundi. It should be noted, however, that Belgium has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947.

[2] By a declaration communicated pursuant to article 35 of the Constitution, Denmark has undertaken to apply the provisions of this Convention to Greenland.

[3] The French Government has declared that it will apply the provisions of this Convention to the following territories: Cameroons, French Equatorial Africa, French Guiana, French Settlements in Oceania, French Somaliland, French West Africa, Guadeloupe, Madagascar, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Togoland. France has also ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947, and has undertaken to ensure its application to all the territories within the purview of the Ministry for Overseas France.

[4] The Government of the Netherlands has accepted the obligations of this Convention on behalf of the Netherlands Antilles and Surinam. It has undertaken to ensure its application in Netherlands New Guinea.

[5] This Convention is applicable *ipso jure* to Guernsey, Jersey and the Isle of Man. The United Kingdom has also ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947, and the obligations under this Convention extend to almost all the territories for whose international relations that State is responsible.

Reports Examined by the Committee

10. Reports communicated in accordance with article 19 of the Constitution concerning the position of law and practice in regard to the matters dealt with in the Convention have been received from 37 States. Among the 26 States which have ratified the Convention, only 16 were called upon to supply this year annual reports pursuant to article 22 of the Constitution; all these States have carried out this obligation.[7] Of the ten States which ratified the Convention at a relatively recent date and were not yet under the obligation to supply an annual report this year, eight, as already seen, nevertheless furnished reports pursuant to article 19 of the Constitution.[8] Further, it has appeared useful to take account in addition of information contained in reports examined in 1953 which were furnished by four States, two of which (Burma and Ireland), having since ratified the Convention, were not yet obliged to furnish an annual report this year, and two of which (Bolivia and Yugoslavia) have omitted this year to furnish the reports requested. In all, therefore, it has been possible for the Committee to base its general examination on the position of the law and practice in regard to the matters dealt with in the Convention in 57 member States [9] which have furnished reports, either pursuant to the provisions of article 19 of the Constitution relating to unratified Conventions, or pursuant to article 22 in the case of some of those which have ratified the Convention.[10]

Contents of Reports

11. As this was the second occasion on which most of the member States which have not ratified the Convention had been called upon to furnish reports on the Convention pursuant to article 19 of the Con-

[6] Argentina, Australia *, Bulgaria, Byelorussia **, Canada, Ceylon, Chile, Costa Rica, Czechoslovakia *, the Dominican Republic **, Ecuador, Egypt, the Federal Republic of Germany **, Greece, Haiti, Honduras **, India, Iran, Iraq, Israel **, Italy, Japan, Jordan, Luxembourg, New Zealand, Poland **, Portugal, Spain, the Sudan, Switzerland, Tunisia *, Turkey, Ukraine **, the Union of South Africa, the U.S.S.R.**, the United States and Viet-Nam.

* Reports received too late to be summarised in Report III, Part II, prepared for the 40th Session of the Conference (1957).

** Ratification by these States being of recent date, they were not yet under the obligation to supply in the present year a report pursuant to article 22 of the Constitution. Reports received, therefore, have been communicated in accordance with article 19.

[7] Austria, Belgium, Cuba, Denmark, Finland, France, Guatemala, Iceland, Mexico, the Netherlands, Norway, Pakistan, the Philippines, Sweden, the United Kingdom and Uruguay. See Report III, Part I, prepared for the 35th Session of the Conference (1952) and subsequent sessions.

[8] Byelorussia, the Dominican Republic, the Federal Republic of Germany, Honduras, Israel, Poland, Ukraine, the U.S.S.R.

[9] Argentina, Australia, *Austria, Belgium*, Bolivia *, Bulgaria, Burma *, Byelorussia, Canada, Ceylon, Chile, Costa Rica, *Cuba*, Czechoslovakia, *Denmark*, the Dominican Republic, Ecuador, Egypt, *Finland, France*, the Federal Republic of Germany, Greece, *Guatemala*, Haiti, Honduras, *Iceland*, India, Iran, Iraq, Ireland *, Israel, Italy, Japan, Jordan, Luxembourg, *Mexico*, the *Netherlands*, New Zealand, *Norway, Pakistan*, the *Philippines*, Poland, Portugal, Spain, the Sudan, *Sweden*, Switzerland, Tunisia, Turkey, Ukraine, the Union of South Africa, the U.S.S.R., the *United Kingdom*, the United States, *Uruguay*, Viet-Nam, Yugoslavia.*

* Reports examined in 1953 by the Committee and summarised in Report III, Part II, prepared for the 36th Session of the International Labour Conference (1953).

[10] In the rest of the text, the names of the States which have ratified the Convention and in respect of which the information utilised was furnished in their annual reports are given *in italics*.

stitution, a more detailed special form of report was adopted by the Governing Body. Consequently, in a fairly large number of cases, the information furnished this year pursuant to article 19 of the Constitution has, in detail and volume, been more or less comparable with the information furnished under article 22 by States which have ratified the Convention. The Committee notes that the two Conventions [1] relating to the right of association of workers and employers have again been selected by the Governing Body for report pursuant to article 19, and will come before the Committee at its session in 1959. It would be desirable that, in connection with the reports to be supplied on that occasion also, the form of report should be of the detailed nature used on the present occasion and that a more detailed form to guide the governments in preparing their reports on the Right to Organise and Collective Bargaining Convention, 1949, be adopted. Special mention should be made of the reports of Canada and New Zealand, which were particularly detailed. On the other hand, the reports furnished by Bulgaria, Iran, Iraq, Jordan, Luxembourg, Poland and Spain were extremely brief. The Governments of Luxembourg and Poland indicated that they had not considered it necessary to furnish more detailed information by reason of the fact that the procedure for ratifying the Convention was pending.[2] The reports of Iraq and Jordan are confined to a statement that the national legislation concerning the matters dealt with in the Convention is not in conformity with the instrument, in the case of Iraq, and does not exist in the case of Jordan. While the reports of Bolivia, Burma, Ireland and Yugoslavia were sufficiently detailed, regard must, of course. be had to the fact that, as they were drawn up several years ago, the situation which they describe is perhaps no longer exactly the situation which now exists in those countries. Finally, the reports of Bulgaria, Byelorussia, Poland, Portugal, Spain, Ukraine and the U.S.S.R. must be analysed in the light of the economic, political and social conditions prevailing in these countries.

12. The study of the information furnished in the reports of the different governments makes it possible—

(a) to give a general description of the position of the law and practice of these different States in regard to the matters dealt with in the Convention;

(b) to indicate the different techniques utilised for this purpose;

(c) to discover the problems raised by the Convention and the possibilities of its ratification.

These three questions will be examined in turn below.

General Description of the Position in the Different States

13. The Freedom of Association and Protection of the Right to Organise Convention, 1948, provides a number of guarantees and safeguards for individuals, organisations and federations of organisations. In the first place, individuals (workers and employers) should have the right to establish organisations of their own choosing and to join such organisations freely. In the second place, workers' and employers' organisations—that is to say, organisations which have the object of " furthering and defending the interests " of their members—should enjoy certain rights and guarantees intended to ensure their freedom. Finally, inter-union organisations, federations and confederations should enjoy the same rights and guarantees as the basic trade union organisations. The results of the analysis of the information communicated by the governments and the examination of the constitutional or legislative texts to which they refer make possible a general assessment of the extent to which the rights and guarantees prescribed by the Convention for safeguarding freedom of association are ensured for each of the three specified cases.

[1] In addition reports under article 19 will also be requested as regards the Right of Association (Non-Metropolitan Territories) Convention, 1947.

[2] Ratification by Poland was registered on 25 February 1957.

A. *Rights and Guarantees Enjoyed by Individuals*

14. The rights and guarantees which shall be enjoyed by individuals are defined or specified in several Articles of the Convention. The categories of individuals who shall enjoy these rights and guarantees are determined by Article 2, which is exceedingly broad in scope and is limited only by Article 9, which permits each State to decide the extent to which certain workers (armed forces and police) shall or shall not enjoy the rights and guarantees in question. It was necessary in the first place, therefore, to endeavour to ascertain the extent to which all the individuals covered by the Convention may effectively enjoy trade union rights in the different States which have submitted reports, and, on the other hand, to ascertain in which States such rights are refused. The extent of the rights of the individuals in question are defined or specified in different provisions of the Convention (Article 2, in particular, and Articles 7, 8 and 10) and may be briefly summarised as follows:

(a) the right of individuals to establish freely organisations of their own choosing;

(b) the right of individuals to join such organisations, subject only to the rules of the organisations concerned.

The ways in which these two fundamental rights would appear to be ensured in the different countries, according to the information communicated in the reports, may be analysed, therefore, after reviewing the various distinctions made in certain cases among those to whom they apply.

Individuals Enjoying the Right to Organise.

15. According to Article 2 of the Convention " workers and employers, without distinction whatsoever " shall have the right to establish and join occupational organisations.[3] However, Article 9 leaves it to the national legislation of each State to determine the extent to which the right shall apply to the armed forces and the police.[4]

[3] " Subject only to the rules of the organisation concerned." However, the conditions of membership or withdrawal from membership must not bring into question the principle of non-discrimination in relation to organisational rights. On this point see I.L.O.: *Freedom of Association and Protection of the Right to Organise*, Report VII, International Labour Conference, 31st Session, San Francisco, 1948 (Geneva, 1948), p. 89.

[4] Among the 21 coun' es which have furnished information on this point, it would appear from the information given by the governments that the situation may be summarised as follows:

Armed forces: right to organise without limit or subject to conditions similar to those applicable in the case of public officials: *Denmark, France,* the *Netherlands, Norway* and *Sweden.* The report by *Austria* declares that the question will be dealt with later by legislation; the report of *Iceland* declares that this country does not possess armed forces.

Police: right to organise without limit or subject to conditions similar to those applicable in the case of public officials:

16. The analysis of the reports received reveals that in the majority of the countries no substantial distinction is made between the different categories. Nevertheless, some countries make the right of organisation subject to more or less specific conditions which may, directly or indirectly, give rise to distinctions between the different categories of workers or employers with respect to the exercise of the right to organise. These conditions, which vary in character, may be grouped under five main heads: nationality, political opinions, race, sex and occupation or employment. Further, in a fairly large number of countries, legislation prescribes a minimum age at which a person may belong to an occupational organisation or, more generally, to any association.

17. *Distinctions based on nationality.* In nearly all the States which have submitted reports it would appear, from the information available, that alien residents enjoy without distinction the rights and guarantees prescribed by the Convention. In certain countries, nevertheless, it would appear that, at least in principle, aliens may not claim the enjoyment of these rights. Thus, under the constitutional provisions in force in Portugal, it would seem that only citizens enjoy the right of association. A similar conclusion would appear necessary judging by the letter of the Constitutions in *Belgium* and Luxembourg, but the two countries concerned declare, nevertheless, that aliens in fact freely enjoy the right to organise. In Italy the national Constitution accords the right of association to aliens only on a reciprocal basis; in practice, nevertheless, it would appear that the Italian trade unions admit aliens to membership on condition that they have resided a certain time in the country. Finally, in a number of States distinctions based on nationality are prescribed by law. This is the case, for example, in Honduras and Iran, where at least two-thirds of the members of a trade union must be nationals of the country concerned.

18. *Distinctions based on political opinions.* It would appear that the legislation in most of the countries which have submitted reports does not make any distinction in this connection. In some countries [1] the legislation prescribes certain disabilities with respect to persons who have particular political opinions. Moreover, the criterion of the political opinions of workers and employers, although not expressly laid down by law, also appears to be applied in a number of other countries; this is the case, for instance, in the *Philippines* [2], where registered organisations may not admit to membership persons professing certain political opinions. In the U.S.S.R. a fairly similar situation would appear to result from the provisions of the Constitution [3] and from the Rules of the Trade Unions of the U.S.S.R. The information furnished in some of the reports does not make it possible to ascertain whether any such distinctions exist or not.

19. *Distinctions based on race.* It would appear that distinctions based on race exist under legislation only in one of the States which have presented reports —the Union of South Africa, in which special legislative provisions apply to Native and coloured workers.[4] Further references in this report to the Union of South Africa relate only to organisations of " European " workers.

20. *Distinctions based on sex.* It would appear from the information supplied in the reports examined that, in nearly all the States which have presented such reports, no distinction based on sex with regard to trade union matters is established by legislation. However, in certain cases restrictions placed by civil law on the juridical capacity of married women may constitute an obstacle to their free adhesion to a trade union. Thus, in Canada, in one province (Quebec), and in Viet-Nam, women may belong to a trade union only if their husbands do not object. Moreover, the reports furnished by a number of countries do not make it possible to ascertain with certainty whether women in those countries enjoy the same trade union rights as do employers and workers of the male sex.[5]

21. *Distinctions based on occupation or employment.* It is with respect to the occupation or employment of individuals that distinctions seem to be made in the largest number of countries. In certain cases, these distinctions are purely formal and, therefore, are only of very limited scope. Thus, in certain countries workers employed in different branches of industry or different areas may not constitute or belong to the same trade union but, having established separate unions on an occupational or regional basis, they may constitute federations and confederations. Also, in a fairly large number of countries, public officials may belong only to trade unions whose membership is confined to public officials. In certain other cases, according to the information furnished by the governments [6], distinctions are made for the purpose of preventing acts of interference with workers' trade unions on the part of employers; this would appear to be the case, especially, in four countries [7], where managerial and supervisory staff may not belong to the same organisations as the workers but have the right to establish their own organisations.

22. In a number of countries, nevertheless, clearer restrictions exist, either because the trade union rights of certain categories are subject to stricter regulation, which leads in practice to a refusal of the right to constitute trade union organisations within the meaning of Article 10 of the Convention, or because persons belonging to certain occupations are in fact deprived of all trade union rights. The principal distinctions made relate to the following categories : public officials, persons employed in public

Austria, Belgium, Denmark, Finland, France, Iceland, Norway, Sweden and the *United Kingdom*. In the report from the United States it is pointed out that some of the states accord the right to organise to members of the police but that most of the states subject this right to certain restrictions or refuse it. In Egypt and New Zealand, the right to associate, but not for trade union purposes, is accorded to members of the police forces.

[1] This would appear to be the case in Chile (Labour Law, section 365), the Dominican Republic (Law No. 1443, section i), Turkey and the Union of South Africa (suppression of Communism Act, No. 44 of 1950, as amended).

[2] Republic Law No. 875, article 17 *(d)*.

[3] Article 126 of the Constitution provides "... the Communist Party is the leading core of all organisations of the working people...."

[4] The Industrial Conciliation Act, No. 36 of 1937 and the Native Labour (Settlement of Disputes) Act, No. 48 of 1953.

[5] This is the case, for example, with regard to the reports furnished by the following countries : Egypt, Iran, Iraq, Jordan, Spain and the Sudan.

[6] See Report III, Part IV, prepared for the 39th Session of the Conference (1956). General Remarks on the Right to Organise and Collective Bargaining Convention, 1949, pp. 135 ff.

[7] Dominican Republic (Law No. 2059, section 302 of 22 June 1949); *Cuba* (Decree No. 2605 of 7 November 1933); Haiti (Trade Union Act of 19 July 1947, amended by Act of 2 March 1948); *Sweden* (such exclusions may be provided by Collective Agreements Law of 11 September 1936, section 3).

or semi-public undertakings, workers employed in certain branches of industry and employers. These different distinctions are examined respectively below.

23. With regard to public officials, the large majority of the States which have presented reports do not draw any distinction, or prescribe conditions only of a more or less formal character which do not appear to place these categories of workers in a special position with regard to trade union rights. In two countries (Costa Rica [1] and Viet-Nam [2]) provision is made for special legislation in the case of public officials or certain categories thereof but, this legislation not having been enacted, all public officials have the right to constitute and join organisations. On the other hand, in two countries (*Denmark* [3] and *Pakistan* [3]) the conditions which are applied by the regulations to trade unions of public officials may limit to a certain degree the possibility of establishing trade union organisations. In nine countries (Chile [4], *Cuba* [3], the Dominican Republic [5], Ecuador [6], *Guatemala* [3], Portugal [7], Spain [8], Turkey [9], the United States—seven states [10]), the right to organise is refused entirely in the case of public officials. Further, in two countries (Iran [11] and Italy [12]) prohibition exists in respect of certain public officials. Finally, in four countries (Haiti [13], Honduras, *Mexico* [14] and the Sudan) the information available does not make it possible to ascertain whether such distinctions exist or, if they do exist, what their extent may be.

24. With regard to employees of undertakings in the public or semi-public sector, it would appear that in nearly all the States which have submitted reports there exists no distinction, except that in some cases, as with respect to officials, there are also a number of conditions of a more or less formal character which are established by the regulations. However, the reports of three governments (the Dominican Republic, Haiti [13] and Portugal) do not contain any information on this point. Finally, in three countries (Chile [14], Ecuador (except in the case of railwaymen) and *Guatemala* [3]) workers in these categories are refused the right to organise.

25. Other distinctions relating to workers employed in certain branches of industry result either from the fact that certain undertakings are not included within the scope of application of trade union legislation, as is the case in three countries (the Dominican Republic [15], Iran [16] and Turkey [17]) or from the existence of stricter legislation with regard to certain occupations, as in Chile [18] and *Guatemala*. [3] The most general of these distinctions apply in the case of workers employed in agriculture.

26. Finally, in certain countries, the position of employers differs from that of workers either because the intervention of the State in the constitution of their organisations is more marked, as in Egypt [19] and Portugal [20], or because, as in Byelorussia, the Ukraine and the U.S.S.R., there are no " private capitalist owners " and the directors of undertakings may form organisations the purpose of which seems to be only " the exchange of scientific and technical experience or information ", the discussion of " administrative and managerial problems, the organisation of work, etc. ". Such organisations do not appear to conform to the definition given in Article 10 of the Convention. The reports of certain countries, Bulgaria and Poland, contain no information with respect to employers and their organisations. The report supplied by the Government of Czechoslovakia merely states that there is " no provision forbidding employers to establish organisations ".

Free Establishment of Organisations by Those Concerned.

27. According to Article 2 of the Convention, workers and employers shall have the right " to establish organisations of their own choosing without previous authorisation ". This right, therefore, has a twofold aspect: first, the exclusion of all previous authorisation, and, secondly, the free choice of the organisation which those concerned may desire to establish. However, while it would appear from the information received that the absence of previous authorisation or of formalities which, in practice, are equivalent to authorisation, is a necessary condition for enabling individuals to establish an organisation of their own choosing, the absence of authorisation alone is not always sufficient. It is evident that in most countries the free choice of individuals is naturally limited by certain constitutional or legislative provisions which are merely the expression of the internal legal system of the State and the existence of which should not give rise to any problem, in view of the fact that under the provisions of Article 8, paragraph 1 of the Convention, " workers and employers... shall respect the law of the land ". Nevertheless, in some cases, the existence of these provisions does not always appear to be in complete harmony with Article 8, paragraph 2 of the Convention, according to which any restrictive provision " shall not be such as to impair nor shall it be

[1] Political Constitution of the Republic of Costa Rica, 7 November 1949, articles 25 and 60.

[2] Ordinance No. 23 of 16 November 1952 does not apply to public officials (an ordinance affecting officials is being prepared).

[3] See Observation addressed to the government of this country.

[4] Labour Law, section 368.

[5] Law No. 2059 of 22 July 1949.

[6] Constitution, article 185 *(g)*.

[7] Decree No. 23048 (with the exception of certain engineers, etc.).

[8] Order of 11 August 1953, section 1, *in fine*.

[9] Law No. 5018 of 20 February 1947.

[10] The Government points out, however, that there are doubts as to the constitutionality of this distinction.

[11] In the case of the staff of the Ministry of War (Law of 3 March 1946, section 1).

[12] In the case of civilian staff responsible for ensuring public security (Decree No. 205 of 24 April 1945).

[13] However, constitutional provisions appear to guarantee the right of association to officials and workers of all undertakings (Constitution, article 25).

[14] See request for information addressed to the government of this country.

[15] Employees of agricultural undertakings for stock-raising or forestry which do not permanently employ more than ten workers, farmers and tenant farmers (Labour Law, section 265).

[16] Agricultural workers: legislation is being prepared.

[17] Intellectual workers (except journalists employed in private undertakings).

[18] Agricultural workers may organise only in the form of works unions and the restrictions are such that they result in practice in depriving seasonal agricultural workers of the right to organise (see Observations addressed to the government of this country on the application of the Right to Organise (Agriculture) Convention, 1921).

[19] Legal personality is granted by decree; employers' organisations may be made compulsory.

[20] The State may make the membership of employers compulsory " in order to co-ordinate the economic forces of the nation ". Decree No. 23049 of 23 September 1933.

so applied as to impair the guarantees provided for . . . ".

28. *Exclusion of any previous authorisation.* It is evident that the principle of freedom of association might very often remain a dead letter if employers and workers were required to obtain any previous authorisation to enable them to establish an organisation. Nevertheless, it would appear from the information received that the fact that it must be possible to create organisations " without previous authorisation " naturally has not resulted in liberating the founders of an organisation from the duty of observing formalities as to publicity or other similar formalities which may be prescribed in certain countries either generally, in respect of all associations, or specifically in respect of trade unions. It follows, however, from the provisions of Article 8 of the Convention referred to above, that the various formalities prescribed, even though they may be of general application in respect of all associations, must not be such as to be equivalent in practice to previous authorisation or as to constitute such an obstacle to the establishment of an organisation that it amounts in practice to a prohibition pure and simple. In this connection, Article 7 of the Convention relates expressly to the acquisition of legal personality which, in some countries, constitutes a substantive condition of the existence and activities of organisations and which, according to that Article, " shall not be made subject to conditions of such a character as to restrict " the right of employers and workers to establish occupational organisations.

29. It appears from the information received that in some countries the formalities prescribed by law (deposit of constitution and rules, registration or other measures of publicity) are compulsory; in others, these formalities are only optional. However, it would seem that the compulsory or optional nature of the formalities prescribed does not always provide a sufficient criterion for determining whether there is or is not a requirement of previous authorisation. In fact, in some cases, although registration is compulsory, the authority competent to effect the registration does not have power to refuse it or, which amounts to practically the same thing, can refuse registration only because of a formal defect which it is always possible to remedy; moreover, in nearly all cases, refusal may be appealed against to the courts. In other cases, on the other hand, registration, while being of an optional nature, may confer on the registered organisation such rights (legal personality, right to bargain collectively, immunity from prosecution in respect of the offence of conspiracy or other similar offences) that an organisation deprived thereof might have great difficulties in " furthering and defending the interests " of its members; it is clear that in such cases, if the authority competent to effect the optional registration has power to refuse this formality in its discretion, the situation is not very different from that in cases in which previous authorisation is required.

30. In the majority of the countries which have furnished sufficiently detailed information in this connection in their reports [1] it would seem that there exists in fact no need to obtain previous authorisation in order to be able to establish an organisation. This is the case, particularly, in countries in which the constitution of an organisation is subject to no formality [2]; in those in which the formalities respecting publicity or registration may not be the subject of a refusal on the part of the authorities responsible under the law for effecting such formalities [3]; finally, in countries in which, although the competent authorities may refuse registration, it would not appear that such refusal (which, most generally, may be appealed against to the courts) may be based on anything other than failure to observe certain formalities which are not substantive in character.[4]

31. The situation is less clear in a number of other countries in which the authorities responsible for registration have more extensive powers of exercising judgment in certain cases and in which registration, whether compulsory or nominally optional, is in practice necessary to the organisation which is being founded to enable it to achieve its objects. This is the case, especially, when the refusal of registration, which in nearly all cases may be the subject of an appeal to the courts, may be motivated either by the existence of another organisation in the occupation or area [5] or by the political opinions of the leaders of the organisation.[6]

32. The situation appears even more complex in certain countries in which, as in Spain, " local " trade unions must be registered with higher organisations.[7] A somewhat comparable situation appears to exist in the U.S.S.R. in the case of the workers, whose associations may avail themselves of the titles and rights of occupational trade unions only if they are registered by an inter-trade-union organisation [8]; in the latter country, moreover, the information furnished with respect to the right of directors of undertakings to constitute associations does not specify what formalities are necessary in order to establish such bodies.

33. Finally, in four countries (Bolivia [9], Chile [10], *Guatemala* [11], and Portugal [12]) registration is compulsory and the competent authorities appear to be endowed with very extensive powers, not only to grant or to refuse registration, but also to give their approval to the rules of organisations; in addition, it would appear that in nearly all cases there is no right of appeal to the courts.

[1] The information furnished by the following States is not sufficiently detailed on this point: Iraq, Jordan, Poland, Yugoslavia.

[2] *Belgium*, Canada, *Denmark* (except in the case of organisations of public officials, which must be " recognised "), *Iceland*, Italy, Luxembourg, *Norway*, *Sweden*, Switzerland, the *United Kingdom* and *Uruguay* (in the last two countries, however, there appears to be a possibility for the founders of an organisation to choose between registering and not registering, and the advantages obtained by this formality do not seem indispensable to enable an organisation to pursue its objects).

[3] *France*, the Federal Republic of Germany, Israel, Tunisia, Turkey.

[4] Argentina, *Austria*, Burma, Ceylon, Costa Rica, *Cuba*, the Dominican Republic, *Finland*, Greece, India, Ireland, Japan, *Mexico*, *Pakistan* (except in the case of organisations of public officials, which must be " recognised ").

[5] Australia (Commonwealth Conciliation and Arbitration Act, section 82), Egypt (in the case of organisations of workers; employers' organisations may be made compulsory), Iran, New Zealand (Industrial Conciliation and Arbitration Act, 1954), the Sudan, the Union of South Africa (Industrial Conciliation Act No. 360 of 1937, section 4).

[6] The Philippines (Republic Law No. 875, sections 23 *(b)* (2)) and the United States.

[7] Act of 6 December 1940, section 5.

[8] Labour Law, sections 152 and 153.

[9] Decree of 19 May 1948, sections 1 to 7.

[10] Labour Law, Book III, Title I.

[11] See Observation addressed to the government of this country.

[12] Decree No. 23050, section 8.

34. *Free choice as to type of organisation to be established.* In a number of countries, the free choice by those concerned of the organisations which they desire to establish appears to be more or less limited by legislative or constitutional provisions. Thus, in Chile, agricultural workers may constitute only organisations each of which is limited to one estate and the objects of which are limited to purposes of mutual aid and welfare. The free choice of the founders of an organisation also appears to be limited in Portugal [1] and in Spain [2] by virtue of provisions which define, in particular, the political objects which the trade unions must pursue. A somewhat similar situation appears to result, in the U.S.S.R., from the constitutional provisions already mentioned.[3]

Right of Individuals to Adhere Freely to Organisations.

35. The third guarantee laid down by Article 2 of the Convention is that " workers and employers... shall have the right... to join " organisations of their own choosing " subject only to the rules of the organisation concerned ".[4] In this connection, it is of course appropriate to refer to the information already analysed in the earlier paragraphs, both with respect to the distinctions made in different cases between the different categories of persons concerned and with regard to the establishment or organisations. Among the countries which have reported and in which, in most cases, the State refrains from placing obstacles in the way of the free adhesion of individuals to an organisation, two tendencies may be observed. Firstly, there is the tendency seen in those countries in which, as, for example in *Belgium* [5], Costa Rica [6], *Cuba*, the Dominican Republic [7], *France* [8] and the *Netherlands*, in accordance with the traditional conceptions existing in these countries, the State not only does not intervene to place obstacles in the way of the free adhesion of workers or employers to an organisation but even guarantees to individuals the right to refuse their adhesion and represses any constraint which may be exercised with a view to causing any person to adhere to a given organisation. A second tendency is to be observed in those countries in which union security clauses [9] are traditionally inserted in collective agreements or utilised in practice, as is the case in Australia, *Mexico, Sweden*, the Union of South Africa, the *United Kingdom* and the United States; in this latter group of countries, however, a distinction should be drawn between those in which the State leaves it to employers and workers to negotiate such clauses in freedom, without intervention [10], and those in which the State makes the utilisation of such clauses subject to certain conditions and, in particular, the condition that the rules of the trade unions shall not contain any rules which are " oppressive " or discriminatory.[11] A special situation is seen in New Zealand; in that country the obligation to adhere to a trade union may result not only from a clause to that effect inserted in a freely negotiated agreement; the obligation, which is prescribed by law, may result in certain occupations from a binding arbitration award. In this connection, the Government indicates in its report that certain clauses relating to this system, the abrogation of which would encounter opposition " in the country as a whole ", are not " strictly in harmony " with the Convention. Finally, in certain countries (e.g. Chile [12], Portugal [13] and Spain [14]) individuals may be obliged, by law, to join a trade union which they have not chosen.

B. *Rights and Guarantees Applicable to Organisations*

36. The rights and guarantees which may be enjoyed by organisations of workers and employers are defined in Articles 3, 4 and 5 of the Convention. The different rights prescribed in these Articles of the Convention may be enumerated as follows : the right to draw up their constitutions and rules, the right to elect their representatives in full freedom, the right to organise their administration and activities and to formulate their programmes (Article 3 (1)), the right to establish and join federations and confederations, the right to affiliate with international organisations (Article 5). The guarantees prescribed are three in number : organisations shall not be liable to be dissolved or suspended by an administrative authority (Article 4); the public authorities shall refrain from any interference which would restrict or impede the lawful exercise of the rights of organisations (Article 3 (2)); finally, because naturally organisations are obliged "to respect the law of the land ", the same safeguard clause as is prescribed in the case of employers and workers as individuals is also valid in respect of their organisations : the law of the land " shall not be such as to impair nor shall it be so applied as to impair the guarantees provided... " (Article 8 (2)).

37. The information furnished in the reports with respect to each of the rights enumerated above will be analysed in turn; however, this examination will naturally be made having regard to the last two guarantees mentioned which, being of general application, could not be the subject of entirely separate examination; then, the information furnished on the methods of suspending and dissolving organisations will, in its turn, be considered.

38. *Drawing-up of constitutions and rules.* There exists a very large variety of situations in the countries which have reported and furnished information on this point. In a considerable number of cases, national laws and regulations either include no special provisions relating to the contents of constitutions and rules or simply give an enumeration of questions which must be dealt with in those rules. In other, also numerous, cases, on the other hand, the legislation contains provisions which are frequently very detailed but which, in general, are only of formal character and do not appear likely to infringe the rights of the organisations : it would appear, even, that these detailed requirements have in some cases the purpose of preventing a situation arising at a later date in which the trade unions would have to cope with complicated legal problems which could arise as the result of constitutions and rules being

[1] Decree No. 23050, sections 9, 11, and 15 *(b)* and *(c)*.

[2] Labour Charter, Chapter XIII.

[3] See paragraph 18 above.

[4] See above : footnote 3 to paragraph 15.

[5] Law of 24 May 1921, section 1.

[6] Constitution, article 25.

[7] Labour Law, sections 306 and 307.

[8] Labour Law, Book III and 1956 Law.

[9] Clauses by virtue of which a worker is obliged to join a given trade union if he desires to be employed in a particular occupation or undertaking (closed shop), or by virtue of which all the workers in an undertaking may be obliged to join a trade union (union shop), etc.

[10] *Sweden*, the Union of South Africa and the *United Kingdom*.

[11] Australia, *Mexico* and the United States.

[12] Labour Law, Book III, Title I.

[13] In the case of employers (see above, footnote 20 to paragraph 26).

[14] Labour Charter, Chapter XIII, section 2 and Law of 6 December 1940, sections 1 and 17.

drawn up in insufficient detail. However, in a number of countries, it would appear that constitutions and rules must be submitted for previous approval by the authorities, whose power of decision does not appear to be limited by any specific rules. This is the case in Chile [1], Ecuador [2], Egypt (with respect to employers' organisations), Portugal [3] and Spain. In the last two countries, it would seem, even, that approval can be given only if the constitution and rules are in accordance with the social policy of the Government.

39. *Election of representatives.* The analysis of the information received shows that there are two principal categories of rules applicable in the case of elections: firstly, procedural rules and, secondly, rules defining the conditions as to eligibility which persons must fulfil. With regard to the rules of procedure, it would seem that, in the large majority of the States which have made reports, no special rule exists. In the countries in which such rules exist, it would seem that their particular purpose is to avoid any dispute arising as to the result of the election; this would seem to be the case, for example, in Greece, where elections are presided over by a judge. In other countries (Chile [4], *Cuba* [5] and Turkey) a labour inspector may (or must, as the case may be) be present at elections; in this connection, the Committee has already pointed out that in certain cases this requirement may be incompatible with Article 3, paragraph 2, of the Convention. Finally, it would appear that in certain countries the rules applicable to the election of trade union officers cannot be regarded simply as procedural rules because, as in Portugal [6], the results of the elections must be officially approved or, as would seem to be the case in Spain, the higher trade union leaders are appointed by the Government.

40. With regard to the qualifications with which trade union leaders must comply in order to be eligible, it would seem that the national laws and regulations of a large number of countries contain no specific provisions on this point. In certain countries, however, it is provided that persons who have been subject to a penal sentence are ineligible. In some of those cases, nevertheless, it is provided that this rule shall not apply in the case of sentences pronounced in respect of a political offence. [7] In some ten countries all the trade union leaders, or at least a certain proportion of them, must belong to the occupation in respect of which the organisation carries on its activities [8], which in certain cases might involve a limitation of the free choice of representatives. In some dozen countries, national legislation establishes a prohibition based on nationality: only nationals may be trade union officers.[9] The problem raised by a provision of this kind is fairly complex; the Committee has already had occasion to refer to it in one of its earlier reports.[10] It may be admitted that in certain cases a provision of this kind cannot give rise to difficulty. However, everything depends on the manner in which such a clause is applied in practice. In fact, it is not impossible that according to local circumstances the application of a provision of this kind might lead in practice to a refusal of all right to organise to certain categories of workers. In some countries, certain persons may also be removed from their functions as trade union officers by reason of their political opinions. However, whereas in certain cases this exclusion relates only to persons belonging to a particular political party [11], in other countries, on the contrary, it would seem that adherence to any political party other than that which is in power is necessarily excluded.[12] Finally, it is evident that certain of the distinctions referred to above with respect to individuals enjoying the rights and guarantees prescribed in the Convention are also applicable in the case of trade union leaders.[13]

41. *Right of organisations to organise their administration and activities and to formulate their programmes.* In a large number of countries which have made reports, it would seem that there is no limitation on the right of organisations to " organise their administration and activities and to formulate their programmes ".[14] In these countries workers' and employers' organisations are of course obliged " to respect the law of the land ", but it would seem that this common law rule is not formulated in such a manner that it may constitute a limitation on the potential activities of organizations; moreover, control over the activities of organisations can be effected only *a posteriori* and nearly always by the judicial authorities or under their control. In a number of countries there exist provisions relating specifically to occupational organisations and prohibiting them in general terms from engaging in any political activities.[15] The extent of such a prohibition is naturally very variable, according to how it is applied in practice. In certain cases the governments indicate that the object of the prohibition is solely to prevent trade unions from abandoning their occupational role in order to transform themselves into political parties, and add that, in fact, the existing trade unions have never been limited in their activities by a provision of this kind.[16] However, as the Committee has had occasion to remark, such provisions, of general scope and referring especially to trade unions, may, by establishing a prohibition *a priori*, raise difficulties by the fact that the interpretation given to them in practice may change at any moment and restrict considerably the possibility of action of the organisations. In this connection the Committee thinks it useful to make reference to the resolution adopted by the International Labour Conference at its 35th

[1] Decree No. 1030 of 26 December 1949.

[2] Labour Law, section 363.

[3] Decree No. 23050, section 8.

[4] Decree No. 1030, section 29.

[5] See Observations addressed to the government of this country.

[6] Decree No. 25116 of 12 March 1935.

[7] This is the case, for example, in *France* and Tunisia.

[8] *Cuba*, Ecuador, Haiti, Honduras, India, Iran, Japan (in respect of public employees), *Pakistan*, Viet-Nam.

[9] Argentina, Chile, Costa Rica, *Cuba*, Ecuador, *Finland*, *France*, Haiti, Honduras, Iran, *Mexico*, Tunisia (Tunisian and French), Viet-Nam.

[10] See Report III, Part IV, prepared for the 37th Session of the International Labour Conference (1954), p. 39.

[11] The Philippines (see Observation addressed to the government of this country), the Union of South Africa and the United States (in the case of organisations which wish to enjoy certain advantages) (Communist Party in all three cases).

[12] Spain (Labour Charter, Chapter XIII, section 4) and the U.S.S.R. (Constitution, section 126).

[13] See above, paragraphs 17 to 26.

[14] This would appear to be the case, for example, in the following countries: *Austria*, *Belgium*, Canada, *Denmark*, *Finland*, *France*, Greece, Haiti, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, *Mexico*, the *Netherlands*, New Zealand, *Norway*, the Sudan, *Sweden*, Switzerland, Tunisia, the *United Kingdom*, the United States.

[15] This is the case, it would appear, in the following countries: Costa Rica (Labour Law, section 280), *Cuba* (see Observations addressed to the government of this country), the Dominican Republic (Labour Law, section 314), Ecuador (Labour Law, section 363 (8)), Iran, Turkey and Viet-Nam.

[16] In particular, *Cuba*.

Session (Geneva, 1952) in which it is stated, among other things, that when trade unions undertake or associate themselves with political action, this action should not be " of such a nature as to compromise the continuance of the trade union movement or its social or economic functions, irrespective of political changes in the country ". It would therefore seem that States should be able, but without prohibiting in general terms and *a priori* all political activities by occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which had lost sight of the fact that their fundamental objective should be " the economic and social advancement of the workers ". Finally, in some countries there do not exist, properly speaking, provisions prohibiting organisations from engaging in any political activity. However, this may result indirectly from legislative [1] or constitutional [2] provisions which closely associate the activities of occupational organisations with those of the political party in power.

42. It is also evident that, as the Governing Body Committee on Freedom of Association 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 a country. In this connection the information supplied in the reports of the governments has not enabled the Committee always to assess very accurately the exact effect of these general provisions on the possibilities of action by organisations. It has nevertheless appeared to the Committee that in a large number of the countries which have furnished reports, if not in most of them, the rules applicable in this connection do not appear to be calculated to impede the possibilities of action of the organisations.

43. *Right of federation and confederation.* Under the terms of Article 5 of the Convention, workers' and employers' organisations shall have the right to establish and join federations and confederations. Generally speaking, in the very large majority of the countries which have furnished information on this point, the constitution of federations or confederations is not subject to rules different from those applicable to the constitution of basic organisations by individuals. Reference should therefore be made to the analysis made above on the basis of the information furnished on the rules applicable to the establishment of the workers' and employers' organisations. In a certain number of countries, however, there exist special rules of procedure applicable to the case under review; thus, in certain countries [3] the regulations prescribe a specified majority, generally two-thirds, by which the members of each organisation may validly decide to constitute a federation or to affiliate with an existing federation. In certain countries, special rules in this connection are applicable only in the case of organisations of public officials, which may only federate among themselves.[4] In other countries it would seem that the right of federation or confederation itself is refused to organisations of public officials or is granted only on certain conditions.[5] The prohibition of federation is sometimes more general in character and applies to organisations catering for workers employed in certain activities, as, for example, in agriculture in Chile. [6] In other cases the right of federation of all organisations would appear to be subject to previous authorisation.[7] Finally, in certain cases the adhesion of organisations to a federation or confederation may be compulsory : this is the case, for example, in Egypt [8] and in Spain, where, as was pointed out earlier in connection with the establishment of the basic organisations it would appear that " local " trade unions are obliged to federate because their registration must be effected by the higher trade union organisation; a somewhat similar situation would appear to ensue in the U.S.S.R. from the fact that only associations registered with an inter-union organisation may avail themselves of the title and rights of a trade union.

44. *The right of organisations to affiliate with international confederations.* The right of organisations to affiliate with international organisations established by Article 5 of the Convention does not appear to be subject to any particular formality in almost all reporting countries. However, it would seem that in certain cases this right may be limited indirectly in countries in which there is an absolute and general prohibition of organisations from engaging in political activities or when this prohibition results, as seen above, from legislative or constitutional provisions which closely associate organisations with the political party in power. Moreover, it would seem that in countries in which there exist limitations on the right of organisations to establish or join federations or confederations, the same rules are applicable with respect to affiliation with international organisations. However, it would seem that in two countries [9] affiliation of organisations with international organisations is subject to previous authorisation. Finally, in Portugal, such affiliation appears very limited.

45. *Suspension and dissolution of organisations.* Article 4 of the Convention provides a fundamental guarantee for organisations by stipulating that they shall not be liable to be dissolved or suspended " by administrative authority ". Here again the scope of such a provision may vary considerably according to the civil liberties which the inhabitants of a country in fact enjoy. It would seem that, in some cases, the de-registration of an organisation may have the same results as does a suspension or even a dissolution. Nevertheless, the effect of such a measure of de-registration can vary according to whether registration constituted or did not constitute a formality necessary to enable the organisation to achieve its objects (see above, paragraphs 28 and 29) and according to the grounds on which the decision may be taken. That is why the information received with respect to the de-registration of organisations will be examined at the same time as that which relates to suspension and dissolution properly so-called.

46. According to the information received suspension by administrative authority appears to be impos-

[1] Portugal, Spain (see above, footnotes 1 and 2 to paragraph 34).

[2] U.S.S.R. See above, paragraph 18.

[3] Honduras, Iran (Rules of 3 March 1946, section 10), Turkey (Law No. 5018 of 20 February 1947, section 8).

[4] Canada (in one province—Quebec), Japan, the Union of South Africa.

[5] For example, Ceylon, India, Iran.

[6] See Observations made by the Committee with respect to the application of the Right of Association (Agriculture) Convention, 1921 (No. 11).

[7] Portugal (Decree No. 23050, section 8), the Union of South Africa.

[8] In the case of employers' organisations.

[9] Honduras, Turkey.

sible in nearly all the countries reporting. Among these countries, some specify that the power of suspension is accorded to the judicial authorities in cases in which organisations contravene the law.[1] In three countries [2] the suspension of organisations may be pronounced by an administrative authority but the suspension may be the subject of an appeal to the courts; moreover, it would seem that in Argentina the suspended occupational organisation can subsist as an association at common law. Finally, three countries [3] furnish no information on this point in their reports.

47. With regard to dissolution, which, according to Article 4, shall not be ordered by the administrative authorities, it would seem that, in the majority of countries reporting, this decision can be taken only by the judicial authorities. However, in some of these countries [4] the dissolution of organisations results from their de-registration by the competent authority but it would seem that such a decision would be taken only where the organisation contravenes the law and its own rules and that further, the decision to de-register can always be the subject of an appeal to the courts. In certain cases [5] dissolution is preceded by an order of suspension made by the competent administrative authorities, which results in the case coming immediately before the judicial authorities (or, alternatively, on pain of being held to be null and void, the order must immediately be referred to such authorities), and it is for the judicial authorities to decide whether or not there should be a dissolution; in the event of a negative decision, the order of suspension appears automatically to be terminated.

48. In a number of countries [6] it would seem that dissolution can be pronounced by the administrative authorities, but in most cases an appeal to the courts against the measure is provided; it does not appear clearly however from the information furnished whether the appeal suspends the measure of dissolution or not. Finally, in countries in which basic organisations must be registered with higher trade union organisations [7] it would appear that the latter organisations are competent to order at one and the same time de-registration and dissolution.

C. *Rights and Guarantees of Inter-Union Organisations*

49. According to Article 6 of the Convention federations and confederations shall enjoy the same rights and guarantees as are prescribed in the Convention in the case of basic organisations. According to the information furnished in the reports examined by the Committee, in all the countries which have furnished information on this point, with the exception of five, the same rules as apply to organisations are also applicable to federations and confederations. In two countries [8] federations and confederations appear to be subject to financial regulations which are somewhat stricter than those applying in the case of organisations. In Chile federations or confederations created by works unions or by unions of agricultural workers may have only cultural or welfare objects. In Honduras federations and confederations may not declare a strike or lock-out. Finally, in the Union of South Africa it would seem that the competent Minister may, in certain cases, grant or refuse registration and order the de-registration of federations or confederations, that is to say, in effect, order their dissolution.

Legal Methods Employed by the Various States

50. Like the Right to Organise and Collective Bargaining Convention, 1949, with respect to which the Committee endeavoured last year to distinguish the different methods adopted or already existing to ensure its application, the Freedom of Association and Protection of the Right to Organise Convention, 1948, in no way makes necessary the adoption of special legislation when the rights and guarantees which it provides for individuals, workers and employers, or organisations and federations and confederations, are effectively ensured by practice. However, while it would appear that in a certain number of countries [9] the recognition of the right to organise follows from the suppression of the old offences of combination and restraint of trade, it is to be observed that, even in countries whose legal systems are based on common law, special legislative provisions have very often been adopted to guarantee the rights provided in the Convention for employers and workers and their respective organisations.[10] It would appear from the information communicated that, in the very large majority of the countries which have made reports, the right to organise, or, more generally, the right of association is guaranteed by a constitutional provision. In most of these countries, moreover, special laws have been enacted to define and delimit the scope of these rights and guarantees. In some of these countries the legislation adopted for this purpose contains, as has already been pointed out, detailed, and sometimes exceedingly detailed, provisions with regard, among other things, to the constitution of trade unions. Although such provisions do not place any obstacle in the way of the free constitution of organisations and, on the contrary, appear to be intended to prevent certain legal difficulties from arising and to guide trade unions when the trade union movement is in its first stage of development, it may nevertheless be doubted whether such an accumulation of details is always necessary. In other cases legislative or constitutional provisions result indirectly in limiting the free choice of individuals or in considerably restricting the right of individuals to form an organisation or, in some cases, even amount to a pure and simple prohibition. While collective agreements are very extensively utilised as the means of ensuring the guarantees laid down in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as the Committee pointed out in its report in 1956, it is not surprising that very few countries refer to such agreements in their reports on the present Convention, in view of the fact that this instrument deals essentially with relations between the State, as the public power, and individuals and their organisations. Finally, in some cases the reports explain that the application

[1] Honduras, Iran, New Zealand, Turkey.

[2] Argentina, Ceylon, Haiti.

[3] Egypt, Greece, the Sudan.

[4] *Austria*, *Cuba*, Ecuador, *Finland*, Haiti, Israel, *Mexico*, Turkey and Viet-Nam.

[5] *Austria*, *Cuba*, *Denmark*, *Finland* and Iceland.

[6] Bolivia, Chile, Ceylon, Ecuador, Egypt (in the case of employers' organisations), *Guatemala* (see Observations addressed to the government of this country), Portugal, the Union of South Africa (by virtue of the Suppression of Communism Act).

[7] Spain, the U.S.S.R. (in the case of the latter country, however, no information is furnished with respect to directors of undertakings).

[8] Egypt and Turkey (fixing of a maximum limit on contributions from federated organisations).

[9] E.g. the *United Kingdom*.

[10] E.g. Australia.

of the standards laid down in the Convention, or of some of them, is ensured by means of arbitration awards[1] or defined in detail and reinforced by case law.[2]

Problems Raised by the Convention and Ratification Prospects

51. The reports examined also contain information concerning : *(a)* the sharing of competence in federal States; *(b)* difficulties of application; *(c)* amendments made to legislation and practice in order to give effect to the Convention; *(d)* ratification prospects.

52. *Federal States.* Among the ten federal States which have reported on the measures taken to give effect to the Convention, two (*Austria* and *Mexico*) have not stated specifically whether the application of this instrument falls within the competence of the federal authorities or of the authorities of the constituent units; however, the information furnished in their reports would appear to indicate that the federal authorities have jurisdiction, at least as regards legislation. The reports of Argentina [3], Switzerland [4], and the United States [5] indicate that jurisdiction is vested in the federal authorities. On the other hand, it would appear that in Australia, Canada [6], India [7] and the U.S.S.R.[8] legislative competence for the questions dealt with in the Convention is shared between the federal authorities and the authorities of the constituent units.

53. *Difficulties of application.* None of the reports furnished pursuant to article 19 of the Constitution points out any difficulties of application as such. However, some governments express doubt as to the exact obligations which the Convention imposes on governments [9], or as to the compatibility with the provisions of this instrument of regulations laid down by the State in respect of the right to organise of public officials [10], or, finally, as to the real effect of the formality of registration [11]. Among the 16 States which have ratified the Convention and have reported pursuant to article 22 of the Constitution, the application of the standards laid down in the instrument appears, in almost all cases, to give rise to no particular difficulty. However, in some cases the Committee has had to draw attention to provisions which appear to it to be incompatible with these standards, involving discrimination between the various categories entitled to the right to organise: in one case, as regards agricultural workers [12], in two cases, as regards public officials who are denied the right to organise.[13]

Further, with respect to the exclusion of any previous authorisation and administrative dissolution, the Committee has had to make observations in one case.[14] Moreover, the Committee has very often found it necessary to request further information on the matters included in the first annual report furnished by the governments. That is why (as indicated in the general part of its report) it appears to the Committee that it would be very useful to supplement the annual report form relating to this Convention. In most cases, once these details have been furnished, the Committee has been able to satisfy itself that the national legislation of the States in question contained no provisions which seemed incompatible with the Convention in respect of the points raised. In one case [15], nevertheless, the information requested has not yet been furnished. In four other cases, after having noted the further information furnished, the Committee has had to point out to the governments concerned that the relevant provisions in their national legislation did not appear to be compatible with certain of the standards laid down in the Convention [16], or that the situation was still not clear.[17]

54. *Amendments made to national legislation and practice.* A number of the reports received indicate that amendments have already been made to legislation in order to give effect to certain provisions of the Convention; in other reports the governments express their intention of making amendments to existing legislation dealing with matters directly or indirectly related to the provisions of the Convention. With respect to the amendments already made, four States indicate the action taken in their reports: Argentina has repealed various laws which established a system of unitary trade unionism, restricted the right to strike and contained numerous provisions incompatible with the exercise of the duties of trade union officers. The report of Honduras points out that, because its legislation had been enacted subsequent to the adoption of the Convention, it had been possible to take the provisions of the Convention into account. Turkey explains that its Associations Act has been amended so as to free federations and confederations from the need to obtain the previous authorisation of the competent Minister. Finally, the report of *France* points out that, in order to put an end to a situation created by an Order dating from the termination of hostilities and which had established a monopoly in respect of engagement in certain undertakings in favour of a particular trade union organisation, a new law has now been adopted by Parliament which prohibits any pressure being exerted on an individual to force him to adhere to an organisation which he has not chosen freely.

55. With regard to amendments which are contemplated, the Governments of Costa Rica, Ecuador and Haiti declare that they wish to repeal provisions in their legislation which permit the administrative dissolution of organisations. In Italy a new law regulating industrial relations is to be promulgated very shortly. The Government of the Sudan states that a new law is being studied, which would provide for the registration of federations and confederations in order that such organisations might be accorded

[1] Australia, New Zealand.

[2] *France, Sweden.*

[3] The Convention is " legally a matter for the federal authorities ". Cf. Report III, Part II, prepared for the 40th Session of the Conference (1957), p. 61.

[4] " Any action in connection with the Convention could be taken only by the federal authorities." (Ibid., p. 79.)

[5] " The Convention is regarded by the Government as appropriate under the constitutional system for federal action." (Ibid., p. 84.)

[6] There exists a " division of legislative jurisdiction as between the federal and provincial authorities ". (Ibid., p. 64.)

[7] " ' Trade unions ' is a concurrent subject under the Constitution." (Ibid., p. 73.)

[8] The Convention " is the responsibility of the federal authorities of the U.S.S.R. and the authorities of the constituent republics, each within their respective fields of competence". (Ibid., p. 83.)

[9] Japan, Switzerland, the United States.

[10] India, Japan.

[11] India, Viet-Nam.

[12] *Guatemala.*

[13] *Cuba, Guatemala* (in the latter country, the prohibition also extends to employees of public undertakings).

[14] *Guatemala.*

[15] *Mexico* (right to organise of public officials).

[16] *Cuba* (programmes of organisations), *Pakistan* (organisations of public officials), the *Philippines* (registration and legal personality).

[17] *Denmark* (public officials' organisations).

legal personality. Finally, the report of Switzerland refers to a Bill dealing with collective agreements and the extension of such agreements and to a further examination of the Labour Bill.

56. *Ratification prospects.* Among the States which have reported pursuant to article 19 of the Constitution, eight have recently ratified this instrument: Byelorussia, the Dominican Republic, the Federal Republic of Germany, Honduras, Israel, Poland, Ukraine and the U.S.S.R. Further, according to the report, the Convention is in course of ratification in Luxembourg. The report of Iran states that no obstacles exist to prevent or delay ratification, since national legislation is in harmony with the Convention. According to the reports, ratification is being considered in Egypt and Greece. The Government of Ceylon declares that, having decided not to ratify the Convention for the moment, it intends to take up the examination of the question again at a later date. Several governments wish to bring their national legislation into harmony with the Convention before they take steps to ratify the instrument. This is the case in Costa Rica, Ecuador, Haiti and Italy, already mentioned in the preceding paragraph. Among the countries which indicate the considerations preventing or delaying ratification of the Convention (and apart from those cases in which governments wish to satisfy themselves as to the exact extent of the obligations which they would assume as a result of ratification [1]), some refer to difficulties of a constitutional nature: this is the case in Canada, which indicates that ratification would be very difficult because of the division of jurisdiction in respect of the matters dealt with in the instrument between the federal Government and the provincial governments. Other countries consider that certain provisions in their national legislation prevent ratification: this is the case, for example, in New Zealand, which indicates that certain provisions restricting the freedom of choice of organisation to which persons may wish to belong are not in complete harmony with the Convention but that the abolition of this system would encounter opposition on the part of the large majority of those concerned; likewise, Viet-Nam considers that the right of the administrative authorities to inspect trade union constitutions and rules when unions are being registered constitutes an obstacle, but that this system, which must be maintained in order to avoid the courts declaring union constitutions to be null and void, is necessary in view of the present state of trade union development. Iraq and Jordan also refer to the insufficient development of occupational organisations to explain why it is impossible to ratify the Convention. Finally, the Government of Portugal states that, having regard to the system in that country, ratification of the Convention is impossible.

Conclusions

57. On several occasions already the Committee has emphasised the fundamental importance which the International Labour Organisation attaches to the Freedom of Association and Protection of the Right to Organise Convention, 1948, the principles of which are regarded as an essential factor in social progress. This Convention, which on the occasion of the first examination of reports furnished thereon pursuant to article 19 in 1953 had already been ratified by 14 States, has now received 26 ratifications. It appears to the Committee that the number of ratifications, which may be considered encouraging when it is remembered that the instrument was adopted by the Conference less than ten years ago, will in a short time be considerably increased.

58. The Committee has been happy to observe that, among the States whose reports it has examined, national legislation, in a relatively considerable number of cases, contains no provisions which appear to be incompatible with the standards laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948. As might be expected, this is the case (with two or three exceptions) with the 16 States which have ratified the Convention and have reported pursuant to article 22 of the Constitution. As regards States which have not ratified the Convention, the Committee has observed that, in addition to the relatively large number in which no real obstacles to ratification would appear to exist, in a considerable number of cases only very slight amendments to national legislation would appear to be required to enable the Convention to be ratified.

59. Examination of the various laws and regulations in force has led the Committee to the conclusion that, as already emphasised, it might be desirable for the legislation of certain countries relating to occupational associations to be simplified. Nevertheless, in view of the universal character of this Convention, which is compatible both with systems under which organisations of workers and employers are based on the general law of association, and with systems under which the right to organise is the subject of very detailed special regulations, the existence of such provisions should not constitute an obstacle to ratification. In fact, here again, more than in all other fields covered by international labour Conventions, respect for established international standards is not merely a question of conformity of legislation, because such respect does not automatically result from the simple fact that the legislation contains no provision which goes against the rights and guarantees prescribed by the Convention. With respect to freedom of association and protection of the right to organise, the Committee cannot emphasise too strongly that national practice is of exceptional importance, in as much as such practice necessarily reflects the more general background of the civil and political liberties enjoyed by the inhabitants of a country.

60. In a number of States, moreover, the Committee has observed that full effect was not given to one or more of the provisions of the Convention, the application of which, nevertheless, does not seem to present any particular difficulty. It may be hoped, therefore, that the economic and social development of these countries and, more especially, the progress made by occupational organisations, will enable them to grant fairly quickly to workers and employers, and to their respective organisations, the rights and guarantees provided for in the Convention.

61. The Committee has, however, been particularly struck by the existence in certain countries—relatively few, it is true—of legislative or constitutional provisions which in effect indirectly restrict the rights and guarantees provided for in the Convention or sometimes even lead to the prohibition, pure

[1] See paragraph 53 above: Difficulties of application.

and simple, of the free exercise of the right to organise; in certain cases, moreover, while the principle of the right to organise is proclaimed in general terms, special legislative provisions or particular regulations result in the restriction, or even the suppression, of the rights and guarantees prescribed. It appears to the Committee that the existence of provisions of this kind needs to be pointed out all the more because, although there can be no doubt as to their incompatibility with the standards laid down in the Convention, their effect is often difficult to discern at first sight and may accordingly escape notice.

Geneva, 13 April 1957.

(Signed) P. TSCHOFFEN,
Chairman.

H. S. KIRKALDY,
Reporter.

Appendix. Reports Requested and Reports Received by 13 April 1957

State [1]	Reports requested			Reports received		
	Nos. of Conventions	Nos. of Recommendations	No. of reports requested	Nos. of Conventions	Nos. of Recommendations	No. of reports received
Afghanistan	81, 87	81, 82	4	—	—	—
Albania	81, 87	81, 82	4	—	—	—
Argentina	87	81, 82	3	87	81, 82	3
Australia	81, 87	81, 82	4	81, 87	81, 82	4
Austria	—	81, 82	2	—	81, 82	2
Belgium	81	81, 82	3	81	81, 82	3
Bolivia	81, 87	81, 82	4	—	—	—
Brazil	81, 87	81, 82	4	—	—	—
Bulgaria	87	81, 82	3	87	81, 82	3
Burma	81	81, 82	3	—	—	—
Byelorussia	81, 87 [2]	81, 82	4	81, 87	81, 82	4
Canada	81, 87	81, 82	4	81, 87	81, 82	4
Ceylon	81 [2], 87	81, 82	4	81, 87	81, 82	4
Chile	81, 87	81, 82	4	81, 87	81, 82	4
China	81, 87	81, 82	4	—	—	—
Colombia	81, 87	81, 82	4	—	—	—
Costa Rica	81, 87	81, 82	4	81, 87	81, 82	4
Cuba	—	81, 82	2	—	81, 82	2
Czechoslovakia	81, 87	81, 82	4	81, 87	81, 82	4
Denmark	81	81, 82	3	81	81, 82	3
Dominican Republic	87 [2]	81, 82	3	87	81, 82	3
Ecuador	81, 87	81, 82	4	87	—	1
Egypt	81 [2], 87	81, 82	4	81, 87	—	2
Ethiopia	81, 87	81, 82	4	—	—	—
Finland	—	81, 82	2	—	81, 82	2
France	—	81, 82	2	—	81, 82	2
Germany (Fed. Rep.)	87 [2]	81, 82	3	87	81, 82	3
Greece	87	81, 82	3	87	81, 82	3
Guatemala	—	81, 82	2	—	81, 82	2
Haiti	87	81, 82	3	87	81, 82	3
Honduras	81, 87 [2]	81, 82	4	81, 87	81, 82	4
Hungary	81, 87	81, 82	4	—	—	—
Iceland	81	81, 82	3	81	81, 82	3
India	87	81, 82	3	87	81, 82	3
Indonesia	81, 87	81, 82	4	—	—	—
Iran	81, 87	81, 82	4	81, 87	81, 82	4
Iraq	87	81, 82	3	87	81, 82	3
Ireland	—	81, 82	2	—	81, 82	2
Israel	87 [2]	81, 82	3	87	81, 82	3
Italy	87	81, 82	3	87	81, 82	3
Japan	87	81, 82	3	87	81, 82	3
Jordan	81, 87	81, 82	4	81, 87	81, 82	4
Lebanon	81, 87	81, 82	4	—	—	—
Liberia	81, 87	81, 82	4	—	—	—
Libya	81, 87	81, 82	4	—	—	—
Luxembourg	81, 87	81, 82	4	81, 87	81, 82	4

[1] Members on 27 December 1955, date on which reports were requested.
[2] This State has ratified the Convention.

Document No. 232

ILC, 43rd Session, 1959, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 101–129

P09661/1

REPORT III

(PART IV)

INTERNATIONAL LABOUR CONFERENCE

FORTY-THIRD SESSION

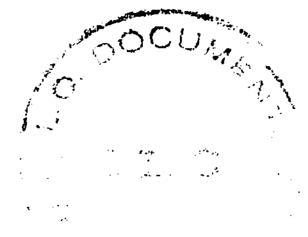
GENEVA, 1959

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)



INTERNATIONAL LABOUR OFFICE

GENEVA, 1959

Price: $1.75; 10 s. 6 d.

I. FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE, COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

GENERAL REMARKS OF THE COMMITTEE CONCERNING 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), THE RIGHT OF ASSOCIATION (NON-METROPOLITAN TERRITORIES) CONVENTION, 1947 (No. 84) AND THE COLLECTIVE AGREEMENTS RECOMMENDATION, 1951 (No. 91)

Introduction

1. This is the first time that the Committee has been called upon to examine at the same time reports furnished by States Members of the Organisation, under article 19 of the Constitution, on a series of international instruments dealing mainly with freedom of association, collective bargaining and collective agreements.[1] The main purpose of freedom of association, as envisaged in the instruments adopted by the Conference, is to enable individual members of occupational organisations, as well as the organisations themselves, to defend their interests. This may be done especially through collective negotiations which, leaving aside the case of public officials, are designed in most cases to conclude, revise or renew collective agreements. The Committee has accordingly taken the view that it would be useful to submit observations relating to the different instruments in a single report.

2. These observations are based essentially on the information furnished in the reports emanating from 160 different countries: 74 States Members of the I.L.O.[2] and 86 non-metropolitan territories.[3] In other words, the information examined relates to 92.5 per cent. of the States Members [4] and to more than 88.6 per cent. of the non-metropolitan territories.[5]

3. As in previous years, the observations of the Committee relating to the three Conventions dealing with freedom of association and protection of the right to organise are based not only on the information furnished, pursuant to article 19 of the Constitution, by States which have not ratified those Conventions, but also on the various annual reports transmitted by the States which have ratified them. In certain cases, account has also been taken of information already utilised by the Committee in 1956 [6] and in 1957 [7] in respect of countries which have omitted, this time, to furnish reports pursuant to article 19 of the Constitution. Further, the Committee has thought it useful to take account of information furnished in annual reports on the application of the Right of Association (Agriculture) Convention, 1921 (No. 11).[8] Finally, the information relating to collective bargaining and collective agreements is derived from reports pursuant to article 19 concerning the Collective Agreements Recommendation, 1951 (No. 91), and also from reports furnished, both under article 19 and under article 22 of the Constitution of the I.L.O., on the three Conventions mentioned above.

4. In 1953 and in 1957 the Committee pointed out the difference between its own task and the work of the " Committee on Freedom of Association " of the Governing Body of the I.L.O. and of the " Committee on Freedom of Employers' and Workers' Organisations ". In particular, the Committee felt bound to point out that, with respect to the Conventions, the scope of its conclusions was clearly different according to whether the country had ratified these Conventions or not. In respect of the States which are bound by these Conventions, it is the duty of the Committee to indicate, where necessary, the legislative provisions or established practice which are not in harmony with the Convention and should be repealed or amended in accordance with the international obligations undertaken by the States in question by virtue of their ratification; the situation is the same with regard to the non-metropolitan territories to which, pursuant to a declaration transmitted under article 35

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[1] These Conventions and Recommendation have already been selected separately by the Governing Body as subjects for reports pursuant to article 19 of the Constitution. These reports were examined respectively by the Committee in 1953, 1956 and 1957.

[2] Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Republic of Guinea, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Luxembourg, Federation of Malaya, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Rumania, El Salvador, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, Union of South Africa, U.S.S.R., United Arab Republic (Egypt), United Kingdom, United States, Uruguay, Venezuela, Viet-Nam, Yugoslavia.

[3] *Australia:* Nauru, New Guinea, Norfolk Island, Papua; *Belgium:* Belgian Congo, Ruanda-Uruandi; *Denmark:* Faroe Islands, Greenland; *France:* Algeria, Cameroons, Comoro Islands, French Equatorial Africa, French Polynesia, French Somaliland, French West Africa, Guadeloupe, French Guiana, Madagascar, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Togoland; *Italy:* Trust Territory of Somaliland; *Netherlands:* Netherlands Antilles, Surinam, Netherlands New Guinea; *New Zealand:* Cook Islands and Niue, Tokelau Islands, Western Somoa; *Union of South Africa:* South West Africa; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Brunei, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gibraltar, Gilbert and Ellice Islands, Grenada, Guernsey, Hong Kong, Jamaica, Jersey, Kenya, Malta, Isle of Man, Mauritius, Montserrat, Nigeria, North Borneo, Northern Rhodesia, Nyasaland, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent, Sarawak, Seychelles, Sierra Leone, Singapore, Solomon Islands, Southern Rhodesia, Swaziland, Tanganyika, Trinidad and Tobago, Uganda, Zanzibar; *United States:* Alaska, American Samoa, Guam, Hawaii, Puerto Rico, Trust Territory of Pacific Islands, Virgin Islands.

[4] No information was available in respect of the following States: Ethiopia, Lebanon, Liberia, Libya, Panama, Paraguay.

[5] No information was available in respect of the following territories: *Portugal:* Angola, Cape Verde, Macao, Mozambique, Portuguese Guinea, Portuguese Indies, S. Tomé and Principe, Timor; *Spain:* Spanish Guinea, Spanish West Africa; *United States:* Panama Canal Zone.

[6] See I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 39th Session, Geneva, 1956 (Geneva, 1956), p. 135.

[7] Idem, 40th Session, Geneva, 1957, p. 161.

[8] As, for example, in respect of China.

of the Constitution of the I.L.O., a Convention is applicable without modification—or, where it is applicable with modifications, having regard to such modifications. On the other hand, in the case of States which are not bound by these Conventions, the Committee in its conclusions must confine itself to noting the position of law and practice in the countries concerned in regard to the matters dealt with in the Conventions in question, in so far as the information furnished in reports received pursuant to article 19 enable it to do so. Non-metropolitan territories whose international relations are the responsibility of a State which has ratified one of these Conventions, but to which the Convention concerned is not applicable are, so to speak, in an intermediate position. In fact, according to the established procedure, the Committee must be kept informed periodically, through annual reports, of the evolution of the situation and of the nature of the local conditions which prevent or delay the partial or complete application of the Convention.

5. The present report is divided into two chapters. The first, which deals with freedom of association and protection of the right to organise, is intended to afford a general view of the situation in all the countries considered, in the field covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by Articles 1 and 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and by Articles 2 and 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84). The second chapter, which deals with collective bargaining and collective agreements, contains an analysis of the information available in the field covered by the Collective Agreements Recommendation, 1951 (No. 91), and by the other Articles of the two last mentioned Conventions.

6. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been ratified by 36 States [9]; it has been declared applicable without modification to 27 non-metropolitan territories [10]; it has been declared applicable subject to modifications to 11 non-metropolitan territories.[11] The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by 40 States [12]; it has been declared applicable without modification to 23 non-metropolitan territories [13]; it has been declared applicable with modifications to one non-metropolitan territory.[14] The Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), has been ratified by four States responsible for the international relations of such territories [15]; it is applicable without modification to 55 non-metropolitan territories.[16]

Content of Reports

7. In a considerable number of cases, the governments of the States which have not ratified the Conventions under review have made reference to information furnished in earlier reports or have reproduced such information; in fact, Convention No. 87 was the subject of reports under article 19 examined in 1953 and 1957 and Convention No. 98 of reports examined in 1956. The same is true in certain cases in respect of reports on Recommendation No. 91, which was also the subject of reports under article 19 examined in 1956. It should nevertheless be pointed out that the reports of certain States were particularly detailed as, for example, the reports of Argentina (Recommendation No. 91), Australia (Convention No. 87 and Convention No. 98), India (Convention No. 98 and Recommendation No. 91), United States (Convention No. 98, Convention No. 84 and Recommendation No. 91), and the U.S.S.R. (Recommendation No. 91). On the other hand, the information given by certain governments was extremely brief: this is so, for instance, in the case of Afghanistan, which confines itself to an indication that the two Conventions and the Recommendation in question have been brought to the notice of the competent authorities, and in the case of Colombia, which indicates simply that the Conventions are going to be submitted to Congress for ratification. Further, it should be pointed out that account has also been taken of the earlier reports made by certain countries which have omitted to furnish the reports requested: Iraq, which had indicated that its legislation concerning freedom of association was not in conformity with Convention No. 87, and Jordan, which stated that no relevant legislation existed. Finally, it should be noted that new legislative provisions have been adopted in certain countries since the despatch, by the governments, of the reports which the Committee was called upon to examine [17]: it has not been possible to take account of these in the present observations. Finally, the Committee wishes to emphasise that the

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[9] Albania, Austria, Belgium, Burma, Byelorussia, Cuba, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Guatemala, Republic of Guinea, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Mexico, Netherlands, Norway, Pakistan, Panama, Philippines, Poland, Rumania, Sweden, Tunisia, Ukraine, U.S.S.R., United Arab Republic (Egypt), United Kingdom, Uruguay, Yugoslavia.

[10] *Denmark:* Greenland; *France:* Cameroons, Comoro Islands, French Equatorial Africa, French Guiana, French Polynesia, French Somaliland, French West Africa, Guadeloupe, Madagascar, Martinique, New Caledonia, St. Pierre and Miquelon, Réunion, Togoland; *Netherlands:* Netherlands Antilles, Surinam, Netherlands New Guinea; *United Kingdom:* Aden, Dominica, Guernsey, Jersey, Malta, Isle of Man, Nigeria, St. Lucia, Trinidad and Tobago.

[11] *United Kingdom:* Basutoland, Bechuanaland, British Guiana, British Honduras, Gibraltar, Grenada, Jamaica, Mauritius, North Borneo, Nyasaland, St. Vincent, Sarawak, Sierra Leone, Swaziland, Uganda.

[12] Albania, Argentina, Austria, Belgium, Brazil, Byelorussia, Cuba, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Guatemala, Republic of Guinea, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Morocco, Norway, Pakistan, Philippines, Poland, Rumania, Sudan, Sweden, Tunisia, Turkey, Ukraine, U.S.S.R., United Arab Republic, United Kingdom, Uruguay, Yugoslavia.

[13] *France:* French Guiana, Guadeloupe, Martinique, Réunion; *United Kingdom:* Aden, British Guiana, British Honduras, Dominica, Gibraltar, Grenada, Guernsey, Jamaica, Jersey, Isle of Man, Mauritius, Nigeria, North Borneo, St. Lucia, St. Vincent Sarawak, Sierra Leone, Trinidad and Tobago, Uganda.

[14] *United Kingdom:* Northern Rhodesia.

[15] Belgium, France, New Zealand and the United Kingdom. In addition, Italy, which has not ratified this Convention, has accepted the obligations of the Convention on behalf of the Trust Territory of Somaliland (see note below).

[16] *Belgium:* Belgian Congo, Ruanda-Urundi; *France:* Cameroons, Comoro Islands, French Equatorial Africa, French Polynesia, French Somaliland, French West Africa, Madagascar, New Caledonia, St. Pierre and Miquelon, Togoland; *Italy:* Trust Territory of Somaliland; *New Zealand:* Cook Islands and Niue; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Virgin Islands, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gibraltar, Grenada, Hong Kong, Jamaica, Kenya, Malta, Mauritius, Montserrat, Nigeria, North Borneo, Northern Rhodesia, Nyasaland, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent, Sarawak, Seychelles, Sierra Leone, Singapore, Southern Rhodesia, Swaziland, Tanganyika, Trinidad and Tobago, Uganda, Zanzibar.

[17] This is the case, it would seem, in respect of Ghana and Thailand.

footnotes to the following paragraphs should not be regarded as exhaustive, but as giving, as far as possible, representative examples based on the information available to it.

Chapter I. Freedom of Association and Protection of the Right to Organise

8. The three Conventions under review provide for a number of rights and guarantees to be accorded to individuals and also to their occupational organisations. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides in the first place that individuals (workers and employers) shall have the right to establish freely organisations of their own choosing and to adhere freely to such organisations (Article 2); secondly, the organisations of workers and employers in question, that is to say, organisations for the purpose of "furthering and defending the interests" of their members (Article 10), shall enjoy certain rights (Article 3, paragraph 1, and Article 5) and certain guarantees intended to ensure their freedom of action (Article 3, paragraph 2, and Article 4); higher organisations, federations and confederations, shall enjoy the same rights and guarantees as do the primary trade union organisations (Article 6); finally, under Article 11, States shall take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise. Articles 1 and 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provide that workers [18], as members of occupational organisations, shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (Article 1), and that workers' and employers' organisations shall enjoy guarantees against acts of interference by each other (Article 2). The Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), provides that employers and employed shall have the right to associate for all lawful purposes (Article 2) and that occupational organisations shall have the right to conclude collective agreements (Article 3).

9. It is necessary to consider separately, therefore, in so far as the information available in respect of the different countries considered permits of this [19], the situation of individuals from the point of view of freedom of association and protection of the right to organise, the rights and guarantees enjoyed by the primary trade union organisations and, finally, the rights and guarantees enjoyed by higher organisations (federations and confederations).

[18] See paragraph 11 below as to the difference between the scope of this Convention and the scope of the preceding Convention with regard to the individuals protected.

[19] The information available for the following countries does not make it possible to gauge the extent to which effect is given to the Conventions under consideration; in certain cases the governments themselves state either that legislation is not in conformity with these Conventions, or that there is no legislation relating to the freedom of association or the protection of the right to organise:
Member States: Afghanistan, Albania, Bolivia, Bulgaria, Czechoslovakia, Hungary, Iraq, Jordan, Peru, Rumania, United Arab Republic (Syria), Venezuela, Yugoslavia. *Non-metropolitan territories: Australia:* Nauru, New Guinea, Norfolk Island, Papua (according to the report there are no trade union organisations, and no legislative provisions in this connection); *New Zealand:* Tokelau Islands, Western Samoa (the right of association is guaranteed by the Constitution, but there are no other legislative provisions in this connection); *United States:* Trust Territory of Pacific Islands, American Samoa (ibid.).

A. Situation of Individuals from the Point of View of Freedom of Association and Protection of the Right to Organise

10. The survey of the information available concerning the rights and guarantees enjoyed by individuals (workers and employers) entails, in the first place, consideration of the categories of individuals who enjoy freedom of association and those to whom the right to organise is denied, and, secondly, consideration as to how far the individuals concerned may, under the national legislation, enjoy the different rights and guarantees accorded to them by the Conventions.

1. Individuals Enjoying the Right to Organise

11. The scope, from the point of view of individuals, of the three Conventions under review, is not exactly the same. Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which applies to "workers and employers without distinction whatsoever", is exceedingly broad in scope. It is limited only by Article 9 of the Convention, which permits each State to decide the extent to which members of the armed forces and police shall or shall not enjoy the rights and guarantees provided for. This last provision is also embodied in Article 5 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 6 of which, moreover, provides that the Convention does not deal with the position of public servants engaged in the administration of the State; further, Article 1 of this Convention, which refers to acts of anti-union discrimination in respect of employment, can naturally not be applied either to independent workers or to employers. Finally, the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), is applicable, like the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to employers, but does not cover all workers because, according to Article 1 of the Convention, the right of association shall be guaranteed to those who are "employed".

12. The analysis of the reports received reveals that in the majority of the countries no distinction [20] or no substantial distinction is made between the different categories. Nevertheless, some countries make the right of organisation subject to more or less specific conditions which may, directly or indirectly, give rise to distinctions between the different categories of workers or employers with respect to the exercise of the right to organise. These distinctions may, according to the frequency with which they are found in the different legislative systems, be grouped as follows: firstly, those which are found most often and which relate to certain occupations or employments; secondly, other distinctions, which may be grouped under four main heads: sex, race, nationality, political opinions; thirdly, in certain countries special provisions are applicable to employers; finally, there

[20] *Member States:* Austria, Belgium, Canada (federal legislation), Finland, France, Federal Republic of Germany, Republic of Guinea, Honduras, Iceland, Israel, Italy, Luxembourg, Morocco, Netherlands, Norway, Sweden, Switzerland, Tunisia, United Kingdom. *Non-metropolitan territories: France:* all non-metropolitan territories; *Italy:* Trust Territory of Somaliland; *New Zealand:* Cook Islands; *United Kingdom:* Aden, Antigua, Bahamas, Basutoland, Bechuanaland, British Guiana, British Somaliland, British Virgin Islands, Brunei, Cyprus, Falkland Islands, Gilbert and Ellice Islands, Guernsey, Jersey, Malta, Isle of Man, Montserrat, St. Christopher, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Singapore, Trinidad and Tobago.

exist in certain countries distinctions applicable to particular categories of persons.

Distinctions Based on Occupation or Employment.

13. The occupations in respect of which distinctions are made include, in particular, public officials, workers in public or semi-public undertakings, agricultural workers and independent workers.

14. The extent of the distinctions established by legislation varies somewhat. In certain cases, it would seem that these distinctions are of a more or less secondary nature and do not, in fact, place any important restriction on the freedom of association of individuals; in other cases, they appear to limit more strictly the choice of individuals and the scope of activity of the organisations which they may establish; finally, restrictions in certain other cases may lead in practice to a prohibition of the free establishment of, or free adherence to, trade union organisations.

15. *Distinctions of a more or less secondary nature.* Under certain legal systems senior supervisory staff who represent the employer are not permitted to belong to the same unions as do other workers in the undertaking, but they may freely establish their own trade unions.[21] According to the explanations given by certain governments, the purpose of these provisions is to prevent acts of interference with workers' trade unions. In other cases, the establishment of trade unions is possible only where the workers (or employers) belong to the same occupation or region. It would seem that this prohibition of workers employed in different branches of industry or in different regions establishing or joining the same trade union may be of a purely formal character. That is the case, for instance, when these separate primary organisations (constituted for an occupation or for a region) may freely establish and join federations and confederations and, again, where the law does not prohibit workers who are not or are no longer employed in the occupation concerned from being chosen as trade union officers [22]; thus in a fairly considerable number of countries public officials may only join trade unions whose membership is limited to such officials. This ensues, in certain cases, from a legislative provision or special regulation providing for the establishment of separate trade unions, or from provisions in union rules, or from the fact that officials may not join organisations which may utilise certain methods of action and, in particular, the strike weapon.[23] In two countries [24], there is provision that special legislation shall be enacted with respect to public officials or certain categories thereof but, this legislation not having been adopted, the reports indicate that all officials have the right to establish and join organisations in freedom. In certain countries, the distinctions of a formal nature applicable in the case of public officials apply also to workers employed in undertakings in the public or semi-public sector.

[21] Canada (Quebec), Cuba, Dominican Republic, Haiti, Philippines, Sweden (by virtue of a collective agreement).

[22] France (Book III of the Labour Code, section 7), Algeria (ibid.), Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.), Cameroons (Overseas Labour Code, 1952, Title II, section 9), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland.

[23] Austria, Switzerland, United Kingdom (Great Britain), Union of South Africa, etc.

[24] Costa Rica (articles 25 and 60 of the Constitution), Viet-Nam (Ordinance No. 23 of 16 November 1952).

16. *More marked distinctions.* The prohibition of the adherence of certain particular workers to the same organisations as other workers or the fact that workers employed in different branches of industry, or in different regions may not establish or join the same trade union is supplemented in certain cases by a twofold prohibition which may restrict the freedom of association of these workers: firstly, the separate trade unions established on an occupational or regional basis may not freely establish or join federations or confederations and, secondly, only workers who are engaged in and continue to be engaged in the occupation concerned may be chosen to act as trade union leaders.[25] In certain cases, these distinctions are applicable only in the case of public officials [26]; in other cases they are applicable both to public officials and to workers employed in undertakings in the public or semi-public sector.[27] In a number of countries, the trade unions of workers in certain occupations, and especially agriculture, do not enjoy the same rights as do other trade unions.[28] This question will be examined in greater detail when the scope of the activities of organisations comes to be considered. Finally, in certain cases the definitions contained in existing legislation do not always make it possible to ascertain if certain workers enjoy the same rights as others.[29]

17. *Distinctions leading to prohibition.* These distinctions assume different forms. In some cases, foremen and higher grades are prohibited not only from belonging to the same trade unions as other workers but even from establishing special trade unions.[30] There also exist distinctions the prohibitive nature of which is sometimes difficult to perceive at first sight. Thus, in certain countries in which the population includes only a minority who know how to read and write, legislative provisions or regulations require that workers shall produce a certificate attesting that they can read and write [31] or even, in some cases,

[25] *Member States:* Brazil (Labour Code, section 515), Colombia (Labour Code, section 388), Ecuador (Labour Code, section 369, and Decree No. 762 of 13 May 1946, section 1), *Non-metropolitan territories: United Kingdom:* Hong Kong (Ordinance No. 8 of 1948, section 13; in addition it does not appear that the Trade Union Ordinance applies to persons working on their own account), Kenya (Ordinance No. 23 of 1952, section 29), North Borneo, Sarawak (Ordinance No. 10 of 1947, section 14(A) and 14(B), as amended in 1948), Tanganyika (Ordinance No. 11 of 1957, section 2).

[26] Ceylon, India, Pakistan, United Kingdom (Northern Ireland). An analogous factual situation may be caused by the illegality of strikes by officials. Costa Rica, Haiti, United States, Sudan (Trade Unions Ordinance, 1957, section 27(2), prohibition of political activity and federation with any " political organisation ").

[27] China, Japan, Union of South Africa and South-West Africa.

[28] *Member State:* Brazil (Decree No. 5452 of 1949, sections 543 and 624; Decree No. 7038 of 1944; Decree No. 9070 of 1946). *Non-metropolitan territories: United Kingdom:* Barbados, Dominica, Swaziland (the immunities provided for in sections 17, 18 and 19 of the Trade Unions Proclamation do not apply to agricultural workers).

[29] This is particularly the case for certain *United Kingdom non-metropolitan territories:* British Honduras (agricultural and non-wage-earning workers, Ordinance No. 1 of 1951, section 2), Gambia (Cap. 139 of the Laws of Gambia, section 2), Grenada (non-wage-earning workers, Ordinance No. 20 of 1951, section 2), Kenya (Ordinance No. 23 of 1952, section 2—agricultural workers), Nigeria (non-wage-earning workers; furthermore, under the legislation, seasonal workers appear to be excluded; Schedule to Chapter 218 of the Laws of Nigeria), Tanganyika (Ordinance No. 48 of 1956, section 2—non-wage-earning workers), Zanzibar (Decree No. 3 of 1941 as amended by Decree No. 7 of 1942—agricultural workers).

[30] Japan.

[31] Guatemala, Nicaragua (see observations addressed to these countries).

that workers employed for less than three years shall have successfully followed a course of secondary study for at least two years [32]; in certain cases, these provisions affect only agricultural workers; in other cases, the provisions are of general application but, having regard to the nature of the occupational distribution of the population and of the often seasonal character of agricultural employment, they result in fact in a denial of all right to organise to such workers.

18. In certain countries, prohibition of certain agricultural workers and independent workers from establishing and joining trade unions is the result of a combination of various legislative provisions or regulations.[33] In other cases, the exclusion of certain workers results from the definition of the term " worker " or from the fact that the undertakings in which they are employed are excluded from the scope of the legislation.[34] Finally, in a few cases the provisions in force result in the right to organise being denied to certain workers; those concerned may be public officials [35], workers employed in undertakings in the public or semi-public sector [36], or, again, agricultural workers.[37]

Other Distinctions.

19. *Distinctions based on sex.* It would appear from the information available that in nearly all the States considered no distinction with regard to trade union matters based on sex is established by legislation. In certain cases, even, where restrictions might result from provisions contained in the civil code, legislation provides specifically that a married woman may join a trade union without the authorisation of her husband.[38] In other cases, however, restrictions result from limitations placed on the juridical capacity of married women; thus, in two countries [39], women may not join a trade union if their husbands object. Moreover, the reports furnished by a number of countries do not make it possible to ascertain with certainty whether women in those countries enjoy the same trade union rights as do employers and workers of the male sex.

20. *Distinctions based on nationality.* In nearly all the countries reports from which have been examined it would appear that alien residents enjoy without distinction the rights and guarantees prescribed by the Conventions. In certain countries, nevertheless, constitutional provisions relating to the right of association, and more especially to the right to organise, apply only to citizens of the country concerned.[40] However, in certain of these cases [41] the governments concerned declare that aliens in fact freely enjoy the right to organise. In one country [42] the national Constitution accords the right of association to aliens on a reciprocal basis; in practice, nevertheless, it would appear from the information available that trade union organisations in that country admit aliens to membership on condition that they have resided there a certain time. In some cases there are certain legal restrictions on the functions which aliens may perform as members of trade unions.[43] In three countries [44], at least two-thirds of the members of a trade union must be nationals of the country concerned. In one country, legislation accords the right to organise only to nationals.[45] Finally, in four countries, the fact that the enjoyment of the right to organise in trade unions, within the limits assigned by national legislation and practice, appears to be reserved exclusively to citizens, results not only from constitutional provisions but also from legislation.[46]

21. *Distinctions based on race.* Among the countries whose reports have been examined it would seem that, in almost all cases, there exists no distinction based on race. In one country, however, different legislation is applied respectively to Europeans and non-Europeans, but it would seem that the legal effect of these two different enactments is the same.[47]

[32] Belgian Congo and Ruanda-Urundi (Ordinance No. 21-57, section 1); as a transitional measure, it is provided that the workers in question should have successfully completed the full primary course.

[33] Byelorussia, U.S.S.R. (see observations addressed to these countries in 1958 with respect to the application of Convention No. 11) and Ukraine.

[34] *Member States:* Iran, El Salvador (agricultural workers and domestic servants; Legislative Decree No. 353, 1951, section 1), Turkey, Union of South Africa (agricultural workers and domestic servants; (Industrial Conciliation Act, section 2 (2)). *Non-metropolitan territories : United Kingdom :* Fiji (Chapter 79 of the Laws of Fiji, section 8 (a); the Government has taken measures to amend this provision), Mauritius (seasonal workers), Southern Rhodesia (agricultural workers); *United States :* Alaska (agricultural workers and domestic servants), Hawaii (idem), Puerto Rico (idem), Virgin Islands (idem).

[35] *Member States :* Chile (Labour Code, section 368), Cuba (Decree No. 2605 of 7 November 1933), Dominican Republic (Act No. 2059 of 22 July 1949), Ecuador (section 185g of the Constitution), Guatemala (Decree of 29 February 1956, section 9 (2)), Nicaragua (the Labour Code does not apply to public officials), Portugal (Legislative Decree No. 23048), Spain (Ordinance of 11 August 1953, section 1 *in fine*), Turkey (Act No. 5018 of 20 February 1947), United States (seven states). In Iran (Act of 3 March 1946, section 1) and Italy (Legislative Decree No. 205 of 24 April 1945), this prohibition applies only to certain categories of officials. *Non-metropolitan territories : United Kingdom :* Fiji (Chapter 79, Laws of Fiji, section 2), Sarawak (Ordinance No. 10 of 1947, section 15) and it would also appear to be the case in Southern Rhodesia.

[36] *Member States:* Brazil (except in the case of industrial organs; Labour Code, section 566), Chile (Labour Code, section 368), Ecuador (except in the case of railwaymen; article 185*g* of the Constitution), Guatemala (Decree of 29 February 1956, section 9 (2), Peru (Legislative Decree No. 11377, section 49). *Non-metropolitan territories: United Kingdom:* Sarawak (Ordinance No. 10 of 1947, section 15), and it would also appear to be the case in Southern Rhodesia.

[37] Chile (see observation addressed to this country in connection with the application of Convention No. 11) ; Guatemala (Labour Code, sections 235 to 239); Nicaragua (regulation 6 of the Regulations concerning Trade Unions).

[38] *Member States:* France (Labour Code, Book III, section 5), Republic of Guinea (Act of 12 December 1952, section 7), Morocco (Dahir No. 1-57-119 of 16 July 1957 respecting Occupational Organisations, section 5). *Non-metropolitan territories: France:* Algeria, French Guiana, Guadeloupe, Martinique, Réunion (Labour Code, Book III, section 5), Cameroons, Comoro Islands, French Equatorial Africa, French Polynesia, French Somaliland, French West Africa, Madagascar, New Caledonia, St. Pierre and Miquelon and Togoland (Labour Code, 1952, section 7).

[39] Canada (in one province: Quebec) and Viet-Nam.

[40] *Member States:* Belgium, Denmark, Luxembourg, Portugal. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland.

[41] *Member States:* Belgium, Denmark, Luxembourg. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland.

[42] Italy.

[43] This is the case of Gibraltar *(United Kingdom)* (Trade Unions and Trade Disputes Act, Chapter 128 of the Laws of Gibraltar, section 17).

[44] Colombia (Labour Code, section 384), Honduras (Legislative Decree No. 101 of 6 June 1955, section 8 (3)), Iran (Trade Unions Regulations of 9 November 1955, regulation 17).

[45] Peru.

[46] Byelorussia (article 101 of the Constitution; section 151 of the Labour Code), Ukraine (article 106 of the Constitution; section 151 of the Labour Code), U.S.S.R. (article 126 of the Constitution; Russian S.F.S.R., section 151 of the Labour Code).

[47] Indonesia.

In another case [48], existing legislation is applicable only to non-Natives; the Government of that country has indicated however that new legislation is being prepared which will apply without distinction to all workers. In certain cases, distinctions based on race may, in fact, result indirectly from provisions relating primarily to certain occupations or employments or requiring workers to have reached a certain level of education.[49] Further, in some cases, such distinctions, although not prescribed by legislation, may result from the clauses of collective agreements and from trade union rules.[50] Finally, in two cases [51], distinctions based on race result from the fact that more restrictive legislative provisions are applicable in the case of Natives and coloured workers.

22. *Distinctions based on political opinions.* In this respect it would appear that the legislation in most of the countries reports from which have been examined does not make any distinction. In certain cases even, while the law prescribes that the founder members of a trade union shall not have been convicted by a court of law, it is also provided that such incapacity shall not be occasioned by sentences in respect of political offences (offences against the Press Laws, etc.).[52] In some countries [53], trade union legislation prescribes certain disabilities with respect to persons who have particular political opinions. Moreover, the criterion of the political opinions of workers or employers, although not expressly laid down in the trade union legislation, also appears to be applied in a number of countries; this is the case, for instance, where registered organisations may not admit to membership persons professing certain political opinions.[54] A similar situation would appear to result in certain countries from constitutional and legislative provisions which exclude adherence to any party other than that which is in power.[55]

Distinctions Affecting Employers.

23. In almost all the countries reports from which have been examined by the Committee, there exist no distinctions affecting employers specifically. In certain cases, nevertheless, in connection with employers, the reports refer to the legislation relating to the economic organisation of certain occupations, chambers of commerce, chambers of industry, chambers of agriculture, affiliation to which is obligatory in certain cases for the persons carrying on the occupations in question.[56] It is however doubtful whether these economic organisations, constituted under the ægis of the State and often placed under its control and which it is compulsory for the persons in question to join, really correspond to trade union organisations within the meaning of the Conventions under review. The same question would appear to arise with respect to organisations in other countries in which employers may belong only to mixed organisations which also admit workers.[57]

Distinctions Affecting Certain Individuals.

24. The reports of certain countries, referring to the economic and social régime existing in such countries, emphasise that as there are no employers who are " private capitalist owners ", the directors of state undertakings have no interests to defend and could not, therefore, constitute trade unions within the meaning ascribed to the term in the Conventions under consideration.[58] The Committee has devoted particular attention to this question. It noted that nothing in the text of the Conventions in question or in the preparatory work which led to their adoption would make it appear that the terms used in these Conventions imply any reference whatsoever to the mode of ownership of the undertakings (private property or state property, etc.); furthermore it would appear that nothing authorises the State to decide for itself whether the individuals covered by these Conventions have or do not have any interest in establishing trade union organisations. Consequently the Committee considers that in the States which have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), all " workers and employers, without distinction whatsoever ", including the directors of undertakings belonging to the State, should be able to enjoy the rights and guarantees laid down in the Convention.

2. Rights and Guarantees Enjoyed by Individuals

25. According to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the individuals concerned (workers and employers) shall have *(a)* the right to establish organisations in freedom [59], *(b)* the right to choose freely the type of organisation which they wish to establish, and *(c)* the right to join the organisation of their own choosing in freedom, subject only to the rules of the organisation concerned. Under the provisions of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. These different points will be examined separately.

Free Establishment of Organisations.

26. According to Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), workers and employers shall have the right to establish organisations " without previous authorisation ". It is evident that the principle of freedom of association might very often remain a dead letter if employers and workers were required to obtain any previous authorisation to enable them to establish an organisation, be it authorisation concerning the formation of the trade

[48] *Non-metropolitan territory: United Kingdom:* Southern Rhodesia. (However, the Government points out that workers may not be refused employment because they are not union members.)

[49] See paragraph 17.

[50] That is the reason why, in some countries—see paragraph 38—the utilisation of union security clauses is subject to regulation.

[51] Union of South Africa and South West Africa (Industrial Wages and Conciliation Ordinance, 1952; the parts of this Ordinance relating to trade unions apply only to non-Natives).

[52] France (Labour Code, Book III, section 4), Algeria (ibid.), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.).

[53] This would seem to be the case in Chile (Labour Code, section 365), the Dominican Republic (Act No. 1443, section 1), Turkey (Penal Code, amended in 1951, sections 141 and 142) and the Union of South Africa (Suppression of Communism Act, No. 44 of 1950, section 5). In Iran members of " workers' " trade unions must not have belonged to any political body or party (Trade Union Regulations of 1955, regulation 2 (i)).

[54] Philippines (Act No. 875, section 17 (d)).

[55] Byelorussia (article 101 of the Constitution), Ukraine (article 106 of the Constitution), U.S.S.R. (article 126 of the Constitution).

[56] Portugal (Legislative Decree No. 23049 of 23 September 1933); United Arab Republic (Egypt: Act No. 73 of 1947, as amended, and Act No. 112 of 1954).

[57] Portugal (in certain industries), Spain.

[58] Byelorussia, Ukraine, U.S.S.R.

[59] Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), provides that employers and employed shall have the right to associate for all lawful purposes.

union organisation itself, need to obtain discretionary approval of the constitution or rules of the organisation, or, again, authorisation for taking steps prior to establishment of the organisation, as would be the case, for instance, if any authorisation were required in order to convene the general meeting to constitute the organisation. Nevertheless, this naturally does not mean that the founders of an organisation are freed from the duty of observing formalities as to publicity or other similar formalities which may be prescribed in certain countries either generally in respect of all associations, or specifically in respect of trade unions. Indeed, according to Article 8, paragraph 1, of the Convention, " workers and employers . . . shall respect the law of the land ". However, under the provisions of paragraph 2 of Article 8 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. Consequently, the various formalities prescribed, even though they may be of general application in respect of all associations, must not be such as to be equivalent in practice, so far as trade union organisations are concerned, to previous authorisation, or as to constitute such an obstacle to the establishment of an organisation that they amount in practice to prohibition pure and simple; this would naturally be the case if, for example, the meeting called to establish the trade union were to be subject to any previous authorisation. Moreover, Article 7 of the Convention relates expressly to the acquisition of legal personality which, in some countries, constitutes a substantive condition of the existence and activities of organisations; according to Article 7, the acquisition of legal personality by workers' and employers' organisations " shall not be made subject to conditions of such a character as to restrict " the right of workers and employers to establish occupational organisations in freedom.[60]

27. It appears from the information received that in some countries the formalities prescribed by law (deposit of constitution and rules, registration or other measures of publicity) are compulsory; in others, these formalities are optional. However, it would seem that the compulsory or optional nature of the formalities prescribed does not always provide a sufficient criterion for determining whether there is or is not a requirement of previous authorisation. In fact, in some cases, although registration is compulsory, the authority competent to effect the registration does not have power to refuse it or, which amounts to practically the same thing, can refuse registration only because of a formal defect which it is always possible to remedy; moreover, where refusal is possible it may be appealed against to the courts. In other cases, on the other hand, registration, while being of an optional nature, may confer on the registered organisation such rights (legal personality, right to bargain collectively, immunity from prosecution in respect of the offence of conspiracy or other similar offences) that an organisation deprived thereof might have great difficulties in " furthering and defending the interests " of its members or even be placed in practice in a position in which it would be impossible for it to do so; it is clear that in such cases, if the authority competent to effect the optional registration has power to refuse this formality in its discretion, the situation is not very different from that in cases in which previous authorisation is required.

[60] Article 2 of the Convention must also be considered bearing in mind the provisions of Article 11, which obliges States that have ratified this international instrument to " take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise ".

28. Even in the absence of any previous authorisation properly so called—whether relating to the formalities for constituting organisations or to the meeting of the general constituent meeting—it would appear that in some cases, and especially where public officials and workers employed in public or semi-public undertakings are concerned, a prohibition of the establishment of an occupational organisation capable of " furthering and defending the interests " of its members may result from the " recognition " by the government of another organisation. This is clearly the case, for example, when the law itself specifies the privileged organisation by name.[61] It may also be the case where the regulations relating to " recognition " impose on the organisations of workers concerned a form which may restrict their freedom of action and does not lay down " objective " criteria for the recognition, for a fixed period, of an organisation for the purposes of " representation " or " negotiation ".[62]

29. It would appear from the information examined that, having regard to the nature of the formalities relating to the establishment of trade union organisations, the different countries considered fall into three groups:

- those in which any previous authorisation is excluded;
- those in which, in certain cases, the formalities prescribed may be assimilated to a certain extent to previous authorisation;
- finally, those in which the obtaining of previous authorisation is required, whether this results from a specific provision to that effect or from the nature of the formalities prescribed, this authorisation being given by the government itself or by an independent authority or by a body to which competence has been delegated by the State.

30. *Exclusion of any previous authorisation.* In the majority of the countries in respect of which the information examined was sufficiently detailed with regard to this matter, it would seem that there exists in fact no need to obtain previous authorisation in order to be able to establish an organisation of employers or workers. This is the case, particularly, in countries in which the constitution of an organisation is subject to no formality.[63] It is also the case in countries in which the formalities respecting publicity or registration may not be the subject of a refusal on the part of the authorities responsible under the law for effecting such formalities.[64] It is the same, finally, in countries in which, although the competent authorities may refuse registration, it would not appear that such refusal (which may be

[61] This is the case, for example, in Byelorussia (section 152 of the Labour Code) and in Poland (section 5 of the Act of 1 July 1949 respecting trade unions).

[62] This is the case in respect of public officials in Mexico and Pakistan (see observations addressed to these countries in 1958 with regard to Convention No. 87, in Report III (Part IV), prepared for the 42nd Session of the Conference, pp. 55 and 56).

[63] *Member States:* Belgium, Canada, Denmark (except for public officials), Federal Republic of Germany, Iceland, Italy, Luxembourg, Norway, Sweden, Switzerland, United Kingdom, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *United Kingdom:* Guernsey, Jersey, Isle of Man, St. Helena; *United States:* American Samoa, Trust Territory of Pacific Islands.

[64] *Member States:* France, Republic of Guinea, Israel, Tunisia, Turkey. *Non-metropolitan territories: France:* Algeria, Cameroons, Comoro Islands, French Equatorial Africa, French Guiana, French Polynesia, French Somaliland, French West Africa, Guadeloupe, Madagascar, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Togoland.

appealed against to the courts) may be based on anything other than failure to observe certain formalities which are not substantive in character.[65]

31. *Previous authorisation in certain cases.* This situation arises in a number of countries in which the authorities responsible for registration have more extensive powers of exercising judgment and in which registration, whether compulsory or nominally optional, is in practice necessary to the organisation which is being founded to enable it to achieve its objects.[66] This is the case, for example, when registration may be refused on the ground of the existence of another organisation in the occupation or area.[67] As the Committee has already had occasion to emphasise, such provisions, the usefulness of which in countries in which the trade union movement is still in its early stages may be arguable, involve a risk of interference on the part of the authorities responsible for effecting registration which does not appear to be compatible with Article 3, paragraph 2, or with Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In other countries, registration may be refused on the ground of the presumed political opinions of the leaders of the organisation.[68] The fact that in certain cases such refusal may be appealed against to the courts naturally constitutes a guarantee against an illegal or unfounded decision on the part of the authorities responsible for effecting registration. However, it would appear that when legislation makes it possible, directly or indirectly, to exercise substantial control in cases such as those referred to above, the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal—except in certain cases [69]—would only be able to ensure that the legislation had been correctly applied. On the other hand, in the absence of judicial supervision, even when the authorities responsible for registration have in principle only a procedural right of supervision, abuses may occur [70]; this risk of abuse is still greater if the authorities responsible for registration have the right to refuse registration where there already exists another trade union in the occupation, etc., and are not subject to judicial supervision.[71] Finally, in some cases the legislation contains provisions which, in practice, may considerably hinder or even render impossible the establishment of a trade union. This may be the case, for instance, when legislation requires that the members of a trade union, or at least a certain proportion of them, shall be able to read and write [72], or where the minimum number of members of a trade union is fixed at obviously too high a figure.[73]

32. *Previous authorisation or equivalent formalities.* In a number of countries, registration by administrative authorities is compulsory and the competent authorities are endowed with very extensive powers, either in granting or refusing registration, or in giving their approval to the rules of organisations [74]; in certain cases there is the possibility of an appeal to the courts. Nevertheless, here again, it would appear that the existence of a judicial procedure permitting of an appeal against refusal of registration cannot alter the nature of the conditions prescribed by legislation and which in fact are equivalent to previous authorisation.

33. In a number of countries [75], a similar result comes about by indirect means. Under the legislation of these countries, applicable to common law associa-

[65] *Member States:* Austria, Burma, Ceylon (except for public officials), Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Finland, Greece, Honduras, India (except for public officials and public services employees), Ireland, Japan, Mexico (except for public officials), Pakistan (except for public officials), Viet-Nam. *Non-metropolitan territories: Italy:* Trust Territory of Somaliland; *New Zealand:* Cook Islands; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Cyprus, Dominica, Falkland Islands, Fiji, Gibraltar, Gilbert and Ellice Islands, Grenada, Jamaica (however, in cases where registration is refused, an appeal may only be made in certain cases), Malta, Montserrat, Nigeria (however, registration may be refused if objections are raised by third parties: Chapter 218 of the Laws of Nigeria, section 15 *(d)*), Northern Rhodesia, St. Christopher, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Southern Rhodesia, Swaziland, Trinidad and Tobago, Zanzibar.

[66] A special situation exists in Morocco, where section 1 of the decree of 17 July 1957 makes it possible for the administration to oppose the formation of an organisation within a certain period. In two non-metropolitan territories of the United Kingdom (Kenya and Uganda) a special situation also exists by reason of the fact that, before obtaining registration, trade unions may be required to undergo a probationary period, during which they cannot enjoy all the privileges of trade unions.

[67] *Member States:* Australia (Conciliation and Arbitration Act, section 82), Iran, New Zealand (Conciliation and Arbitration Act, 1954), Sudan (Trade Unions Act of 1957, section 11 *(d)*) and the Union of South Africa (Industrial Conciliation Act, No. 28 of 1956, section 4). *Non-metropolitan territories: United Kingdom:* Hong Kong (Ordinance No. 8 of 1948, section 10), Kenya (Ordinance No. 23 of 1952, section 16 *(d)*), North Borneo, Nyasaland (Chapter 120 of the Laws of Nyasaland, section 10, as amended in 1957), Sarawak (Ordinance No. 10 of 1947, as amended in 1948, section 10), Sierra Leone (Chapter 242 of the Laws of Sierra Leone, section 13; in addition there is no right of appeal if registration is refused, ibid., section 14), Southern Rhodesia (for non-Natives); *Union of South Africa:* South West Africa (Wages and Industrial Conciliation Act, 1952, section 20 (3) and (4)).

[68] Philippines (Act No. 875, section 23 *(b)* (2); the Government has however decided to propose that the legislation be amended on this point) and United States (Labor-Management Relations Act, 1947, section 9 *(h)*); a similar position appears to exist in the following *United States non-metropolitan territories*: Alaska, Hawaii, Puerto Rico and the Virgin Islands.

[69] Exceptions are in fact possible in cases in which a legislative provision is held to be unconstitutional, either in proceedings for a declaration to that effect or when the unconstitutionality of the provision is raised by way of defence, and in cases in which subsidiary legislation is held to be *ultra vires* in similar circumstances.

[70] This is the case in the following non-metropolitan territories: *United Kingdom:* Brunei (Societies Act, section 6 (5)), Singapore (Ordinance No. 3 of 1940, sections 16 and 17).

[71] This is the case in Hong Kong (Ordinance No. 8 of 1948, sections 10 and 11).

[72] See paragraph 17 above.

[73] This is the case in respect of workers in the United Arab Republic (Egypt), where a works union must have at least 50 founder members and other unions at least 200 founder members (Legislative Decree No. 319 of 1952).

[74] *Member States:* Bolivia (Decree of 19 May 1948), Brazil (Labour Code, sections 517, 520 and 558), Chile (Labour Code, Book III, Title I and Decree No. 1030 of 26 December 1949), China (Trade Unions Act, 1947, sections 8 and 9), Guatemala (Labour Code, section 217), Haiti (Act of 17 July 1947, as amended by the Act of 22 February 1948, section 8), Iran (Regulations of 9 November 1955, regulation 46), Federation of Malaya (Trade Unions Enactment, 1940, section 14), Netherlands (Act of 22 April 1855, as amended by Acts of 2 July 1934 and 13 May 1939), Nicaragua (Trade Unions Regulations of 1951, regulation 13), Peru (Decree of 23 March 1936, sections 118-119), Portugal (Legislative Decree No. 23050, section 8), El Salvador (Decree No. 353, sections 9 to 12), United Arab Republic (Egypt: in the case of employers: Act No. 112 of 1954). *Non-metropolitan territories: Netherlands:* Surinam, Netherlands New Guinea; *United Kingdom:* Solomon Islands (Trade Unions and Trade Disputes Regulations, No. 1 of 1946), Tanganyika (Ordinance No. 48 of 1956, section 13 (1) *(c)*).

[75] Byelorussia (sections 152 and 153 of the Labour Code), Poland (sections 5, 6, 9 and 10 of the Act of 1 July 1949 respecting Trade Unions), Spain (Labour Charter, Chapter XIII), Ukraine (sections 152 and 153 of the Labour Code), U.S.S.R. (Russian S.F.S.R.: sections 152 and 153 of the Labour Code).

tions and providing for previous authorisation (registration or approval of rules) by the administrative authorities, only trade union organisations, or some of them, are exempt from this administrative formality. Nevertheless, in order to have a legal existence and to be able to function, these organisations must be registered with an inter-union organisation which itself prescribes the cases in which it will grant or refuse registration. In other words, it would appear that in these countries the legislation gives to the inter-union organisations [76] (and in certain cases, even, to one of such organisations designated by name [77]) the right to supervise the establishment of any new primary organisation and, if it wishes, to oppose the formation of such an organisation. The fact that the legislation in question refers in some cases in general terms to inter-union organisations and in other cases to an organisation designated by name does not alter the character and effect of this compulsory formality; in effect, in all these cases the individuals wishing to establish a trade union organisation must, by virtue of legislation, obtain the previous authorisation of an inter-union organisation and the result is that the formation of a primary union organisation independent of the inter-union organisations already constituted is impossible. The effect of such legislative provisions becomes all the more apparent when it is observed that in each of the countries in question there exists only a single higher inter-union organisation which, in each case, has very close ties with the political party in power.

34. Finally, it would appear that in a number of countries the prior control of the State may be exercised through the medium of legislation relating to public and private meetings. In fact, in so far as all meetings, including meetings of trade union organisations, require previous authorisation by the government or administrative authorities, the holding of the general meeting to constitute a trade union—that is, the formation of the organisation itself—depends, in fact as well as in law, on the good will of the competent authorities.[78]

Free Choice as to Type of Organisation To Be Established.

35. It would appear from the information available that the absence of the need for previous authorisation or of formalities which in practice are equivalent to authorisation is a necessary condition for enabling individuals to establish an organisation of their own choosing; however, the absence of the need for authorisation alone is not always sufficient. In the majority of countries for which information is available, the free choice of individuals in respect of the organisation which they wish to establish does not appear to be restricted by any legal rules.[79] On the other hand, in certain countries, the freedom of choice of organisations which workers or employers may establish is more or less limited, directly or indirectly, by legislation. Thus, in one country [80], agricultural workers may constitute only organisations each of which is limited to one estate and the objects of which are limited to purposes of mutual aid and welfare. In another country [81], it is the choice of the employers which appears to be limited by the legislation in force. The free choice of the founders of an organisation also appears to be limited in two countries [82] by virtue of provisions which define, in particular, the political objects which the trade unions must pursue. It is however, doubtful whether the organisations considered [83], which are of a mixed character because they include both workers and employers, really correspond to the occupational organisations covered by the Convention. Moreover, in some countries [84], the free choice of the organisation to be set up is considerably limited by the provisions of national legislation, which, as pointed out earlier, make it compulsory for primary trade union organisations to be registered by central federations of unions.

Right of Individuals to Adhere Freely to Organisations.

36. According to Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), workers and employers shall have the right to join organisations of their own choosing " subject only to the rules of the organisation concerned ". It would appear from the discussions prior to the adoption of the Convention, and especially from the rejection by the Committee on Freedom of Association of the Conference of an amendment which would have accorded to workers and employers the " right not to join " [85], that Article 2 of the Convention leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers and employers not to join an occupational organisation, or on the other hand, to authorise and, where necessary, to regulate the use of union security clauses and practice.

37. In a number of countries [86], in accordance with the traditional concepts of the right of association

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[76] Ukraine (Labour Code, section 152), U.S.S.R. (Russian S.F.S.R.: Labour Code, section 152).

[77] Byelorussia (Labour Code, section 152), Poland (Act of 1 July 1949 respecting trade unions, section 5), Spain (Labour Charter, Chapter XIII).

[78] Byelorussia (decree of 15 May 1935 respecting the procedure for convening congresses (general assemblies, conferences and meetings)), Spain (circular of the National Trade Unions Office of 7 November 1951), Ukraine (the above-mentioned decree of 15 May 1935), U.S.S.R. (the above-mentioned decree of 15 May 1935).

[79] *Member States:* Austria, Belgium, Canada (federal legislation), Denmark (except for public officials), Finland, France, Federal Republic of Germany, Republic of Guinea, Honduras, Iceland, Ireland, Israel, Italy, Japan (except for public officials and public services employees), Luxembourg, Mexico (except for public officials), Norway, Pakistan (except for public officials), Sweden, Switzerland, Tunisia, United Kingdom. *Non-metropolitan territories: Denmark:* Faroe Islands (apparently with the exception of public officials), Greenland (idem); *France:* all non-metropolitan territories; *Italy:* Trust Territory of Somaliland; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Cyprus, Dominica, Falkland Islands, Gibraltar, Gilbert and Ellice Islands, Guernsey, Jamaica, Jersey, Malta, Isle of Man, Mauritius, Montserrat, St. Christopher, St. Helena, St. Lucia, St. Vincent, Seychelles, Trinidad and Tobago, Zanzibar.

[80] Chile (see observations addressed to this country with respect to the application of Convention No. 11).

[81] United Arab Republic (Egypt)—see paragraph 23.

[82] Portugal (Decree No. 23050, sections 9, 11 and 15 *(b)* and *(e)*) and Spain (Labour Charter, Chapter XIII).

[83] Portugal (for certain industries), Spain.

[84] Byelorussia (sections 152 and 153 of the Labour Code), Spain (Act of 6 December 1940, section 5), Ukraine (sections 152 and 153 of the Labour Code), U.S.S.R. (Russian S.F.S.R.: Labour Code, sections 152 and 153).

[85] I.L.O.: *Record of Proceedings*, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, 1948), p. 571.

[86] This is the case in the following countries. *Member States:* Austria (Act of 5 April 1930), Belgium (Act of 24 May 1921, section 1), Colombia (Labour Code, section 379), Costa Rica (Labour Code, section 271), Cuba (Decree No. 2605, section III), Dominican Republic (Labour Code, sections 306 and 307), Ecuador (Constitution, article 185), France (Labour Code, Book III and Act of 1956), Republic of Guinea (Act of 1956), Luxembourg (Act of 11 May 1936, section 134), El Salvador (Decree No. 353, section 23), Switzerland (Code of Obligations, section 322*bis*). *Non-metropolitan territories: France;* Algeria

(Footnote continued overleaf)

existing in those countries, the law guarantees to all workers, and in some cases to all employers, the right to refuse to adhere to a trade union organisation and represses any constraint which may be exercised with a view to causing any person to adhere to a given organisation.

38. In a number of other countries, union security clauses are traditionally inserted in collective agreements or utilised in practice. In some of these countries [87], however, the utilisation of such clauses is subject to certain conditions and, in particular, in order that it shall be made possible for individuals to " comply with " [88] the rules of the organisation concerned, those rules must, under the regulations in force, not contain any rules which are " oppressive or discriminatory ". In other countries, on the other hand, the State leaves employers and workers free to negotiate union security clauses without interference.[89]

39. A special situation is seen in one country where the obligation to adhere to a trade union may result not only from having a clause to that effect inserted in a freely negotiated collective agreement; the obligation, which is prescribed by law, may result in the case of certain occupations from a binding arbitration award. In this connection, the government had indicated earlier in its report that certain provisions relating to this system, the abrogation of which would encounter opposition in the country as a whole, are not " strictly in harmony " with the Convention.[90]

40. Finally, in certain countries, individuals may be obliged *by virtue of legislation* to join a trade union which they would not have chosen [91], or be denied any possibility of choice between different organisations by reason of the fact that legislation provides that only a single primary trade union organisation may exist in each undertaking.[92] As the Committee has already emphasised, such provisions do not appear to be compatible with the Conventions under review, especially when they are applicable to public officials and to workers employed in state undertakings.[93] These provisions result in the establishment, *by legislation*, of a trade union monopoly which must be distinguished both from union security clauses and practices and from objective criteria established by regulations for determining the most representative organisation which shall be recognised for the purposes of collective bargaining during a given period, and also from the factual situations in which primary trade union organisations join together *voluntarily* in a single federation or confederation.[94]

Protection against Acts of Anti-Union Discrimination in Respect of Employment.

41. This protection is provided for in general terms in Article 11 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). One aspect of this protection is defined in Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Finally, Article 3 of the same Convention provides that appropriate machinery shall be established " where necessary " for the purpose of ensuring respect for the right to organise.[95] As pointed out earlier [96], this Convention does not deal with the position of public servants engaged in the administration of the State [97]; it may, however, be queried to what extent, in a country in which the rights and guarantees laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), are fully and effectively respected in the case of officials, the latter could really be subjected to acts of anti-union discrimination in respect of their employment.

42. The protection prescribed by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applies more particularly, in connection with the engagement of a worker, to acts calculated to make his employment subject to the condition that he shall not join a union or shall relinquish trade union membership. It also extends to acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of his union membership or participation in union activities.

43. According to the information available in respect of the large majority of countries, the governments consider that in one way or another workers are protected against any acts of anti-union discrimination in respect of their employment.

44. In a certain number of countries, it would seem that the laws which are intended to protect workers against such acts of anti-union discrimination are of general scope and applicable both in connection with engagement and in connection with dismissal. This is the case, for example, in countries in which the protection results from the application of general principles of domestic law: in certain countries, indeed, any infringement or attempted infringement of the rights of others committed by any person either by individuals or by officials in the exercise of their functions, is punishable; in so far, therefore, as the domestic law (including the Constitution) recognises the right of association in trade unions, any act of anti-union discrimination in respect of employment would be punishable.[98] In other countries, protection

(Act of 1956), Cameroons (ibid.), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Guiana (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Guadeloupe (ibid.), Madagascar (ibid.), Martinique (ibid.), New Caledonia (ibid.), Reunion (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.). To a certain extent a similar situation appears to exist in Southern Rhodesia *(United Kingdom)*.

[87] This is the case, for example, in the following member States: Australia (Conciliation and Arbitration Act, section 140), Mexico, United States (Labor-Management Relations Act, 1947, ecstion 8). A similar situation appears to exist in the following *United States non-metropolitan territories* : Alaska, Hawaii, Puerto Rico, Virgin Islands.

[88] See Article 2 of the Convention.

[89] *Member States:* Sweden, Union of South Africa, United Kingdom. *Non-metropolitan territories:* this appears to be the case in most of the *United Kingdom* non-metropolitan territories.

[90] New Zealand.

[91] Chile (Labour Code, Book III, Title II), Portugal (Legislative Decree No. 23049 of 23 September 1933), Spain (Labour Charter, Chapter XIII, section 2, and Act of 6 December 1940, sections 1 and 17).

[92] Byelorussia (sections 156 and 157 of the Labour Code), Ukraine (ibid.), U.S.S.R. (Russian S.F.S.R.: ibid.).

[93] Mexico (Statute for Workers in the Service of Authorities of the Union, sections 47, 49, 50 and 60).

[94] See observation addressed to Mexico in 1958 (Report III (Part IV), 1958, p. 56).

[95] It would appear from the information available that in none of the countries considered has it appeared necessary to set up special machinery for this purpose; in most cases labour courts, the ordinary law courts and conciliation and arbitration agencies assume these functions.

[96] See para. 11.

[97] On the other hand, the Convention does apply to workers employed in public or semi-public undertakings.

[98] This would seem to be the case, for example, in Italy, in Switzerland, and in a number of Latin American countries, and in the following non-metropolitan territories of the *United States*: American Samoa, Trust Territory of Pacific Islands.

in this respect is provided for by special legal provisions, which prescribe penal sanctions or the award of damages against those guilty of acts of anti-union discrimination.[99]

45. It would appear, nevertheless, from the analysis of this information that, in certain countries, the extent of the legal guarantees enjoyed by workers against such measures of discrimination varies according to whether the guarantee is considered as one to be accorded in connection with engagement or as one to be accorded against the dismissal of a worker. In certain countries, legislation prohibits only measures of discrimination on engagement and does not contain any special provision protecting the worker against arbitrary dismissal in this connection. This is the case, for instance, in a fairly considerable number of countries in which an employer is not bound to give reasons for effecting a dismissal.[100] On the other hand, in some countries workers are protected against measures of discrimination in connection with dismissal, but legislation contains no measure of protection in this connection applicable to engagement.[101]

46. The study of the information available also affords a clear view of the different methods by which the guarantees laid down in the Convention are ensured to the workers. These methods vary considerably according to the juridical techniques utilised for regulating conditions of employment and, especially, contracts of employment: intervention of the State through laws or regulations, on the one hand, or predominance of collective agreements, on the other. They also vary according to the historical background of trade union development in the different countries, the present strength of the trade union organisations and the experience of their leaders.

47. It is also clear from the information available that none of the methods of protection utilised appears to make it possible to ensure effectively a total and absolute guarantee against acts of anti-union discrimination: in fact, in cases in which protection is ensured by legal provisions, it may often be difficult, if not impossible, for a worker to furnish proof that an employer has refused to engage him because of his trade union membership; the same difficulty is encountered in connection with dismissal, and especially in cases in which an employer is not bound to give reasons for a dismissal. That is the reason why, in certain countries, legislation accords special and more extensive protection to leaders of trade unions; having regard to the fact that it is these leaders above all who, by reason of their activities, are likely to become victims of acts of anti-union discrimination, the legislation of these countries provides that the dismissal of a trade union leader may take place only in certain cases, which are strictly defined, and only with the authorisation of a labour inspector or a judicial authority.[102]

48. Even in countries in which protection against acts of anti-union discrimination is ensured to a very substantial degree, by the existence of powerful and well-organised trade unions, cases would appear to arise in which some employers refuse to employ organised workers. It should be observed, however, that in this case, and especially when there is no underemployment in the country or where the number of skilled workers is low, conditions of employment in such undertakings necessarily follow the pattern of those in undertakings which employ organised workers; moreover, it would seem that very often workers employed in these undertakings do not themselves demand the right to organise; finally, it would appear that, in these cases, the powerful and well-organised trade unions which exist prefer to tolerate these practices, which on the whole are exceptional, rather than to accept any intervention by the State.

B. Rights and Guarantees Applicable to Primary Organisations

49. The rights and guarantees which shall be enjoyed by organisations of workers and employers are defined in Articles 3, 4, 5, 8, and 10 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and in Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84).

50. The different rights prescribed in the case of trade union organisations may be enumerated as follows: the right to draw up their constitutions and rules, the right to elect their representatives in full freedom, the right to organise their administration, the right to organise their activities, including collective bargaining and formulating their programmes, the right to establish and join federations and confederations, the right to affiliate with international organisations.

51. The guarantees prescribed are four in number: organisations shall not be liable to be dissolved or suspended by an administrative authority; they shall enjoy adequate protection against any acts of interference by each other; the public authorities shall refrain from any interference which would restrict or impede the lawful exercise of the rights of organisations; finally, as organisations are naturally bound " to respect the law of the land ", the same safeguard as is prescribed in the case of employers and workers as individuals is also applicable in the case of organisations: the law of the land " shall not be such as to

[99] *Member States:* Austria, Belgium (Act of 24 May 1921), Brazil (Penal Code, section 199 and Labour Code, section 543), Byelorussia (Labour Code and Penal Code), Canada (Labour-Management Relations Act, 1948, sections 4 and 5, and Criminal Code, section 367), Colombia (Penal Code, section 309), Costa Rica (Labour Code, section 271), France (Act of 1956), Greece (Act No. 281 of 1914, section 23), Republic of Guinea (Act of 1956), Iran (Labour Act, 1949, section 12), Japan (Trade Union Law, No. 25 of 1946), Luxembourg (Act of 11 May 1936, section 4), Federation of Malaya (Employment Ordinance 1955, section 8), Nicaragua (Labour Code, section 190), Turkey (Trade Unions Act, 1947, section 9 and Labour Code, section 13(4)), Ukraine (Labour Code and Penal Code), Union of South Africa (Industrial Conciliation Act, 1956, section 78), U.S.S.R. (Russian S.F.S.R.: Labour Code and Penal Code), United States (Labor-Management Relations Act, 1947, section 80 *(a)*) *Non-metropolitan territories: France:* Algeria (Act of 1956), Cameroons (ibid.), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Guiana (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Guadeloupe (ibid.), Madagascar (ibid.), Martinique (ibid.), New Caledonia (ibid.), Réunion (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.); *United States:* Alaska, Hawaii, Puerto Rico, Virgin Islands.

[100] This is the case, for instance, in Iran and Switzerland.

[101] Australia, Ceylon, Haiti, India, Italy, Poland, Viet-Nam. The same situation exists in fact in New Zealand in virtue of union security clauses.

[102] Bulgaria (Labour Code, section 38), Greece (Act No. 1803 of 1951), Honduras (Trade Unions Act), Luxembourg (Order of 8 May 1928 section 17), El Salvador (Legislative Decree No. 353 of 1951, sections 36 and 39). The same situation exists in Italy by virtue of the provisions of an agreement concluded between the employers' and workers' confederations (Inter-confederational Agreement of 8 May 1953).

impair, nor shall it be so applied as to impair, the guarantees provided for . . . ".

52. The information available with respect to each of the rights and guarantees enumerated above will be analysed in turn; this examination will naturally be made having regard to the last two guarantees mentioned, which, being of general application, could not be the subject of entirely separate examination.

Drawing up of Constitutions and Rules.

53. In the majority of the countries considered, it would seem that the relevant laws and regulations contain no provisions calculated to infringe the right of organisations to draw up their constitutions and rules in freedom. Thus, in a fairly considerable number of cases, legislation contains no special provisions relating to the contents of constitutions and rules.[103] In other cases, fairly numerous, the legislation simply enumerates matters which must be dealt with in the rules.[104] Finally, in a number of countries, legislation contains provisions which are frequently very detailed but which, in general, are only of a formal character and do not appear likely to infringe the rights of the organisations [105]: it would appear, even, that these detailed requirements have in some cases the purpose of preventing a situation arising at a later date in which the trade unions would have to cope with complicated legal problems which could arise as a result of constitutions and rules being drawn up in insufficient detail. Although, in the majority of cases, these detailed, or even meticulously detailed, provisions do not in themselves appear to place any obstacle in the way of the free constitution of organisations, it may nevertheless be doubted whether such an accumulation of details is always necessary.

54. In certain other countries the right of organisations to draw up their constitutions and rules in freedom appears to be considerably restricted. This is the case, for instance, in countries in which the legislation provides that the rules of a primary trade union organisation must necessarily be approved by a higher inter-union organisation and be drafted in accordance with directives issued by a central federation of trade unions; it follows that a primary trade union may not draw up its rules in full freedom (Article 3 of the Convention) since, in virtue of the law, the central federations of trade unions to which affiliation is compulsory determine the contents of these rules themselves.[106] This is also the case in certain other countries in which it would appear that constitutions and rules must be submitted for previous approval by the authorities, whose power of decision does not appear to be limited by any specific rules.[107] In two of these countries it would seem, even, that approval can be given only if the constitutions and rules are in accordance with the social policy of the government.[108]

Election of Representatives.

55. The analysis of the information available shows that there are two principal categories of rules applicable in the case of elections of representatives: firstly, procedural rules prescribed by national legislation, and secondly, rules defining the conditions as to eligibility which persons must fulfil.

56. With regard to procedure, it would seem that, in the large majority of the States in respect of which information was available, no special rules exist.[109] In some countries in which such rules do exist, it would seem that their particular purpose is to avoid any dispute arising as to the result of the election; this would seem to be the case for example in one country where elections must be presided over by a judge.[110]

57. In other countries, on the other hand, the rules of procedure do not appear to offer all the guarantees prescribed by the Convention. This is the case, for instance, where a labour inspector may (or must, as the case may be) be present at elections [111]; it is also the case where the legislation provides that trade union leaders may not be re-elected [112], their maximum period of office being fixed in certain cases at one year; as the Committee has already pointed out, such requirements do not appear to be compatible with Article 3, paragraph 2, of the Convention, which provides that the public authorities shall refrain from any interference which would restrict the rights of organisations or impede the lawful exercise thereof. Finally, in some countries, the results of the elections

[103] *Member States:* Belgium, Canada (federal legislation), Denmark (except for officials), Federal Republic of Germany, Ireland, Italy, Luxembourg, Norway, Sweden, United Kingdom, Uruguay. *Non-metropolitan territories: Belgium:* Belgian Congo and Ruanda-Urundi; *United Kingdom:* Isle of Man, St. Helena.

[104] *Member States:* Austria, Ceylon, Finland, France, Republic of Guinea, Iceland, Israel, Morocco, Pakistan, Sudan, Tunisia, Viet-Nam. *Non-metropolitan territories: France:* all non-metropolitan territories; *Italy:* Trust Territory of Somaliland; *New Zealand:* Cook Islands; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Brunei, Cyprus, Dominica, Gambia, Gilbert and Ellice Islands, Grenada, Hong Kong, Jamaica, Kenya, Malta, Mauritius, Montserrat, Nigeria, North Borneo, Northern Rhodesia, Nyasaland, St. Christopher, St. Lucia, St. Vincent, Sarawak, Seychelles, Sierra Leone, Singapore, Solomon Islands, Southern Rhodesia, Tanganyika, Trinidad and Tobago, Zanzibar.

[105] Argentina, Bolivia, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico.

[106] Byelorussia (Labour Code, sections 152 and 153), Poland (Act of 1 July 1949 respecting trade unions, sections 5, 6, 9 and 10), Spain (Labour Charter, Chapter XIII), Ukraine (Labour Code, sections 152 and 153), U.S.S.R. (Russian S.F.S.R.: ibid.).

[107] Chile (Decree No. 1030 of 26 December 1949), Colombia (Labour Code, section 383), Ecuador (Labour Code, section 363), Iran (Regulations of 9 November 1955, regulation 15), Nicaragua (Regulations of 1951 respecting trade unions, regulations 12 and 13), Peru (Decree of 23 March 1936, section 118), Portugal (Decree No. 23050, section 8), Spain (Act of 6 December 1940, sections 5 and 11), United Arab Republic (Egypt: in the case of employers' organisations).

[108] Portugal and Spain.

[109] This is the case for the following *member States*: Argentina, Australia, Austria, Belgium, Burma, Canada (federal legislation), Ceylon, Denmark, Finland, France, Federal Republic of Germany, Republic of Guinea, Haiti, Honduras, Iceland, India, Indonesia, Ireland, Israel, Italy, Luxembourg, Morocco, Netherlands, Norway, Pakistan, Philippines, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States, Uruguay, Viet-Nam. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *France:* all non-metropolitan territories; *Italy:* Trust Territory of Somaliland; *New Zealand:* Cook Islands; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Brunei, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gibraltar, Gilbert and Ellice Islands, Grenada, Guernsey, Hong Kong, Jamaica, Jersey, Kenya, Malta, Isle of Man, Montserrat, Nigeria, North Borneo, Northern Rhodesia, Nyasaland, St. Christopher, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Solomon Islands, Southern Rhodesia, Swaziland, Trinidad and Tobago, Zanzibar; *United States:* Alaska, Guam, Hawaii, Trust Territory of Pacific Islands, Puerto Rico, Virgin Islands.

[110] Greece (Act No. 148/1945).

[111] Chile (Decree No. 1030, section 29), Cuba and Turkey.

[112] Brazil (Labour Code, section 515), Nicaragua (Regulations of 1959 respecting trade unions, regulation 35), El Salvador (Decree No. 353 of 1951, section 14).

must be officially approved [113], and, in one country, the higher trade union leaders are appointed by the government.[114]

58. With regard to the qualifications with which trade union leaders must comply in order to be eligible it would seem that the laws and regulations of a large number of the countries considered contain no specific provisions [115]; in certain countries, however, there exist certain restrictions. For example it is sometimes provided that persons who have been convicted of a crime are ineligible. However, in certain of these cases it is provided that this rule shall not apply in the case of sentences pronounced in respect of political offences.

59. Restrictions, the exact scope of which it is more difficult to appreciate, exist in certain countries: this is the case, for example, where the legislation establishes a disqualification based on nationality: only nationals may be trade union officials [116]; the problem raised by a provision of this kind is fairly complex and the Committee has already had occasion to refer to it in its earlier reports.[117] It may be admitted that in certain cases a provision of this kind cannot give rise to difficulty. However, everything depends on the manner in which such clauses are applied in practice. In effect, it is possible that, in given circumstances, a provision of this kind might in practice lead to a refusal to certain categories of workers or employers of the right freely to elect their representatives.

60. Even more marked restrictions exist in a number of other countries. Especially, it would seem that in most cases the distinctions mentioned in paragraphs 16 to 24 above in respect of individuals to whom the rights and guarantees prescribed by the Convention should apply are also applicable in the case of trade union leaders. It should nevertheless be pointed out that in certain cases the distinctions based on occupation and employment which are applicable to members of trade union organisations are not applicable to the leaders of such organisations: this is the case, for instance, when it is provided that leaders may be recruited from outside the occupation concerned or where former members of a trade union who no longer carry on the occupation in question may continue to be members and leaders of trade unions [118] or, again, when the legislation simply prescribes the proportion of the leaders who must belong to the occupation concerned [119]; in the case of the countries in which this proportion is defined by national legislation, the governments state that the provisions have the essential purpose of preventing trade unions from being used as tools by politicians.

61. On the other hand, it would seem that when provisions in national legislation provide that all the trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities [120], the guarantees laid down in the Convention may be impaired. In fact, in such cases, the dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer.

62. Finally, in a few countries, certain persons may also be removed from their functions as trade union officers by reason of their political opinions. Whereas in certain cases this exclusion relates only to persons belonging to a particular political party [121], in other countries, on the contrary, it would seem that adherence to any political party other than that which is in power is necessarily excluded.[122]

Right of Organisations to Organise Their Administration in Freedom.

63. It would appear that the legislation of a large number of countries contains no special provisions with respect to the manner in which organisations shall ensure their own administration.[123] In certain countries, however, the legislation contains rules providing, for example, for the holding of an annual general meeting, the keeping of minutes of meetings, the obligation to take decisions, or at least the most important decisions, by secret ballot, the need for a certain quorum of members for meetings in certain

[113] Portugal (Decree No. 25116 of 12 March 1935). In Nicaragua the Inspectorate General of Labour may order the complete or partial dissolution of the executive committee of a trade union when it considers that it does not carry out its functions (Trade Unions Regulations, regulation 39).

[114] Spain (Act of 6 December 1940, section 12).

[115] *Member States:* Denmark, Federal Republic of Germany, Iceland, Ireland, Israel, Norway, Pakistan (except as regards public officials), Sweden, United Kingdom, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Brunei, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gilbert and Ellice Islands, Grenada, Guernsey, Jamaica, Jersey, Malta, Isle of Man, Montserrat, Northern Rhodesia, Southern Rhodesia, St. Christopher, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Singapore, Solomon Islands, Swaziland, Trinidad and Tobago.

[116] *Member States:* Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Finland, France, Haiti, Honduras, Iran, Mexico, Morocco, Nicaragua, Peru, El Salvador, Tunisia (there is not an absolute prohibition, but the election of leaders of alien nationality may be opposed by the Government), Viet-Nam. *Non-metropolitan territories: France:* Algeria, Cameroons, Comoro Islands, French Equatorial Africa, French Guiana, French Polynesia, French Somaliland, French West Africa, Guadeloupe, Madagascar, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Togoland; and to some extent, *United Kingdom:* Gibraltar (Trade Union and Trade Disputes Ordinance, section 17).

[117] See Report III (Part IV), prepared for the 40th Session of the Conference (Geneva, 1957), p. 168, para. 40.

[118] See countries listed in footnote 22.

[119] Federation of Malaya (two-thirds), India (one-half).

[120] *Member States:* Brazil, Colombia, China, Cuba, Ecuador, Haiti, Honduras, India (in respect of public officials), Iran, Japan (in respect of public employees: National Public Service Law, section 98, Local Public Service Law, section 52, Public Corporations and National Enterprises Labour Relations Law, section 4 (3), Local Public Enterprises Labour Relations Law, sections 5 (3)), Pakistan, Peru, El Salvador, Viet-Nam. *Non-metropolitan territories: United Kingdom:* Hong Kong (Ordinance No. 8 of 1948, section 13; however, in certain cases exceptions may be authorised), Kenya (Trade Union Ordinance, 1952, section 29), Mauritius (Ordinance No. 36 of 1954, section 13), Nigeria (Chapter 218 of the Laws of Nigeria, Schedule), North Borneo (Ordinance No. 28 of 1947, section 14 B); Sarawak (Ordinance No. 10 of 1947, section 14 A), Tanganyika (Ordinance No. 48 of 1956, section 25).

[121] Chile (Act No. 5839 of 30 September 1948, section 36), Philippines (Republic Act No. 875), Union of South Africa (Suppression of Communism Act, 1954, section 5), United States (Labor-Management Relations Act, 1947, section 9 *(h)* and Suppression of Communism Act, 1954).

[122] Byelorussia (article 101 of the Constitution), Spain (Labour Charter, Chapter XIII, section 14), Ukraine (Constitution, article 106), U.S.S.R. (Constitution, article 126).

[123] *Member States:* Austria, Belgium, Denmark, Finland, France, Federal Republic of Germany, Republic of Guinea, Haiti, Iceland, Ireland, Israel, Italy, Luxembourg, Morocco, Norway, Sweden, Switzerland, Tunisia, United Kingdom, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *France:* all non-metropolitan territories; *Italy:* Trust Territory of Somaliland; *United Kingdom:* Guernsey, Jersey, Isle of Man, St. Helena.

cases, the obligation to provide that certain prescribed majorities shall be required for certain decisions and, finally, the obligation to keep the accounts of the trade union in accordance with certain rules, etc. Generally speaking, it does not seem that such requirements can infringe the rights and guarantees prescribed by the Conventions when their application is left to the members of the trade unions themselves, each member having the right to require the committee to ensure the application of the rules of the trade union and to respect existing legislation; to this end, the legislation of certain countries also provides that, on the petition of a certain number of members of the trade union, a question may be brought before the judicial authorities.[124]

64. In a certain number of countries, however, the application of legislative provisions relating to the administration of trade unions is not left to the members of the trade union but is the subject of external supervision. Thus, trade unions may be obliged to furnish to an official specially appointed for that purpose reports showing that the administration has actually been carried on in accordance with law (summary of minutes, accounts, etc.). The analysis of the legislative provisions in force does not always make it possible to appreciate the real extent of such supervision. It is clear that in so far as these measures of supervision are utilised only in order to prevent abuses and to protect the members of the trade union themselves against mismanagement of their funds, they may have a certain usefulness, especially in countries in which the trade union movement is only just beginning to develop. However, it would seem that provisions of this kind may, in certain cases, entail a danger of interference by the public authorities in the administration of trade unions and that this interference may be of such a nature as to restrict the rights of organisations or impede the lawful exercise thereof, contrary to Article 3, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It may be considered, nevertheless, that there is a certain measure of guarantee against such interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where he himself is subject to the control of the judicial authorities.[125] On the other hand, it would seem that these guarantees do not always exist where the supervision is exercised by the Minister of Labour or by his services [126] or where no judicial control exists.[127]

Right of Organisations to Organise Their Activities and to Formulate Their Programmes.

65. In a large number of the countries considered, it would seem that there is no limitation on the right of organisations to organise their activities and to formulate their programmes in freedom.[128] In these countries workers' and employers' organisations are, of course, obliged " to respect the law of the land ", but it would seem that this common law rule is not formulated in such a manner as to constitute a limitation on the potential activities of organisations; moreover, control over activities of organisations can be effected only *a posteriori* and only by the judicial authorities or under their control.

66. In certain countries organisations catering for specific categories of workers are more limited, from the point of view of their potential activities, than are other organisations. Such limitations are comprehensible in the case of public officials, whose conditions of employment are dependent on a status which leaves no possible scope for the negotiation of collective agreements; the same is true of the limitations imposed by public service regulations, legislation or court decisions, according to which officials acting as organs of the public power may not take part in strikes.

67. In respect of workers other than public officials, certain limitations may also be imposed by national legislation in connection with the negotiation, scope and contents of collective agreements. This question will be treated in greater detail in Chapter II of this Part of the present report.

68. 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. That is why, in certain countries, this prohibition which, in some cases, is only temporary in character and intended to ensure that all means of conciliation shall first be exhausted [129], applies only to essential services; it would seem, nevertheless, that while the concept of " essential services " is extremely restricted in scope in certain countries, in other countries it embraces a large number of activities, sometimes including even agriculture.[130] In other countries compulsory conciliation procedures which must have been exhausted before a strike is called apply to all branches of activity.[131] Finally, in certain countries organisations do not have the right to use the strike weapon; in three countries, this prohibition applies only to certain

[124] Greece.

[125] This would seem to be the case in a considerable number of non-metropolitan territories of the United Kingdom in respect of the Registrar of Trade Unions, who is responsible for effecting registration and for supervision of trade union organisations.

[126] Brazil (Labour Code, section 550), Chile (Act No. 5839 of 30 September 1948, section 37, and Decree No. 1030 of 26 December 1949, Chapter IX), Colombia (Labour Code, sections 353, 410 and 441), Costa Rica (Labour Code, section 275 *(j)*), United Arab Republic (Egypt), Iran (Regulations of 9 November 1955, regulations 28-30), Peru (Decree of 23 March 1936, section 122), Portugal, El Salvador (Legislative Decree No. 353 of 1951, section 41), Turkey (Associations Act, sections 28, 29, 31, 32).

[127] *Non-metropolitan territories: United Kingdom:* Hong Kong (Ordinance No. 8 of 1948, sections 23 and 24), Jamaica (Chapter 389 of the Laws of Jamaica, section 16).

[128] This appears to be the case in the following *member States*: Austria, Belgium, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Israel, Italy, Japan, Norway, Sweden, Switzerland, Tunisia, United Kingdom, United States, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *France:* all non-metropolitan territories; *New Zealand:* Cook Islands; *United Kingdom:* Aden, Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Somaliland, British Virgin Islands, Cyprus, Dominica, Fiji, Gambia, Gibraltar, Gilbert and Ellice Islands, Grenada, Guernsey, Hong Kong, Jamaica, Jersey, Malta, Isle of Man, Mauritius, Montserrat, Northern Rhodesia, Nyasaland, St. Christopher, St. Helena, St. Lucia, St. Vincent, Solomon Islands, Seychelles, Sierra Leone, Swaziland, Trinidad and Tobago, Zanzibar; *United States:* Alaska, Guam, Hawaii, Puerto Rico, Virgin Islands.

[129] This is the case, for instance, in the following *member States*: Canada (apparently), Italy, Japan. *Non-metropolitan territories: United Kingdom:* the majority of the territories for whose international relations this State is responsible.

[130] This is the case, for example, in Brazil (Decree No. 5452 of 1943, sections 543 and 624; Decree No. 7038 of 1944; Decree No. 9070 of 1946).

[131] Greece, Iran, Luxembourg, Union of South Africa (except for African workers), Viet-Nam.

workers [132]; in three other countries it would seem to apply to all workers.[133] However this may be, 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 workers are prohibited from striking, adequate guarantees should be accorded to such workers in order fully to safeguard their interests.[134] This principle has been emphasised on numerous occasions by the Governing Body of the I.L.O. on the recommendation of its " Committee on Freedom of Association ".

69. In a number of countries there exist provisions relating specifically to occupational organisations and prohibiting them in general terms from engaging in any political activities.[135] The extent of such a prohibition is naturally very variable, according to how it is applied in practice. In certain cases the governments indicate [136] that the object of this prohibition is solely to prevent trade unions from abandoning their occupational role in order to transform themselves into political parties and add that, in fact, the existing trade unions have never been limited in their activities by a provision of this kind. However, as the Committee has had occasion to remark, such provisions, of general scope and referring especially to trade unions, may, by establishing a prohibition, *a priori*, raise difficulties by reason of the fact that the interpretation given to them in practice may change at any moment and restrict considerably the possibility of action of the organisations. In this connection, the Committee thinks it useful to make reference to the resolution adopted by the International Labour Conference at its 35th Session (Geneva, 1952) in which it is stated, among other things, that when trade unions undertake or associate themselves with political action, this action shall not be " of such a nature as to compromise the continuance of the trade union movement or its social or economic functions, irrespective of political changes in the country ". It would therefore seem that States should be able, without prohibiting in general terms and *a priori* all political activities by occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which had lost sight of the fact that their fundamental objective should be " the economic and social advancement " of their members.

70. Finally, in some countries, although there do not exist, properly speaking, provisions prohibiting organisations from engaging in any political activity whatsoever, this appears to result indirectly from legislative or constitutional provisions which closely associate the activities of occupational organisations with those of the political party in power.[137]

71. It is also evident that, as the Governing Body Committee on Freedom of Association 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. In this connection, the information available has not enabled the Committee always to assess very accurately the exact effect of these general provisions on the possibilities of action by organisations. It has, nevertheless, appeared to the Committee that in a very large number of the countries under review, if not in most of them, the rules applicable in this connection do not appear to be likely to impede the possibilities of action of the organisations.[138]

Right of Federation and Confederation.

72. Under the terms of Article 5 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), workers' and employers' organisations shall have the right to establish and join federations and confederations. According to Article 6 of the same Convention, the provisions of Article 2, which define the rights of individuals, workers and employers, are also applicable in the case of primary organisations which desire to establish a federation or a confederation.

73. Generally speaking, it would appear from the information available that in the very large majority of the countries under review the rules applicable to the constitution of primary organisations are, *mutatis mutandis*, applicable to the constitution of federations and confederations. If reference is made to the analysis made above [139] on the basis of the information available on the rules applicable to the establishment of primary organisations by individuals, workers or employers, it will be observed that in a large number of countries the right to establish federations and confederations is accorded to all primary trade union organisations " without distinction whatsoever "; that the establishment of federations or confederations is not subject to any " previous authorisation "; that the primary trade union organisations may freely choose the inter-union organisation which they wish to establish; finally, that the primary trade union organisations

[132] Brazil (Legislative Decree No. 9070 of 1952), Chile (Act No. 8987 of 3 September 1947, section 2); Union of South Africa, in the case of African workers (Act No. 48 of 1953, as amended).

[133] Portugal (Legislative Decree No. 23870), Spain (Labour Charter, Chapter XI, 2), Turkey (Act No. 3008 of 1936).

[134] See, for instance, I.L.O.: *Official Bulletin*, Vol. XL, 1957, No. 2, 25th Report of the Governing Body Committee on Freedom of Association, p. 124, para. 308, and p. 128, para. 319 *(e)*.

[135] Brazil (Labour Code, section 521), Colombia (Labour Code, section 396), Costa Rica (Labour Code, section 280), Cuba (Decree No. 2605 of 1933), Ecuador (Labour Code, section 363 (8)), Honduras (Trade Union Act, section 2), Iran (Regulations of 9 November 1955, regulation 14), Nicaragua (Regulations concerning trade unions, regulation 4), El Salvador (Legislative Decree No. 353 of 1951, section 23), Turkey (Trade Unions Act of 1947, section 5), Viet-Nam (Trade Unions Ordinance 1952, section 1).

[136] This is the case, for instance, in respect of Cuba.

[137] Byelorussia (Constitution, article 101); Portugal (Decree No. 23050, sections 9, 11 and 15); Spain (Labour Charter, Chapter XIII); Ukraine (Constitution, article 106); U.S.S.R. (Constitution, article 126).

[138] See, however, para. 34.

[139] See in particular paras. 11 ff. However, in a number of cases it would seem that the legislation makes no provision for the registration of federations and confederations, whereas this formality is necessary in the case of primary trade unions. This is the case for example in the following *United Kingdom non-metropolitan territories*: Aden, Basutoland, Bechuanaland, British Guiana, British Honduras, British Somaliland, British Virgin Islands, Brunei, Dominica, Falkland Islands, Fiji, Gambia, Gilbert and Ellice Islands, Grenada, Jamaica, Malta, Mauritius, Nigeria, Northern Rhodesia, Nyasaland, St. Lucia, Seychelles, Sierra Leone, Solomon Islands, Southern Rhodesia, Swaziland, Trinidad and Tobago, Zanzibar.

may also choose freely the inter-union organisation with which they wish to affiliate.

74. The same analysis reveals, on the other hand, that in certain countries special distinctions are made in respect of certain organisations, especially with regard to public officials, workers employed in undertakings in the public or semi-public sector, agricultural workers [140], workers belonging to certain races [141], and employers [142], and certain individuals.[143]

75. Similarly, in countries in which the formalities relating to the establishment of primary organisations may be assimilated to previous authorisation, these formalities would also appear to be applicable to the establishment of federations and confederations.[144] In the countries in which the establishment of primary organisations is subject to previous authorisation or to formalities which are equivalent to it, the previous authorisation is also necessary to enable a federation or confederation to be established.[145] The same is true in those countries in which, as was indicated earlier, the establishment of primary organisations is subject to previous authorisation by inter-union organisations. In these countries indeed, the fact that only the trade union organisations registered with the inter-union organisations can style themselves trade unions and act as trade unions and the fact that a primary trade union which might wish to separate from the inter-union organisation to which it belongs in order to establish a new trade union organisation would naturally be deregistered by its original inter-union organisation, which would terminate its legal existence, make the establishment of new federations or confederations impossible.[146] In certain cases this previous control by existing inter-union organisations is, as noted earlier, supplemented by an administrative control, in view of the fact that the convocation of any meeting is subject to previous authorisation by the administrative authorities.[147] It would appear further that in one country in respect of which, on the basis of the information available, it has not been possible to establish whether the primary trade union organisations are or are not subject to previous authorisation, the formation of federations or confederations is subject to previous authorisation.[148] Finally, in another country, the establishment of federations and confederations by trade unions is prohibited.[149]

76. According to the information available, it would appear that in the countries in which individuals, workers and employers, do not seem to be able to choose freely the organisation which they wish to establish, the primary trade union organisations also do not possess any freedom of choice with respect to the federation or confederation which they wish to establish.[150]

[140] See paras. 16, 17 and 18.

[141] See para. 21.

[142] See para. 23.

[143] See para. 24.

[144] See para. 31.

[145] See para. 32.

[146] See para. 33.

[147] See para. 34.

[148] Union of South Africa (Industrial Conciliation Act, No. 28 of 1951, section 80).

[149] El Salvador (Decree No. 353 of 1951: Preamble). A similar situation exists in Ceylon in respect of organisations of public officials; the Government states in its report that it has been decided to amend the Trade Unions Ordinance so as to permit organisations of public officials to federate between themselves.

[150] See para. 35.

77. The same is true in respect of those countries in which individuals may be obliged, *by virtue of legislation*, to join a trade union which they have not chosen or may be denied any possibility of choice of membership as between different organisations: in these countries the primary trade union organisations also do not appear to be able to choose in freedom the inter-union organisation to which they wish to affiliate.[151]

Right of Organisations to Affiliate with International Organisations.

78. The right of organisations to affiliate with international organisations established by Article 5 of Convention No. 87 appears to be free from any particular formality in almost all reporting countries.[152] However, it would seem that in certain cases this right may be limited indirectly in countries in which there is an absolute and general prohibition of organisations from engaging in political activities or when this prohibition results, as seen above, from legislative or constitutional provisions which closely associate organisations with the political party in power.[153] Moreover, it would seem that in countries in which there exist limitations on the right of organisations to establish or join federations or confederations, the same rules are applicable with respect to affiliation with international organisations: thus it is that, for example, in countries in which a trade union may not legally exist unless it is affiliated to a national inter-union organisation, the trade union could not freely adhere to an international trade union organisation without first obtaining the previous consent of its original national inter-union organisation which, if it were opposed to the affiliation, could terminate its legal existence by cancelling its registration.[154] Finally, it would seem that in certain countries the affiliation of organisations with international organisations is subject to previous authorisation [155] or is prohibited.[156]

Suspension and Dissolution of Organisations.

79. Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) provides that organisations shall not be liable to be dissolved or suspended " by administrative authority ". However, while it would appear from the information available that the prohibition of the dissolution or suspension of an organisation by administrative authority is a necessary condition for

[151] See para. 40.

[152] This is the case in the following *member States:* Australia, Austria, Belgium, Canada (federal legislation), Denmark, Finland, France, Federal Republic of Germany, Republic of Guinea, Honduras (adherence need only be notified), Iceland, India, Ireland, Italy, Japan, Luxembourg, Mexico, Morocco, New Zealand, Norway, Pakistan, Sweden, Switzerland, Tunisia, United Kingdom, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *France:* all non-metropolitan territories; *United Kingdom:* St. Helena, where United Kingdom legislation is applicable, *mutatis mutandis,* with certain exceptions (see end of paragraph 78) it appears that in most of the non-metropolitan territories of the United Kingdom there are no legislative provisions prohibiting organisations from adhering to international organisations.

[153] See paras. 69 and 70.

[154] See para. 33.

[155] *Member States:* Brazil (Act No. 2802 of 18 June 1956); Brunei (Ordinance No. 15 of 1951); China (Trade Union Law, section 34); Turkey (Act of 1947, section 5). *Non-metropolitan territories: United Kingdom:* Hong Kong (Ordinance No. 8 of 1948, section 14), North Borneo, Sarawak (Ordinance No. 7 of 1950, section 4).

[156] Portugal (Legislative Decree No. 23050 of 23 Sep. 1933, section 10).

ensuring respect for freedom of association and protection of the right to organise, this procedural guarantee does not necessarily constitute an adequate condition: in fact, according to the terms of Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 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 . . . ". Here again, therefore, it would seem that the extent of the guarantees against arbitrary suspension or dissolution enjoyed by trade union organisations is liable to vary considerably according to the extent of the freedoms enjoyed in fact by the inhabitants of a country.

80. It would also seem from the information available that, in some cases, the cancellation of the registration of an organisation may have the same results as does a suspension or even a dissolution. Nevertheless, it is clear that the effect of such a measure of cancellation of registration will vary according to whether registration constituted or did not constitute a formality necessary to enable the organisation to achieve its objectives (see paragraphs 25 to 34) and according to the grounds on which the decision may be taken. For this reason, the information available with respect to the cancellation of registration of organisations will be examined at the same time as that which relates to suspension and dissolution properly so called.

81. *Suspension of organisations.* According to the information available, suspension by administrative authority appears to be impossible in nearly all the countries considered.[157] In some of these countries the power of suspension is accorded to the judicial authorities in cases in which organisations contravene the national legislation which, itself, does not seem to contain any provision which may infringe the guarantees laid down in the Conventions. In other countries, the suspension or cancellation of registration of organisations may be ordered by an administrative or quasi-administrative authority, but the suspension may be the subject of an appeal to the courts and the grounds on which such a decision may be taken are not likely to infringe the rights and guarantees enjoyed by organisations.[158] In other cases the order of suspension has no effect unless, within a fairly brief period, it has been confirmed by the judicial authorities [159], or unless a petition for dissolution is brought immediately before the courts of law.[160] Finally, in certain cases, it would appear that there exists a possibility of administrative suspension for a more or less limited period.[161]

82. *Dissolution of organisations.* In the majority of the countries in respect of which information was available, it would seem that dissolution can be ordered only by the judicial authorities and the grounds on which such a decision may be given, according to the legislation in force, do not appear likely to infringe the rights and guarantees accorded by the Conventions to trade union organisations and their members.[162] Thus, in certain countries, the dissolution of organisations results from cancellation of their registration by the competent authority, but it would seem that such a decision can be taken only where the organisation contravenes trade union legislation (which does not seem to contain any provision likely to infringe the prescribed rights and guarantees) or its own rules and that, further, the decision to deregister can always be the subject of an appeal to the courts.[163] In certain cases, the dissolution is preceded by an order of suspension made by the competent administrative authorities, which results in the case coming immediately before the judicial authorities (or, alternatively, if the order is not immediately referred to such authorities, it becomes null and void) and it is for the judicial authorities to decide whether or not there should be a dissolution; in the event of a negative decision, the order of suspension appears automatically to be terminated.[164]

83. In countries in which the founder members of primary trade union organisations must obtain previous authorisation or comply with equivalent formalities, the authority responsible for effecting registration or approving the rules may order dissolution.[165] Likewise, where primary trade union organisations are obliged to register with higher inter-union organisations, it would seem that it is these bodies which, by cancelling the registration, terminate the legal existence of the organisation.[166] Here again, it should be pointed out that in all the countries considered there exists a single inter-union organisation which, in each case, is very closely associated with the political party in power. Finally, in a number of countries, it would seem that dissolution can be ordered by the administrative authorities or by the government.[167]

Protection of Organisations against Acts of Interference by Each Other.

84. According to Article 11 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), States shall " take all necessary and appropriate measures to ensure that

[157] This is the case in the following *member States* : Belgium, Canada, France, Republic of Guinea, Ireland, Israel, Italy, Luxembourg, Norway, Sweden, Tunisia, United Kingdom. *Non-metropolitan territories: France:* all the non-metropolitan territories; *United Kingdom:* Isle of Man, St. Helena.

[158] *Member States:* Ceylon, India, Pakistan, Sudan. *Non-metropolitan territories: Italy:* Trust Territory of Somaliland (Ordinance No. 2 of 1954, section 3, and Ordinance No. 5 of 1956, section 1); the majority of the territories of the *United Kingdom* (it would appear that cancellation of registration does not entail dissolution unless it is confirmed by the Supreme Court or unless no appeal is lodged within the period prescribed). It appears that the same situation exists in the Cook Islands *(New Zealand).*

[159] Cuba (Associations Act, 1888, section 12).

[160] *Member States:* Austria (section 28, Act of 1951); Denmark (Constitution, Article 78 (3)); Finland (Act of 1919, section 21); Iceland (Article 73 of the Constitution). *Non-metropolitan territories: Denmark:* Faroe Islands (section 78 of the Constitution), Greenland (ibid.)).

[161] *Member States:* Brazil (Labour Code, section 553); Haiti (section 76, Act of 1947); New Zealand (Industrial Arbitration and Conciliation Act, 1954). *Non-metropolitan territories: United Kingdom:* Kenya (Ordinance No. 23 of 1952, section 17).

[162] This is the case in the following *member States*: Belgium, Canada (federal legislation), Denmark, Finland, France, Republic of Guinea, Iceland, Ireland, Italy, Luxembourg, Norway, Sweden, Tunisia, United Kingdom, Uruguay. *Non-metropolitan territories: Denmark:* Faroe Islands, Greenland; *France:* all non-metropolitan territories; *United Kingdom:* Guernsey, Jersey, Isle of Man, St. Helena.

[163] This is the case in the countries referred to in footnote 158 to para. 81, with the exception, as regards the *non-metropolitan territories* of the *United Kingdom*, of Jamaica (where appeal is not always possible (Chapter 382 of the Laws of Jamaica, section 22)), Southern Rhodesia (idem, Act of 1945, section 18 (2)).

[164] This is the case in the countries referred to in footnotes 159 and 160.

[165] See para. 32.

[166] See para. 33.

[167] *Member States:* Byelorussia (Civil Code, section 18); Portugal (Legislative Decree No. 23050, section 20); Ukraine (Civil Code, section 18); Union of South Africa (in certain cases—Industrial Conciliation Act 1956, sections 12 and 13); U.S.S.R. (Russian S.F.S.R.: Civil Code, section 18). *Non-metropolitan territories: United Kingdom:* Brunei (Societies Act, 1948, section 9 (1)).

workers and employers may exercise freely the right to organise ". One aspect of this protection is defined in Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), according to the terms of which 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. Paragraph 2 of this Article assimilates to acts of interference the establishment of workers' organisations dominated, controlled or supported by financial or other means by an employer or an employers' organisation. Finally, Article 3 of the same Convention provides for the establishment " where necessary " of machinery appropriate to national conditions for the purpose of protecting organisations against acts of interference.[168] Here again, it should be observed that according to Article 6 thereof, the last mentioned Convention " does not deal with the position of public servants engaged in the administration of the State "; but nevertheless it would appear that any act of interference by the State with organisations of officials would, in fact, contravene the provisions of Article 3, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which is applicable to officials and which provides that the public authorities shall refrain from any interference which would restrict the rights of organisations or impede the lawful exercise thereof.

85. Although, in principle, the first paragraph of Article 2 is intended to protect both employers' organisations and workers' organisations, the information available does not refer, in the majority of cases, to the protection of employers' organisations against acts of interference. In certain cases, nevertheless, the generality of the terms employed in the reports suggests that, as provided for in the Convention, all occupational organisations—both of employers and of workers—enjoy measures of protection prescribed by the legislation. The information available in respect of certain countries, on the other hand, refers directly only to the protection of workers' organisations. Finally, certain governments indicate in their reports that no special protection for employers' organisations exists.[169]

86. In a number of countries this protection appears to be ensured by general or special legislative provisions: principles of the law relating to incorporation [170], penal code [171], legislation relating to freedom of association [172], provisions to this effect included in labour legislation or labour codes [173] (including texts regulating the registration of organisations or collective agreements, etc.).

87. It is evident that in so far as the right to lodge a complaint against acts of interference belongs to the actual members of an organisation or to a certain proportion of them as fixed by law, the measures of control prescribed, for the most part entrusted to the judicial authorities, do not appear to be of such a nature as to infringe the freedom of action of the organisations. This seems to be the case, for instance, in countries in which protection against acts of interference is ensured by application of the principles of the law dealing with incorporation.

88. On the other hand, it would seem that the effect of the supervisory measures prescribed is often difficult to ascertain when, for instance, it is provided that trade unions which do not offer sufficient guarantees of their independence may be refused registration or be deprived of the right to negotiate collective agreements. The protection of trade union organisations against acts of interference by each other through the medium of administrative supervision may give rise to the same difficulties as were indicated earlier in connection with the supervision of the administration of organisations.[174] While such a tutelage on the part of the State may be justified to some extent in countries in which trade unions are just beginning to develop, such measures should, it would seem, only be transitional in character and should be abrogated as soon as circumstances permit.

89. In a certain number of countries, it would seem that there exist no legislative provisions for the purpose of ensuring protection of organisations against acts of interference by each other and that the guarantees prescribed by the Convention are applied in practice: certain governments indicate in this connection in their reports that the strength and development of the trade union organisations or the maturity of the trade union leaders are sufficient to shelter these organisations from any act of interference.[175] In some countries this factual situation is also enshrined in a kind of contractual Charter which determines the relations which shall exist between organisations of employers, on the one hand, and organisations of workers, on the other, and which, for many years, has served as a basis for all collective negotiations.[176]

90. Finally, it would seem difficult to assess to what extent acts of interference are possible—and in what manner these acts of interference might manifest themselves—in countries in which employers or directors of undertakings belong to the same organisations as the workers of the undertakings managed by them.[177]

C. Rights and Guarantees of Higher Organisations

91. According to Article 6 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), federations and confederations shall enjoy the same rights and guarantees as are prescribed in the Convention in the case of primary organisations. It would appear from the information available that in almost all the countries considered

[168] See footnote 95.

[169] This is the case, for instance, in respect of Canada (federal legislation).

[170] Greece, Italy, Switzerland, Turkey.

[171] India.

[172] Belgium, Finland, Japan, Turkey.

[173] *Member States:* Australia (federal legislation), Brazil, Byelorussia, Canada (federal legislation), Colombia, Costa Rica, Cuba, Finland, France, Federal Republic of Germany, Republic of Guinea, Honduras, Japan, Nicaragua, Philippines, Turkey, Ukraine, U.S.S.R., United States (federal legislation, and the legislation of about one-half of the states). *Non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(f)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.), Cameroons (Labour Code of 1952, section 73), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.); *United States*: Hawaii, Puerto Rico.

[174] See paras. 63 and 64.

[175] Austria, Ghana, Israel, Federation of Malaya, Netherlands, Tunisia, United Kingdom, Viet-Nam.

[176] Denmark, Norway, Sweden. A similar situation appears to exist in Morocco in virtue of compliance by organisations with the recommendations of the Higher Collective Agreements Council.

[177] Byelorussia, Portugal (for certain industries), Spain, Ukraine, U.S.S.R.

the provisions applicable to primary organisations also apply to federations and confederations.

92. If reference is made to the preceding analysis it will be observed that in a large number of countries federations and confederations may freely draw up their constitutions and rules, elect their representatives, organise their administration and activities, formulate their programmes and affiliate with international organisations. Further, it is to be noted that they are not liable to be suspended or dissolved by administrative authority and that they enjoy adequate protection against acts of interference by other organisations.

93. In a number of other countries, the restrictions placed on primary organisations apply also to federations and confederations. The result is that in certain cases the rules of these inter-union organisations must be the subject of approval [178]; that they may not for various reasons choose certain persons as leaders as, for example, by reason of the fact that they do not belong to the occupation [179] or by reason of the political opinions of the persons concerned [180]; that the administration of these inter-union organisations is the subject of more or less strict supervision [181]; that their activities and their means of action are more or less restricted [182]; that they may be suspended or dissolved by administrative authority [183]; finally, that they may not freely adhere to international organisations.[184]

94. Finally, in a few countries inter-union organisations appear to be subject to stricter rules than are the primary trade union organisations. Thus, in one country, federations established by works unions or by unions of agricultural workers may have only cultural or welfare objects.[185] In two countries federations and confederations appear to be subjected to financial control of a stricter nature than is applied to primary organisations.[186] In certain countries inter-union organisations may not declare a strike or lockout.[187] Finally, it would seem that in one country the competent Minister may, in certain cases, cancel the registration of federations or confederations, that is to say, in effect, order their dissolution.[188] It should also be remembered that in one country trade union organisations are prohibited from establishing federations and confederations.[189]

Chapter II. Collective Bargaining and Collective Agreements

95. More or less detailed provisions regarding collective bargaining and collective agreements may be found in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and in the Collective Agreements Recommendation, 1951 (No. 91). As already indicated (see paragraph 11), the scope of these two Conventions does not extend to all the workers covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). As for the Collective Agreements Recommendation, 1951 (No. 91), it contains no provision defining its scope as regards workers. Nevertheless, this would not seem to entail the impossibility for associations of certain of these workers, e.g. public officials, to negotiate on behalf of their members with a view to defending or promoting their interests; as already indicated, public officials are free in many countries to establish associations which represent them in their relations with the administration.

96. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides, in Article 4, that measures appropriate to national conditions shall be taken when 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. The Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) provides, in Article 3, that all practicable measures shall be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers or employers' organisations. It also provides, in Articles 5, 6 and 7, that the procedures for investigating and settling disputes must be as simple and expeditious as possible and that representatives of workers and employers must be associated in these procedures. Moreover, in Article 4, it provides for the consultation and association of representatives of employers' and workers' organisations in the establishment and application of provisions for ensuring the protection of workers and the application of labour legislation. As regards the Collective Agreements Recommendation, 1951 (No. 91), it deals with collective bargaining machinery, the definition of collective agreements, their effects, extension and interpretation and the supervision of their application, as well as various other questions (publicity measures, etc.).

97. It appears from the information available, and particularly from the information supplied on the application of the Right of Association (Non-Metropolitan Territories) Convention, 1947, that frequently the procedure for the settlement of disputes, and even sometimes the procedure for the investigation of disputes, is generally established on a contractual basis and merely constitutes one of the aspects of voluntary collective bargaining machinery. Moreover, the agreements concluded by parties in the course of, or at the end of, a procedure for the settlement of a collective labour dispute, are generally assimilated to collective agreements concluded in accordance with the normal procedure. It therefore seems to be extremely difficult, if not impossible, to make a clear distinction between machinery for drawing up collective agreements on the one hand, and procedures for the investigation and settlement of conflicts on the other hand: these two types of procedures, which in some countries are entirely separate, may both be considered from the point of view of an international comparative analysis as falling within the general framework of collective bargaining machinery, in its widest sense.[190] Consequently, it appears that the information available may be analysed by examining,

[178] See para. 54.

[179] See paras. 60 and 61.

[180] See para. 62.

[181] See para. 64.

[182] See paras. 67, 68, 69 and 71.

[183] See paras. 81 and 82.

[184] See para. 78.

[185] Chile.

[186] Egypt and Turkey.

[187] Colombia (section 434 of the Labour Code), Honduras (Legislative Decree No. 101 of 6 June 1955, section 33).

[188] Union of South Africa (Industrial Conciliation Act, No. 28 of 1956, section 80).

[189] See para. 75.

[190] In view of the fact that the Committee has not been called upon to examine the effect given to the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), the present general remarks relate more specifically to collective agreements.

one after the other, the three following questions: collective bargaining machinery, the scope and effect of collective agreements and the application of such agreements. Finally, as regards non-metropolitan territories, it will be possible to examine the information available regarding collaboration and consultation with employers' and workers' organisations and their association in the establishment and working of provisions which are to ensure the protection of workers and application of the labour legislation.

A. Collective Bargaining Machinery

98. Neither the two Conventions under consideration nor the Recommendation specify exactly what procedure should be adopted or followed in regard to collective bargaining. Paragraph 1 of the Recommendation provides that appropriate machinery should be established, by means of agreement or legislation, to negotiate, conclude, revise and renew collective agreements or to assist the parties in such action. It is appropriate, therefore, to examine first of all the manner (contractual or legislative) in which collective bargaining machinery is established and then the nature of this machinery.

Manner in Which Machinery is Established.

99. As already noted by the Committee in 1956, collective bargaining machinery may, in accordance with the Recommendation, be established either by means of agreements between the parties or by means of legislation. This does not mean, of course, that either of these methods should be adopted in any country to the exclusion of the other, and the two systems generally exist side by side. Consequently it is not possible to draw a line of division between the countries where collective bargaining machinery is set up by agreement between the parties, and those where it is established by law. Nevertheless, the various countries may be classified, *grosso modo*, in three groups: those in which the contractual system predominates; those where both the contractual and the legislative system exist or supplement one another; and finally those in which collective bargaining machinery is generally established by legislative measures.

100. *Predominantly contractual system.* A typical example of the contractual procedure for negotiating collective agreements may be found in a country where the organisations of employers and workers have themselves established a network of joint committees and similar bodies on a local, regional and national level and where special importance is attached to those clauses of collective agreements which relate to collective bargaining machinery.[191] In a certain number of other countries where parties have adopted a different method of obtaining similar results, the point of departure is a national or basic agreement by which the central employers' and workers' organisations determine the principles to be followed in collective bargaining, which principles are subsequently embodied in collective agreements.[192] Predominantly contractual procedures for the establishment of collective bargaining machinery, with official machinery playing a very minor role and with legislation generally limited to providing a legal framework for collective agreements, are to be found in a certain number of other countries.[193]

101. *Mixed procedures.* In most countries contractual collective bargaining machinery is to be found side by side with machinery established by legislation. The importance of the two types of machinery varies considerably in the countries in question. As a rule it seems that the object of the relevant legislative provisions is invariably to promote free joint negotiation between employers and workers or their representatives, and these legislative measures do not preclude the conclusion of agreements negotiated directly by the parties without recourse to the official machinery, nor the establishment of collective bargaining machinery through collective agreements. In general the object of all such machinery established by law is either to assist the parties in negotiations or to help them establish for themselves collective bargaining machinery. Moreover, in certain cases it appears that the standard-setting provisions merely give legal recognition to existing machinery. Nevertheless it would seem that a distinction may be made between three principal types of machinery.

102. In a certain number of countries there does not appear to be any permanent collective bargaining machinery established by law. The national legislation merely provides that the government or the competent administrative services may set up machinery to assist the workers and employers in their negotiation, when necessary.[194]

103. In other countries the legislation provides for the setting up of joint committees or councils in all or most occupations and the collective agreements concluded within the framework of this machinery cover the majority of workers.[195]

104. Finally, in some countries in addition to the contractual machinery it would seem that employers' and workers' organisations may have recourse to legally established machinery, provided that they have first been registered. Although certain privileges may thus be obtained (in particular the possibility of obtaining the sole right to represent the workers in question), this procedure also entails certain restrictions since registered organisations must renounce the right to having recourse to strikes or lockouts as a method of action.[196]

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[191] United Kingdom. A similar tendency may be found in a certain number of non-metropolitan territories for whose international relations the United Kingdom is responsible: according to information supplied in reports, the officials of the local labour departments make every effort to encourage employers and workers to establish collective bargaining machinery by means of collective agreements.

[192] Denmark (Agreement of September 1899 and General Rules of 21 December 1956), Norway (National Agreement of 1935), Sweden (Basic Agreement of 1938).

[193] For example Federal Republic of Germany, India, Ireland, Pakistan, Switzerland, United States.

[194] This is the case for example in the following *member States*: France (Labour Code, Book I, section 31 *(f)*), Republic of Guinea (Act of 1952, section 73), Honduras (Legislative Decree of 14 March 1955 section 3), India (Bombay, Industrial Relations Act, 1946), Ireland (Industrial Relations Act, 1946, Parts IV and V), Japan (Law No. 174 of 1949, sections 20 et seq.), Morocco (Dahir of 17 April 1957, sections 20 and 22), Philippines (Act of 17 June 1953, sections 20 et seq.), Viet-Nam (Labour Code of 1956, section 77); and in the following non-metropolitan territories: *France:* Algeria (Labour Code, Book I, section 31 *(f)*); French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.), Cameroons (Labour Code of 1952, section 73), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.).

[195] For example Belgium (Legislative Decree of 9 June 1945), Luxembourg (Grand Ducal Order of 6 November 1945), Netherlands (Decree of 5 October 1945), Union of South Africa (Act No. 36 of 1937, sections 18 et seq. (respecting non-Natives only)).

[196] For example Australia and New Zealand (Industrial Conciliation and Arbitration Act, 1954).

105. *Predominantly legislative procedures.* In a certain number of countries where the authorities wished to encourage employers' and workers' organisations to fix working conditions and wages by means of collective agreements, a legislative framework was established for this purpose by the enactment of detailed provisions regarding collective bargaining, grievance procedure, the effect of agreements, etc.[197]

106. Finally, in certain other countries the legislation provides for the conclusion of collective agreements through which the full and concrete application of legislative standards is to be ensured.[198]

Methods Utilised.

107. In countries where collective bargaining machinery is predominantly established on a contractual basis, collective agreements establish certain procedural rules (time limits, periods of notice, etc.), and also provide for the setting up of joint negotiation committees. Moreover, in some of these countries collective agreements sometimes include provisions for the protection of the trade union (closed shop, union shop, etc.).[199]

108. In countries where there are mixed procedures the legislation also sometimes prescribes procedural rules, the establishment of joint committees, which may be permanent or not, and in some cases provides for the assistance of officials from the labour department, etc.

109. As part of the measures to assist parties to collective agreements and help them in the conclusion of collective agreements, the national legislation of some countries prescribes rules regarding the representative bargaining agent which is to negotiate in the name of all the workers. In some cases the representative character of several organisations may be recognised.[200] In other cases the legislation provides specifically that only one organisation may be recognised for the purpose of concluding collective agreements for a given industry or region.[201] The decision regarding the recognition of an organisation is sometimes general in scope (regional or industrial level), and sometimes is limited to a specified undertaking, plant or part of an undertaking. Finally, in some countries the legislation provides that only one trade union may represent the workers in each undertaking but establishes no rule regarding the manner in which the organisation in question is to be selected [202], probably in view of the fact that all the other trade unions must be affiliated to an all-union organisation and because of the fact that there is only one all-union organisation in each of these countries.

110. It should be stressed that collective bargaining machinery established—either contractually or in virtue of legislation—for the purpose of concluding collective agreements, may also, in practice, serve as conciliation machinery in many countries. Conversely, in many cases the conciliation bodies set up by law are required, in particular, to assist parties who have reached a deadlock in the course of negotiations regarding collective agreements [203]; in other countries the competence of the conciliation services extends to all types of disputes and particularly to disputes arising in the course of bargaining.[204]

B. Scope and Effect of Collective Agreements

111. The Collective Agreements Recommendation, 1951 (No. 91) contains, in Part II, a definition of collective agreements; in Parts III and IV, provisions regarding the effects of collective agreements; and in Part V, provisions regarding the extension of collective agreements. The analysis of the information available will be made with reference to each of these points.

Definition of Collective Agreements.

112. The Recommendation defines collective agreements as agreements in writing relating to working conditions and terms of employment concluded between employers, or a group of employers, or one or more employers' organisations on the one hand, and one or more representative workers' organisations or, in the absence of such organisations, workers' representatives on the other hand.

113. In most of the countries in question the definition given by the national legislation is in conformity with that established by the Recommendation; in countries where the expression is not defined by any legislative text, the collective agreements which are concluded in practice between employers' and workers' organisations correspond with the definition given by the Recommendation. Nevertheless, certain divergencies exist in some countries: these divergencies relate in some cases to the persons or organisations which may be parties to a collective agreement and in others to the contents of collective agreements.

114. *The parties to collective agreements.* As regards workers, the most common difference is due to legislative provisions in virtue of which workers' representatives, as opposed to workers' organisations, are not entitled to conclude collective agreements.[205] This implicit exclusion of the possibility for workers' representatives to conclude collective agreements may doubtless be explained in countries where these

[197] This would appear to be the case in many countries of Latin America.

[198] This is the case, in particular, in Byelorussia, Ukraine and the U.S.S.R.

[199] In particular see para. 38.

[200] This is the case for example in France (Labour Code, Book I, section 31 *(e)*) and in all non-metropolitan territories of France (Labour Code of 1952, section 73).

[201] This is the case for example in Canada (Industrial Relations and Industrial Disputes Act, 1948, sections 7 et seq.), the United States (Labor-Management Relations Act, 1947, section 10 (9)), Mexico (Labour Code, 1931, section 43), New Zealand (Industrial Conciliation and Arbitration Act, 1954, sections 60 et seq.).

[202] This is the case for example in Byelorussia (Labour Code, section 157), Ukraine (Labour Code, section 157) and the U.S.S.R. (Labour Code, section 157).

[203] This is the case for example in Greece (Act No. 3239 of 1955, section 9), Haiti (Act of 23 October 1947), Ireland (Industrial Relations Act, 1946, Parts IV and V), Israel (Settlement of Labour Disputes Act, 1957), United Kingdom (Conciliation Act, 1956).

[204] This is the case for example in Brazil (Labour Code, section 650), Finland (Act No. 570 of 1946), United Arab Republic (Egypt) (Legislative Decree No. 318 of 1952).

[205] This is the case for example in the following *member States*: Costa Rica (Labour Code of 1943, section 54), Dominican Republic (Labour Code of 1943, section 92), France (Labour Code, Book I, section 31 *(a)*), Republic of Guinea (Labour Code 1952, section 68), Indonesia (Act No. 21 of 1954, section 1), Japan (Law No. 174 of 1949, section 14), Mexico (Labour Code of 1931, section 42), Nicaragua (Labour Code of 1945, section 22), Thailand (Act of 1 November 1949, section 112), United Arab Republic (Egypt) (Act No. 97 of 1950, section 1), Viet-Nam (Labour Code of 1956, section 70); and in a number of *non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(a)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.); Cameroons (Labour Code of 1952, section 68), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.).

matters are regulated by statute law, by the need to define collective agreements otherwise than individual contracts and, in certain cases, by the prohibition of concluding contracts on behalf of other persons; this exclusion has certain disadvantages in countries where the trade union organisations have not yet reached a sufficient degree of development: in the first place the conclusion of collective agreements is rendered impossible, and in the second place it may be felt that in the absence of trade unions the fact that some workers should be chosen by their fellow workers as their representatives in collective bargaining should facilitate the setting up of trade unions. However, the importance of these factors should not be exaggerated: in countries where the legislation contains no provisions restricting the rights and guarantees necessary to ensure freedom of association, there may be a tendency towards a proliferation in the number of trade unions.[206]

115. As regards employers, a difference may exist either because the legislation makes no provision for the conclusion of collective agreements by an individual employer [207] or because there are no employers' organisations in the countries concerned which, as indicated above, may be due to legislative provisions.[208] Finally, special reference should be made to a case where collective agreements are concluded on behalf of employers and workers by their respective representatives within the one organisation.[209]

116. *Contents of collective agreements.* The information available shows that in a considerable number of countries no legislative provision exists to restrict in any way the right of the contracting parties to insert in collective agreements any question of mutual interest which they wish to settle by this procedure.[210] However in a certain number of countries the legislation establishes to some extent the minimum contents of collective agreements by providing, for example, that they should include clauses on a certain subject such as wages, dismissal, grievance procedure or questions of form; however such enumeration is not exclusive.[211] In practice considerable variety is to be found in the contents of collective agreements which may set out detailed rules covering all matters respecting working conditions and labour relations in a given industry or trade or which may be limited to a single problem such as holidays with pay; these two extreme types of collective agreements frequently exist side by side in a single country.

[206] See in this connection more particularly I.L.O.: *Record of Proceedings*, Fourth Asian Regional Conference, New Delhi, November 1957 (Geneva, 1958), Appendix VI: Report of the Committee on Labour-Management Relations; and idem: *African Labour Survey*, (Geneva, 1958), Ch. VII.

[207] Austria (Act of 26 February 1947, section 2), Brazil (Labour Code, section 611).

[208] This is the case for example in Byelorussia, Ukraine and the U.S.S.R. (see para. 24).

[209] Spain (Act of 28 April 1958, section 6).

[210] This is the case for example in Sweden, the United Kingdom and the United States.

[211] This is the case for example in the following *member States*: Brazil (Labour Code of 1943, section 619), France—as regards collective agreements which may be extended (Labour Code, Book I, section 31 *(c)* and *(g)*), Republic of Guinea (Act of 12 December 1952, sections 70 and 74), Tunisia (Decree of 5 November 1949, section 16); and in the following *non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(c)* and *(g)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.); Cameroons (Labour Code of 1952, sections 70 and 74), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.).

117. It also appears from the information available that, even if this is not specifically prescribed by law, collective agreements may not contain clauses which are unlawful or which are contrary to legislative provisions of a public nature *(dispositions d'ordre public)*.[212] There are also frequent cases in which collective agreements may not fix wage rates lower than the minimum rates established by some other method.[213]

118. In certain countries legislation restricts to a certain extent the right of parties to determine the contents of collective agreements. Thus in one country the competent minister may withhold his approval of a collective agreement if it is contrary to the government's economic or social policy [214]; in another country collective agreements may not contain any clause conflicting with the State's economic policy and the terms of the agreements are drafted by a public service [215]; in yet other countries collective agreements may not include clauses which are seriously prejudicial to the national economy [216]; in another country the wage rates set out in collective agreements may not be lower than a minimum, nor higher than a maximum determined by a national board [217]; finally, in a certain number of countries, collective agreements may not include clauses respecting wage rates, these being fixed by the economic plan, but they must on the other hand contain provisions respecting the individual and collective standards of production so as to ensure that the objectives fixed by the economic plan shall be attained or even exceeded.[218]

Effects of Collective Agreements.

119. Part III of the Recommendation indicates how the principle of non-derogation from collective agreements should be applied, describing the effect of a collective agreement on individual contracts and the extent to which clauses differing from those of a collective agreement may be maintained in contracts. It is therefore appropriate to examine successively: the binding effect of collective agreements as regards the parties; the binding effect of collective agreements as regards workers who are not members of the trade union having concluded the agreement; and finally, the effect of collective agreements on individual contracts.

120. *Binding effect as regards the parties.* It appears from the information available that the main differences between the reporting countries as regards the effects of collective agreements are due to the systems of law, that is whether collective agreements are governed by common law or statute law. Under the common law system, where collective agreements lack any statutory basis, they are excluded from the jurisdiction of the courts and may be regarded as having the character of " gentlemen's agreements " which are the basis of individual contracts. This is the only system existing in a limited number of countries [219]; it may also be

[212] This is the case, in particular, in the countries mentioned in para. 37 in which union security clauses are prohibited.

[213] This matter was dealt with in detail in the Committee's report for 1958, which contained general conclusions regarding " Minimum Wage-Fixing Machinery ".

[214] Greece (Act No. 3239 of 1955, section 20 (2)).

[215] Portugal (Legislative Decree No. 36173, sections 8 and 26).

[216] Spain (Act of 24 April 1958, section 2); the position appears to be similar in Brazil (Labour Code, section 518).

[217] Netherlands.

[218] Byelorussia, Ukraine, U.S.S.R.

[219] United Kingdom and the majority of this country's non-metropolitan territories.

found in other countries in company with, but independently of, collective bargaining machinery established by law.[220]

121. In countries where these matters are governed by statute law, the legislation generally provides that the two signatory parties to a collective agreement and the persons on whose behalf they acted are bound by the agreement and must ensure its application and respect its provisions for as long as the agreement remains in force. In certain countries the legislation expressly authorises damage suits by and against either party for breach of collective agreements.[221] In other countries the collective agreement has not the same effect in the case of employers as in that of workers; thus as regards the management of the undertaking the collective agreement constitutes a legal obligation, whereas in the case of the workers it constitutes moral and political obligations.[222]

122. *Binding effect as regards third parties who are employed in the undertaking.* The purpose of Paragraph 4 of the Recommendation is to solve the practical difficulties which may arise where an employer bound by a collective agreement has among his employees workers who are not members of the trade union which is a party to the agreement in question. In many countries the law expressly provides that an employer shall be bound by the terms of a collective agreement to which he is a party even as regards those of his workers who are not members of the contracting organisation.[223] Nevertheless in some cases this rule is only applicable if a certain proportion of the workers in the undertaking are members of the organisation having concluded the collective agreement [224], or if the collective agreement does not otherwise provide [225], or if it is specifically ordered by decision of the minister.[226]

123. In the absence of specific legislative provisions on this subject, the question of the extension of collective agreements to workers who are not members of the contracting organisations is frequently ensured either by arbitration awards or on an entirely voluntary basis by the employers themselves [227]; this practice may be subject to the right of the contracting parties to specify in the collective agreement that it shall be applicable only to members of the contracting organisations.[228]

124. In a certain number of countries the problem of the application of collective agreements to workers who are not members of the contracting organisations does not arise in view of the fact that the organisations are considered as representing all the workers employed in the undertaking in question; in some cases this is the result of a procedure of recognition in virtue of which any trade union may claim the quality of bargaining agent in a specified unit [229], and in other cases it is due to the legal monopoly of representation.[230]

125. *Effect of collective agreements on individual contracts.* The effect of collective agreements on the individual contracts of workers covered by a collective agreement varies from country to country. In some cases legislative provisions prescribe that the collective agreement is binding and constitutes an integral part of these contracts [231]; in other cases the law provides that any clause in a contract which is less favourable than a provision of a collective agreement shall be null and void and replaced by the corresponding provisions of the collective agreement.[232] In yet other cases the legislative provisions specify that the standard fixed by the collective agreements shall constitute minimum standards.[233] In certain cases the law does not prohibit clauses in an individual contract which are contrary to a collective agreement provided this is permitted by the agreement itself.[234]

126. Most countries recognise the validity of clauses in individual contracts which are more favourable than those in the collective agreement in so far as they relate to clauses specifying minimum standards

[220] For example Australia, Ireland, New Zealand, Union of South Africa.

[221] This is the case, in particular, in the United States (Labor-Management Relations Act of 1947, section 301).

[222] See for example Byelorussia, Ukraine, U.S.S.R.

[223] This is the case for example as regards the following *member States*: Argentina (Act No. 14250, section 1), Austria (Act of 26 February 1947, section 10), Canada (Industrial Relations and Disputes Investigation Act, 1948, section 18), Dominican Republic (Labour Act of 1951, section 109), Finland (Act No. 436 of 1946, section 4), France (Labour Code, First Book, Part II, section 31 *(e)*), Guatemala (Labour Code of 1947, section 50 *(b)*), Republic of Guinea (Act of 1942, section 72), Israel (Collective Bargaining Law of 1957, sections 15 and 16), Mexico (Labour Code of 1931, section 48), Netherlands (Decree of 5 November 1945, section 17), New Zealand as regards some cases (Government Service Tribunal Act of 1948 and Government Railway Act of 1949), Tunisia (Decree of 5 November 1949, section 2), and also as regards the following *non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(e)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.); Cameroons (Labour Code of 1952, section 72), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Magagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.).

[224] For example Costa Rica (Labour Code of 1943, section 55), Colombia (Labour Code of 1950, section 471), Japan (Law No. 174 of 1949, section 17), United Arab Republic (Egypt) (Act No. 97 of 1950, section 14).

[225] This is the case for example in the following *member States*: Ceylon (Act of 1950, section 8 (2)), France (Labour Code, Book I, section 31 *(e)*), Honduras (Decree of 29 August 1957, section 8), Morocco (Dahir of 17 April 1957, sections 5 and 13), Viet-Nam (Labour Code of 1956, section 73); and in the *non-metropolitan territories* indicated in footnote 223.

[226] For example Indonesia (Law No. 21 of 1954, section 11 (1)).

[227] For example Denmark, Federal Republic of Germany, Norway, United Kingdom.

[228] For example Belgium, India.

[229] For example India, United States.

[230] For example Bulgaria, Byelorussia (Labour Code, section 157), Poland (Act of 1 July 1949 respecting trade unions, section 5), Ukraine (Labour Code, section 157), U.S.S.R. (Labour Code, section 157).

[231] For example as regards *member States*: Argentina (Decree No. 2739, section 7), Austria (Act No. 76 of 1947, section 6), Brazil (Labour Code of 1943, section 444), Chile (Labour Code of 1931, section 18), France (Labour Code, Book I, section 31 *(e)*), Greece (Act No. 3239, section 3), Republic of Guinea (Labour Code, 1952, section 72), Israel (Collective Agreements Law, 1957, section 19), Morocco (Dahir of 17 April 1957, section 5); and as regards *non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(e)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.); Cameroons (Labour Code of 1952, section 72), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.)

[232] For example Finland (Act No. 436 of 1946, section 6), Federal Republic of Germany (Act of 9 April 1949, section 4), Honduras (Decree of 29 August 1957, section 8), Indonesia (Law No. 21 of 1954, section 9), Japan (Law No. 174 of 1949, section 16), Netherlands (Act of 24 December 1927, section 12, and Decree of 5 October 1945, section 17), Switzerland (Code of Obligations, section 323*bis*), Turkey (Code of Obligations, sections 311 and 316), United Arab Republic (Egypt) (Act No. 97 of 1950, section 9).

[233] For example Spain (Act of 24 April 1958, section 3).

[234] For example Denmark, Sweden (Act of 22 June 1928, section 4), Union of South Africa.

of protection.[235] Nevertheless a number of differences exist either in virtue of the collective agreements themselves or in virtue of legislative provisions. Some restrictions are due to provisions specifying that the parties to a collective agreement may specify that its clauses shall be considered as maximum standards, in which case the individual contracts may not of course contain any clause which is more favourable than those of the collective agreement [236], or to provisions specifying that the collective agreement may, by special clause, preclude any variations.[237] In some countries the legislative prohibition of inserting stipulations, in individual contracts, which are contrary to a collective agreement is interpreted as applying also to more favourable clauses.[238] Finally in one country the legislation specifically prohibits the insertion in contracts of conditions more favourable for the workers than those contained in an approved collective agreement.[239]

Extension of Collective Agreements.

127. Part IV of the Recommendation provides that, where appropriate, measures to be determined by national laws or regulations should be taken to extend all or certain stipulations of collective agreements so that they become generally binding on all the employers and workers included within the industrial and territorial scope of the agreements. According to the information available, the national legislation and regulations of a large number of countries provide for the extension of collective agreements to third parties who are not directly bound by them, usually by conferring on the government, a minister, or a special body, the power to make collective agreements generally binding for all the employers and all the workers falling within the occupational or territorial scope of the collective agreement in question.[240] In most cases the legislation prescribes conditions for extension which are in conformity with those prescribed in Paragraph 5 (2) of the Recommendation.

128. The most widespread of the required conditions relates to the representative character of the collective agreement, i.e. provisions requiring that the agreement should be of predominant importance in the opinion of the authorities [241], that it has been concluded by sufficiently representative organisations [242] or that it covers at least a given proportion of the workers and sometimes also of the employers in the trade and region concerned.[243]

129. In certain cases the procedure for the extension of collective agreements can only be initiated at the request of one of the parties to the collective agreement [244] or of both parties [245] and/or at the request of a representative organisation or joint body.[246] These provisions do not necessarily exclude the right of public authorities to initiate the procedure for the extension of collective agreements when this is considered desirable.[247] Application for the extension of an agreement may even, in one country, be made by any member of an association which is a party to the agreement.[248]

130. A third condition to the extension of collective agreements which exists in many countries and which is intended to safeguard the interests of third parties, is that the employers and workers to whom the agreement is to be made applicable by its exten-

[235] This is the case for example in the following *member States*: Argentina (Decree No. 2739, section 7), Austria (Act of 26 February 1947, section 2), France (Labour Code, Book I, section 31 *(e)*), Federal Republic of Germany (Act of 9 April 1949, section 4), Greece (Act No. 3239, section 3), Republic of Guinea (Act of 1952, section 72), Honduras (Decree of 29 August 1957, section 8), Morocco (Dahir of 17 April 1957, section 5), Switzerland (Code of Obligations, section 323 *quater*), United Arab Republic (Egypt) (Act No. 97 of 1950, section 9); and as regards *non-metropolitan territories: France:* Algeria (Labour Code, Book I, section 31 *(e)*), French Guiana (ibid.), Guadeloupe (ibid.), Martinique (ibid.), Réunion (ibid.); Cameroons (Labour Code of 1952, section 72), Comoro Islands (ibid.), French Equatorial Africa (ibid.), French Polynesia (ibid.), French Somaliland (ibid.), French West Africa (ibid.), Madagascar (ibid.), New Caledonia (ibid.), St. Pierre and Miquelon (ibid.), Togoland (ibid.).

[236] For example Japan.

[237] For example Israel (Collective Agreements Law of 1957, sections 21 and 22).

[238] For example Norway (Act of 5 May 1927, section 3 (3), Sweden (Act of 22 June 1928, section 3).

[239] Netherlands (Decree of 5 October 1945, section 17).

[240] For example *member States*: Austria (Act of 26 February 1947, section 14), Belgium (Legislative Decree of 9 June 1945), Brazil (Labour Code, section 612), Canada (Collective Agreements Act of Quebec), Ceylon (Industrial Disputes Act of 1950, section 10), Colombia (Labour Code of 1950, section 472), Costa Rica (Labour Code of 1943, section 63), Cuba (by special Presidential Decrees), France (Labour Code, Book I, Part II, section 31 *(f)*), Federal Republic of Germany (Act of 9 April 1949, section 5), Greece (Act No. 3239, section 5 (2)), Guatemala (Labour Code of 1947, section 54), India (Bombay Industrial Relations Act, section 114 and Central Provinces and Berar Industrial Disputes Settlement Act, section 54), Indonesia (Law No. 21 of 1954, section 11 (2)), Ireland (Industrial Relations Act 1946, section 26), Israel (Collective Agreements Law of 1957, section 25), Japan (Law No. 174 of 1949, section 18), Luxembourg (Grand Ducal Order of 6 October 1947, section 22), Mexico (Labour Code of 1931, section 58), Morocco (Dahir of 17 April 1957, section 23), Netherlands (Act of 25 May 1937 and Decree of 5 October 1945, section 12), New Zealand (Industrial Conciliation and Arbitration Act 1954, section 107), Portugal (Legislative Decree of 23 September 1933, section 33), Switzerland (Act of 28 September 1956), Tunisia (Decree of 5 November 1949, section 11), Union of South Africa (Act No. 36 of 1937, section 48); *non-metropolitan territories: France:* all non-metropolitan territories.

[241] For example Austria (Act of 26 February 1947, section 14), Canada (Collective Agreements Act of Quebec), Ireland (Industrial Relations Act of 1946, section 27 (3)), Israel (Collective Agreements Law of 1957, section 25), Union of South Africa (Act No. 36 of 1937, section 48 (2)).

[242] For example Belgium (Legislative Decree of 9 June 1945), Ceylon (Industrial Disputes Act of 1950, section 10), Tunisia (Decree of 5 November 1949, section 12).

[243] For example Colombia (Labour Code of 1950, section 472), Costa Rica (Labour Code of 1943, section 63 *(b)*), Federal Republic of Germany (Act of 9 April 1949, section 5), Greece —in certain cases—(Act No. 3239, section 5 (2)), Guatemala (Labour Code of 1947, section 54), Japan (Law No. 174 of 1949, section 18), Mexico (Labour Code of 1931, section 58), Morocco (Dahir of 17 April 1957, section 23), Netherlands (Act of 25 May 1957, section 2), New Zealand (Industrial Conciliation and Arbitration Act of 1954, section 106), Switzerland (Act of 28 September 1956, section 2 (3) subject however to certain exceptions), Uruguay (Act No. 9675 of 1937, section 2).

[244] For example Canada (Collective Agreements Act of Quebec), Ceylon (Industrial Disputes Act of 1950, section 10 (6)), Costa Rica (Labour Code of 1943, section 63 (D)), Federal Republic of Germany (Act of 9 April 1949, section 5), Ireland (Industrial Relations Act 1946, section 27), Israel (Collective Agreements Act 1957, section 25), Japan (Law No. 174 of 1949, section 18), Luxembourg (Grand Ducal Order of 6 October 1945, section 22), Morocco (Dahir of 17 April 1957, section 23), Tunisia (Decree of 5 November 1949, section 12).

[245] For example Switzerland (Act of 28 September 1956, section 1).

[246] For example Austria (Act No. 76 of 1947, section 14), Belgium (Legislative Decree of 9 June 1945, section 12), France (Labour Code, Book I, section 31 *(f)*), Netherlands (Act of 25 May 1937, section 4), Union of South Africa (Act No. 36 of 1937, section 48).

[247] For example *member States*: France (Labour Code, Book I, section 31 *(f)*), Israel (Collective Agreements Law of 1957, section 25), Morocco (Dahir of 17 April 1957, section 23); *non-metropolitan territories: France:* all non-metropolitan territories.

[248] New Zealand (Industrial Conciliation and Arbitration Act, 1954, sections 105 and 107).

sion be given an opportunity of submitting their observations. Thus, for example, it may be provided that the collective agreements in question should be published or posted up [249] or that a joint body should be consulted prior to extension.[250]

131. In a certain number of countries it has not been considered necessary to provide for the possible extension by legislation of the provisions of collective agreements to all workers and employers in a given industry or region. As a rule this is the result of the conception of collective agreements in these countries, where they are considered primarily as instruments for regulating terms of employment by direct negotiation and are not therefore appropriate for subsequent extension to persons who were not parties to the agreement.[251] This does not, of course, prevent the authorities from issuing regulations on conditions of work in a given branch of industry or region which are based on the collective agreements in force. Finally, effects similar to the legal extension of agreements are sometimes obtained by regulations concerning contracts placed by public authorities which provide that the undertakings affected must ensure for their workers wages and conditions of work that are not less favourable than those prescribed by the collective agreements in force for the industry or occupation in question.[252] It should be noted that this system also exists in certain countries side by side with the system for the extension of collective agreements, described above.[253]

132. In a certain number of cases, no measures exist as regards the extension of collective agreements and this is due to the fact that the provisions set out in these collective agreements do not constitute so much a set of standards applicable to all undertakings as a system of mutual obligations assumed by the management and the representatives of the workers in a given undertaking, in which due account is taken of the special problems and requirements of the said undertaking.[254]

C. Application of Collective Agreements

133. Part V of the Recommendation provides for an appropriate procedure for the settlement of disputes arising out of the interpretation of a collective agreement; Part VI of the Recommendation provides that the supervision of the application of collective agreements should be ensured by the parties to the agreement or by the bodies existing in each country for this purpose, or by bodies established *ad hoc*; finally, Part VII of the Recommendation deals with measures of publicity, registration and the minimum duration of collective agreements. The information available with regard to these measures will be examined below.

Interpretation of Collective Agreements.

134. According to the Recommendation a procedure for the settlement of disputes arising out of the interpretation of collective agreements should be established by agreement between the parties or by law. As in the case of collective bargaining machinery, the fact that the procedure for the settlement of disputes arising out of the interpretation of a collective agreement may be established either by agreement between the parties or by legislation does not mean that either of these methods should be adopted in a given country to the exclusion of the other. In this respect also there are many countries in which the two systems are to be found side by side. Nevertheless, the part played by statutory procedures seems to vary considerably: it may merely encourage the setting up of a voluntary contractual procedure or it may provide for the establishment of conciliation and arbitration boards, labour courts or other machinery.

135. It is usual for collective agreements themselves to contain clauses for the adjustment of disputes regarding their interpretation generally; by these provisions the parties may even undertake to accept the awards on such legal disputes handed down by the bodies established for this purpose by mutual agreement. While in certain countries this disputes machinery is set up entirely voluntarily by the parties [255], in others legislative provisions require each collective agreement to provide for the settlement of disputes concerning interpretation.[256] Nevertheless even in the countries where disputes are generally settled through contractual disputes machinery, it has often been found useful to provide other machinery to which recourse may be had as a last resort and after resort to the contractual machinery [257]; this procedure takes the form of mediation, conciliation or arbitration.

136. In a fairly large number of other countries, the settlement of disputes regarding the interpretation of collective agreements is ensured by the establishment of labour courts or other machinery performing similar functions.[258] As in the above-mentioned case,

[249] For example *member States*: Austria (Act of 26 February 1947, section 14), Canada (Collective Agreements Act of Quebec), Ceylon (Industrial Disputes Act of 1950, section 10 (4)), Costa Rica (Labour Code of 1943, section 63 (D)), France (Labour Code, Book I, Part II, section 31 *(k)*), Guatemala (Labour Code of 1947, section 54), Ireland (Industrial Relations Act of 1946, section 27), Israel (Collective Agreements Law of 1957, section 26), Mexico (Labour Code of 1931, sections 59 and 61), Morocco (Dahir of 17 April 1957, section 24), Netherlands (Act of 25 May 1937, section 4), Switzerland (Act of 28 September 1956, section 9), Viet-Nam (Labour Code of 1956, section 86); *non-metropolitan territories: France:* all non-metropolitan territories.

[250] For example Federal Republic of Germany (Act of 9 April 1949, section 5), Greece (Act No. 3239, sections 5 (2) and 28), Tunisia (Decree of 5 November 1939, section 12).

[251] See for example Canada (excluding Quebec), Finland, Norway, Sweden, United Kingdom (except in individual cases), United States.

[252] For example United Kingdom and many non-metropolitan territories for whose international relations the United Kingdom is responsible.

[253] For example France and many non-metropolitan territories for whose international relations France is responsible.

[254] For example Byelorussia, Ukraine, U.S.S.R.

[255] For example Ceylon, Denmark, Federal Republic of Germany, India, Japan as regards private industry, Luxembourg, New Zealand, Norway, United Kingdom, United States, Viet-Nam.

[256] For example *member States*: Canada (Industrial Relations and Disputes Investigation Act 1948, section 19), France —as regards collective agreements liable to extension—(Labour Code, Book I, section 31 (2)), Republic of Guinea, Japan—as regards public corporations, etc.—(Law No. 257 of 1948, section 19), Thailand (Act of 1 November 1956, section 114), Tunisia (Decree of 5 November 1949, section 16); *non-metropolitan territories: France:* all non-metropolitan territories.

[257] For example Israel (Settlement of Labour Disputes Law 1957), Luxembourg (Grand Ducal Order of 6 October 1945, section 27), United States (Labor-Management Relations Act, 1947, section 204). United Kingdom (Industrial Disputes Act 1951, Industrial Courts Act 1919, Conciliation Act 1896).

[258] For example Argentina (Act No. 14250, Ch. II), Brazil (Labour Code of 1943, section 625), Chile (Labour Code of 1931, Book IV), Costa Rica (Labour Code of 1943, section 497), Finland (Act No. 437 of 1946), Federal Republic of Germany (Act of 3 September 1953, section 2), Mexico (Labour Code of 1931, section 336), Sweden (Act of 22 June 1928, section 11), Turkey (Act of 30 January 1950).

the labour courts frequently may not hear actions until negotiation through the contractual procedure has proved unfruitful.

137. In countries where these matters are governed by statute law, the ordinary courts are not always called upon to play the same part; it appears from the information available that this procedure is only one of various methods of settling disputes. In general, it is utilised mainly for settling individual disputes [259], but in some countries the ordinary courts may be required to settle collective disputes even if the legislation grants certain immunities to the organisations involved.[260]

138. In a certain number of countries it is usual for the competent minister or the labour departments to give interpretations on questions concerning the application of collective agreements.[261]

139. In certain cases where a special procedure has been established as regards collective agreements having been extended and having acquired force of law, questions of interpretation may either be brought before the ordinary courts [262] or may fall within the jurisdiction of the labour courts.[263]

Supervision of the Application of Collective Agreements.

140. Part VI of the Recommendation provides that the supervision of the application of collective agreements should be ensured by the parties themselves or by bodies already existing or established for this purpose.

141. It appears from the reports that in many countries the parties to collective agreements are alone responsible for the supervision of their application, whether they act directly or through machinery set up by them for this purpose.[264] In other cases, in addition to the supervision exercised by the parties themselves, the control of the application of collective agreements is ensured by the labour department or ministry concerned [265], by the inspection services [266] or by a special service set up for this purpose [267]; such supervision by official bodies may, however, be subject to a specific request by the parties.[268]

142. Special mention should be made of the case of collective agreements having been given force of law. There are countries in which, even for such agreements, the parties bear the full responsibility for ensuring their application [269], but in others the supervision of the application of extended agreements, as opposed to that of agreements valid only as regards their signatories, is always entrusted to official bodies.[270]

Miscellaneous.

143. Part VII of the Recommendation deals with the publicising, registration and minimum duration of collective agreements. These provisions were intended to serve as examples to governments of the measures of application which might usefully be adopted. As the Recommendation refers specifically in this connection to action through national laws and regulations, no mention is made below of the many countries where similar results are obtained through contractual measures or by the prevailing practice.

144. The attention of workers is frequently drawn to the collective agreement applicable in their undertaking by the posting up of the text of the collective agreement in question or of a statement that the collective agreement is applicable and may be consulted on the premises, this measure being required by law.[271] The registration or deposit of collective agreements is required by the national legislation in the great majority of countries [272] although special reference is not made in all cases to registration of subsequent changes made in agreements. Occasionally the relevant legislative provisions refer only to collective agreements having been given force of law [273]

[259] For example Belgium.

[260] For example *member States*: Netherlands, Sweden (Collective Agreements Act of 1928, section 8), United States (Labor-Management Relations Act of 1947, section 301); *non-metropolitan territories: United States:* Alaska, Hawaii, Puerto Rico, Virgin Islands.

[261] For example Ceylon (Industrial Disputes Act, 1950, section 10 *(a)*), Cuba, Greece, Spain, Uruguay (Decree of 26 February 1946).

[262] For example Union of South Africa.

[263] For example Ireland (section 33 of Industrial Relations Act, 1946).

[264] For example Belgium, Canada, Federal Republic of Germany, Greece, Japan, Iceland, Norway, Sweden, Switzerland (Code of Obligations, sections 322*bis* and 323*ter*), United Kingdom, United States.

[265] For example Ceylon (Industrial Disputes Act, 1950, sections 41 and 44), Chile, Cuba, Dominican Republic (Labour Code of 1951, sections 390 and 391), Spain, United Arab Republic (Egypt).

[266] For example Austria (Act No. 147/1957, section 3), Guatemala (Labour Code of 1947, section 278), Luxembourg (Grand Ducal Order of 6 October 1945, section 28), New Zealand (Industrial Conciliation and Arbitration Act, 1954, sections 199 et seq.).

[267] For example Netherlands.

[268] For example Morocco (Dahir of 17 April 1957, section 21), Union of South Africa (Act No. 36 of 1937, section 62).

[269] For example Switzerland.

[270] For example Belgium (Legislative Decree of 9 June 1945, section 14), Canada (Collective Agreements Act of Quebec), France (Labour Code, Book I, Part II), section 31 *(y)*), Ireland (Industrial Relations Act, 1946, section 32 (1)).

[271] For example Austria (Act of 26 February 1947, sections 7 and 8), Ceylon (Industrial Disputes Act of 1950, section 10 *(b)*), Dominican Republic (Labour Code of 1951, section 104), Finland (Act No. 436 of 1946, section 12), France (Labour Code, Book I, section 31 *(u)*), Federal Republic of Germany (Act of 9 April 1949, section 7), Honduras (Decree of 29 August 1957, section 12), Morocco (Dahir of 17 April 1957, section 6), New Zealand (Industrial Conciliation and Arbitration Act, 1954, section 183), Union of South Africa (Act No. 36 of 1937, section 58 *(c)*).

[272] For example *member States*: Argentina (Decree No. 6582/1954, section 5), Austria (Act of 26 February 1944, section 7), Brazil (Labour Code of 1943, section 613), Canada (Industrial Relations and Disputes Investigation Act, 1948, section 52), Ceylon (Industrial Disputes Act, 1950, section 6), Chile (Labour Code of 1931, section 19), Colombia (Labour Code of 1950, section 469), Costa Rica (Labour Code of 1943, section 57), Cuba (Decree No. 446 of 1934, sections II and IV, and Decree No. 798 of 1938, section 86), Dominican Republic (Labour Code of 1951, section 104), Finland (Act No. 436 of 1946, section 2), France (Labour Code, Book I, section 31 *(d)*), Federal Republic of Germany (Act of 9 April 1949, section 6), Greece (Act No. 3239, section 2), Guatemala (Labour Code of 1947, section 52), Honduras (Decree of 29 August 1957, section 5), India (Central Industrial Disputes Act, 1947, section 2 *(p)*, and Relevant Rule of the Corresponding Rules of 1957, section 75), Indonesia (Government Order No. 49/1954, section 5), Israel (Collective Agreements Law, 1957, section 10), Mexico (Labour Code of 1931, section 45), Morocco (Dahir of 17 April 1957, section 3), Netherlands (Decree of 5 October 1945, section 13), Nicaragua (Labour Code of 1945, section 25), Norway (Act of 5 May, 1927, section 3), Pakistan (Industrial Disputes Act, 1947, section 2 *(p)*), Philippines (Act of 17 June 1953, section 19), Portugal (Legislative Decree of 6 March 1947, section 28), Spain (Act of 28 April 1958, Tunisia (Decree of 5 November 1949, section 21), United Arab Republic (Egypt) (Act No. 97 of 1950, section 4), Viet-Nam (Labour Code of 1956, section 83); *non-metropolitan territories: France:* all non-metropolitan territories.

[273] For example Belgium (Legislative Order of 9 June 1945, section 14), Ireland (Industrial Relations Act, 1946, section 26).

or to collective agreements concluded in accordance with a specified procedure or in a given branch.[274]

145. The national legislation prescribes in some cases the minimum period—varying between six months and three years—during which collective agreements should be deemed to be binding in the absence of any provision on this subject in the agreement itself.[275] Similar effects are obtained by legislative provisions fixing a long period of notice [276], or authorising suspension of the legal effect of notices.[277]

D. Consultation and Collaboration with Employers' and Workers' Organisations

146. The Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) provides, in Article 4, that all practicable measures shall be taken to consult and associate the representatives of employers' and workers' organisations in the establishment and working of arrangements for the protection of workers and the application of labour legislation. Since the two other Conventions selected by the Governing Body of the I.L.O., on which reports were due this year under article 19 of the Constitution, do not contain any similar provisions, the only information available relates, therefore, to non-metropolitan territories. Nevertheless, the Committee noted with interest that the more general problem of collaboration between the public authorities and employers' and workers' organisations on the industrial and national level has been included in the agenda of the 43rd Session of the Conference, to which the present report will also be submitted. Moreover, a number of Conventions of general application, adopted by the Conference since 1919, provide for consultation of employers' and workers' organisations as regards certain points and collaboration with these organisations in some cases: this is the case, in particular, of the Conventions concerning minimum wage-fixing machinery in regard to which the Committee was called upon to submit general remarks in 1958.[278]

147. It appears from the information available that in the majority of non-metropolitan territories, the employers' and workers' organisations or their representatives are consulted on most of the questions regarding the protection of workers and are associated in the application of the measures adopted for this purpose. The manner in which such consultation and collaboration is ensured varies from territory to territory.

148. In a large number of territories [279] the methods of collaboration of the public authorities with employers and workers developed in an arbitrary manner; originally this collaboration occurred in connection with the setting up of minimum wage-fixing machinery and in accordance with the local conditions and requirements. It was only at a later date that labour advisory boards were instituted: the representatives of employers and the representatives of workers or of their respective organisations, if any exist, meet in equal numbers and on equal terms. The competence of the advisory boards varies considerably from territory to territory and in the light of the social development and constitutional situation in each territory.

149. In other territories the labour legislation provides for the setting up of various committees, boards and councils.[280] Thus, in each territory there are " labour advisory committees " composed of equal numbers of representatives of employers and workers. The competence of these committees is of a general character; in some cases they must necessarily be consulted by the governments on draft regulations by which the application of labour legislation is to be ensured. In addition there are also technical advisory committees which examine industrial health and safety problems, and in which employers and workers are represented on equal terms, together with technical experts acting in an advisory capacity. Finally, in these territories the collaboration of representatives of employers and workers in the application of measures for the protection of workers is ensured in particular within the tripartite boards of the manpower offices, and in special courts, such as labour tribunals [281], which are required to settle individual disputes.

150. In some territories the consultation of employers' and workers' organisations is ensured at the prelegislative stage when the competent parliamentary committees give a hearing to all the persons concerned.[282]

151. It appears from the information available that the question of collaboration between the public authorities and employers' and workers' organisations, particularly when it is necessary to associate these organisations in the application of protective measures, is closely linked with that of determining the organisations to be regarded as representative. It follows that if the selection of the organisations which are to be called upon to collaborate in applying measures for the protection of workers is made in an arbitrary fashion, the trade union rights of workers and employers, or of some of them, may be adversely affected. It would, therefore, seem that neither the manner in which such collaboration between the public authorities and employers' and workers' organisations is effected, nor the rules drawn up in this connection, should be such as to impair the principle of freedom of association and protection of the right to organise.

[274] For example Australia (Conciliation and Arbitration Act, section 175), Haiti (Act of 23 October 1947, section 3), New Zealand (Industrial Conciliation and Arbitration Act, 1954, section 103 (6)), Union of South Africa (Act No. 36 of 1937, section 31), United States (Railway Labor Act, section 5).

[275] For example Argentina (Legislative Decree No. 2739/1956, section 8), Canada (Industrial Relations and Disputes Investigation Act, 1948, section 20), Colombia (Labour Code of 1950, section 477), Costa Rica (Labour Code of 1943, section 58), Guatemala (Labour Code of 1947, section 53), India (Industrial Disputes Act, section 19 (2)), Israel (Collective Agreements Law, 1957, section 14), Netherlands (Act of 24 December 1927, section 19), Norway (Act of 5 May 1927, section 3), Pakistan (Industrial Disputes Act, 1947, sections 2 *(p)* and 19 (2)), Spain (Act of 24 April, 1958, section 12), Switzerland (Code of Obligations, section 322*ter*), Turkey (Code of Obligations, sections 316-317).

[276] For example Finland (Act 436 of 1946, section 3).

[277] For example Greece (Act No. 323, section 4).

[278] I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 42nd Session, Geneva, 1958 (Geneva, 1959), pp. 106 ff.

[279] This is the case, in particular, in a large number of territories for whose international relations the United Kingdom is responsible.

[280] For example *France*: Cameroons (Labour Code of 1952, sections 145 et seq.), Comoro Islands, French Equatorial Africa, French Polynesia, French Somaliland, French West Africa, Madagascar, New Caledonia, St. Pierre and Miquelon, Togoland.

[281] These courts consist of a chairman and two assessors representing employers, and two representing workers.

[282] This appears to be the case in a certain number of nonmetropolitan territories for whose international relations the United States is responsible.

Conclusions

152. The scope of the general conclusions which can be drawn from the information available to the Committee is evidently different in respect of questions relating to collective bargaining and collective agreements, on the one hand, and questions relating to freedom of association and protection of the right to organise, on the other.

153. The voluntary negotiation of collective agreements is one of the essential means open to workers and employers and their respective organisations of " furthering and defending " their interests. The study of these questions, therefore, is the natural outcome of any study of freedom of association and protection of the right to organise. It is from this aspect and having regard to the contents of the other instruments which were selected by the Governing Body for reports under article 19 of the Constitution that the Committee has viewed this problem. Admittedly, the examination of the situation in the different countries in the field of collective bargaining and collective agreements might have been carried out from a different angle: the voluntary negotiation of collective agreements may also be regarded as a point of departure for a study of the problem of labour-management relations. Such a study, supplementing the examination made by the Committee this year, would certainly give a fuller and more precise picture of the situation in the different countries with regard to collective bargaining. It would nevertheless appear that, in order to make it possible to carry out an examination in this way, it would be necessary that the information furnished by the governments should not be limited to information amounting, in essence, to a description of the legislation in force, as was the case, with a few exceptions, both in 1956 and this year.

154. One case cited from the information available gives a striking example of the difference which may exist, in respect of voluntary negotiation of collective agreements, between the situation of law and the situation of fact in the different countries: thus, in one country [283], in which the legislation has for many years contained very detailed provisions concerning collective agreements, it would seem that the first collective agreement to be concluded did not enter into force until 1957; in another country [284], on the other hand, in which the legislation contains only a very few provisions dealing with this question, 125,000 collective agreements protecting 17 million workers were in force in 1956. That is why the Committee expresses the hope that, if it should in the future be asked to undertake a new examination of this question, a special appeal will be addressed to governments urging that the information which they furnish should not be limited to a description of their law but should also include as many data as possible with respect to the factual position: statistics (number of collective agreements in force and number of workers to whom they are applicable), factors which favour or hinder the development of collective agreements, reasons which militate in favour of the system of bargaining in operation in the country concerned, attitude of the parties, etc.

155. In the field of freedom of association and protection of the right to organise, the Committee has already had occasion to emphasise on several occasions, and especially in its General Remarks in 1957, that actual practice is of exceptional importance, inasmuch as such practice necessarily reflects the more general background of the civil and political liberties enjoyed by the inhabitants of a country. In this connection, the Committee has noted with interest that, pursuant to a decision of the Governing Body, a study of the practice in respect of freedom of association in the various States Members of the Organisation has just been embarked upon by the I.L.O., which will also be responsible for maintaining up-to-date documentation on these matters. It has also noted with interest that the Human Rights Commission of the United Nations has undertaken to assemble documentation on the legislation and practice of the different States in respect of the various rights enunciated in the Universal Declaration of Human Rights.

156. The general survey which the Committee has made this year reveals the importance, in all countries, of maintaining the " rule of law ", which alone can ensure respect for fundamental human rights. This is essential, irrespective of the nature of the political, economic and social system.

157. Whenever the information available has permitted it to follow such a course, the Committee has not contented itself with examining merely the legislation relating to trade unions and to associations. In fact, as is laid down in Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it is necessary that the law of the land and not only the law relating to trade unions and associations should not impair the guarantees provided for. In this connection, it appears to the Committee that it would be extremely useful for separate studies to be undertaken of certain more general aspects of the legislation of the different countries, and also on certain particular aspects of such legislation, in respect of trade union organisations, including, for example, the holding of their general assemblies and meetings, the rules applicable to their administration, the election of their representatives and leaders, etc. Such research, which might usefully be supplemented by a study of the decisions of the courts or other tribunals, in the different countries considered, in respect of freedom of association and protection of the right to organise, would constitute a very useful addition to the work of the Committee.

158. The successive examinations made by the Committee since 1953 of the different Conventions dealing with freedom of association and protection of the right to organise have enabled it to observe that progress (frequently of a very substantial nature) has been realised or is in process of being realised, in applying the rights and guarantees laid down in these Conventions.

159. If one considers, for instance, the number of States which have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), it is to be observed that in the last few years the number of ratifications of these Conventions has increased considerably. In 1953, when the Committee was called upon for the first time to examine reports furnished on Convention No. 87 under Article 19 of the Constitution, 14 ratifications had been registered; now, the number of ratifications is 36. In 1953 Convention No. 98 had received only 11 ratifications; the number has now risen to 40. Admittedly, these ratification figures do not always exactly reflect the situation, because the legislation is not always in complete

[283] Dominican Republic.

[284] United States.

conformity with the Conventions. The Committee has nevertheless noted with satisfaction that, in respect of a certain number of countries where the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), is in force, no modifications of national law and practice have been necessary as a result of ratification. Further, among the States in respect of which the Committee has had to point out that certain legislative provisions did not appear to be in conformity with the Convention, the difficulties in question relate in certain cases to relatively small categories of workers: most usually, public officials. In this connection, the Committee has noted with satisfaction that in several of these countries—this is the case, it would seem, in Mexico and Pakistan—the difficulties encountered are being resolved and the governments concerned are now studying new legislative provisions intended to ensure fuller application of the Conventions.

160. It is also interesting to observe that among the States which in 1957 had not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), there are some which, since then, have ratified the Convention and have amended certain provisions in their legislation in order to make them conform more fully to the Convention. This is the case, for example, in Honduras, where the requirement of previous authorisation formerly imposed on organisations as a condition for affiliation with international organisations has been abolished.

161. Progress, sometimes substantial, can also be observed in the case of States which have not yet ratified the Convention. In this connection, it is interesting to note that a fairly large number of States indicate that they are contemplating ratifying the Convention or even, in certain cases, that they have already initiated the domestic procedure to this end: this is the case, for example, in respect of Colombia, Costa Rica, Ecuador, Greece, Iran and Japan. Other countries, on the other hand, indicate that they are encountering certain difficulties and that they cannot, at least for the moment, contemplate ratification. This is the case, for example, of India, Indonesia, the Federation of Malaya (which refers in this connection to the state of emergency in the country) and Morocco (by reason of the fact, as is pointed out in the report, that the establishment of trade union organisations is subject to a certain degree of control by the Government). In a fairly considerable number of cases, it is interesting to observe that, irrespective of the intentions of the government with regard to ratification of this Convention, amendments have already been made to existing legislation, or are on the point of being made, for the purpose of rendering the national legislative situation more in accordance with international standards. Thus, in Ceylon, the Government is studying amendments to the Trade Unions Ordinance in order to render more flexible the regulations applicable to organisations of public officials. Likewise in Haiti and Viet-Nam, draft legislation intended to ensure greater freedom for trade union organisations is being studied. Finally, in a number of countries in which the legislation does not seem to contain any provisions incompatible with the guarantees prescribed in the Conventions under review, the governments are giving attention to supplementing the existing legislation on collective negotiations: this is the case, for example, in Switzerland, where new legislation relating to collective agreements was recently adopted, and in Luxembourg, where the Government is studying legislative provisions relating to the right to strike and to the exercise of this right.

162. An equally striking example of the considerable increase in the geographical field of application 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), is furnished by the increase in the number of non-metropolitan territories to which these Conventions have become applicable, since 1953, without modification. In 1953 the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was applicable without modification only to six non-metropolitan territories; it is now applicable without modification to 27 non-metropolitan territories, to which it would appear proper to add six or seven other territories in respect of which, although the Convention has been declared applicable with modifications, the modifications appear to relate only to formal matters and are not likely to infringe the rights and guarantees laid down in the Convention.[285] Moreover, the Committee has observed with interest that, in the case of the territories to which the Convention has not yet been declared applicable, the legislation, in a fairly considerable number of instances, does not appear to contain any provision incompatible with the rights and guarantees laid down in the Convention. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which, in 1953, was applicable without modification only to three non-metropolitan territories, is now applicable without modification to 23 non-metropolitan territories.

163. All this progress, which has been realised in a relatively short period, constitutes an encouragement to the work accomplished by the International Labour Organisation: the Conference itself has emphasised on several occasions that this work can assume its full significance only if freedom of association is effectively ensured and if governments take the necessary measures to repeal or amend legislative provisions which infringe or are likely to infringe the rights of workers, employers and their respective organisations. The Committee has noted with satisfaction that appreciable results have already been achieved in this connection and that, in numerous cases, the governments indicate that they are endeavouring to continue their activities in this direction.

[285] This is the case, it would seem, with regard to the following territories: *United Kingdom*: Basutoland, Bechuanaland, British Honduras, Grenada, Swaziland.

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Report III
(Part 4B)

Freedom of Association and Collective Bargaining

General Survey by the Committee of Experts on the Application of Conventions and Recommendations

International Labour Office Geneva

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practically at any time. There are also countries where the legislation contains provisions relating to the investigation by the authorities of union finances or of internal union matters in general. In such cases the authorities are empowered to intervene when they presume that certain irregularities have occurred or when they have received complaints from union members in this connection.[1]

104. Supervision by the public authorities of union finances should not normally exceed the periodic reporting requirements established in many countries. Inspection and furnishing of information whenever requested by the authorities at their discretion entail a danger of interference in the internal administration of trade unions which may be of such a nature as to restrict the guarantees of the Convention. Investigatory measures should be restricted to exceptional cases, when they are justified by especial circumstances such as presumed irregularities resulting from annual statements or reported by members of the trade union. As the Committee had already stated [2] there is a certain measure of guarantee against undue interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where he himself is subject to the control of the judicial authorities. These guarantees, however, do not always exist where the supervision is exercised by the administrative labour services or where no judicial control exists. The general principle concerning the judicial control of internal acts of an occupational organisation in order to ensure an impartial and objective procedure is particularly relevant in regard to the administration of trade union property and finances.

Activities and Programmes

105. In the main, workers' and employers' organisations have the right to organise their activities and to formulate their programmes in freedom, and in several countries the legislation enumerates extensively the various types of activities which such organisations may develop. This does not exclude, however, certain legal restrictions imposed in a number of countries on some of their activities, specifically occupational or otherwise, or the existence, in exceptional cases, of general provisions which may be applied in such a manner as to impair the guarantees provided for in the Convention.[3] Restrictions on activities which are not of an occupational character, such as commercial or religious activities, may result from special provisions to this effect [4] or from the legal definition of the objects of a trade union, which confines these objects to the study and defence of the economic, industrial, commercial and agricultural interests of their members and is understood to prohibit any activity of an exclusively lucrative nature.[5] This kind of restriction, where it exists, does not

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s. 57), Nigeria (Trade Unions Ordinance, s. 28), Singapore (Trade Unions Ordinance, ss. 44 and 45), Trinidad and Tobago (Trade Unions Ordinance, s. 16).

[1] For example, Argentina (Decree No. 969 of 1966, s. 12, as amended by Decree No. 2477 of 1970), Barbados (Trade Union Act, s. 35), United Kingdom (Industrial Relations Act, 1971, s. 83).

[2] RCE, *General Survey,* 1959, para. 64.

[3] For example, when the legislation provides that trade unions shall subordinate their respective interests to the interests of the national economic system, in co-operation with the State and the higher organs of production and labour (Portugal, Legislative Decree No. 23055 of 1933, s. 9). See also, in this connection, Committee on Freedom of Association, 113th Report, Case No. 266 (Portugal), para. 54.

[4] With regard to commercial activities, for example, Colombia (Labour Code, ss. 355 and 379), Costa Rica (Labour Code, s. 280), Guatemala (Labour Code, s. 226). With regard to religious activities, for example, Colombia (Labour Code, s. 379), Ecuador (Act No. 70-05), Paraguay (Labour Code, s. 302).

[5] For example, France (Labour Code, Book IV, s. L.411-1).

appear to constitute an obstacle to the furthering and defending of the interests of workers and employers by their organisations. As regards the prohibition of commercial activities, the situation may deserve re-examination in the light of the development of trade union activities in general. In any case restrictions of this type should not prevent trade unions from promoting and developing, for example, producers' and consumers' co-operatives.[1]

106. With regard to activities which have an occupational character or are closely connected with the furtherance of the social and economic interests of workers and employers, there are certain restrictions which merit special consideration, namely those concerning collective bargaining (which will be examined in the relevant chapter), the right to strike and political activities.

107. The right to strike is subject to restrictions in many countries, but the scope and severity of these restrictions may vary to a considerable extent, ranging from temporary prohibition and prohibition for only certain categories of workers, to prohibition of a general character applicable to all workers. A general prohibition of strikes may result from specific provisions in the law[2], and it may also result, for all practical purposes, from the cumulative effect of the provisions relating to the established dispute settlement machinery, according to which labour disputes are channelled through compulsory conciliation and arbitration procedures leading to a final award or decision which is binding on the parties concerned.[3] A similar situation may arise in cases where in the absence of an agreement reached by the parties, disputes can be settled by compulsory arbitration or decision at the discretion of the public authorities.[4] Severe restrictions may also occur where the procedure to be followed before a strike can be called is so cumbersome that in practice lawful strike action becomes almost impossible; the effect of restrictions of this kind is accentuated where the workers have not yet been able to develop strong and experienced organisations. 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 organise their activities (Article 3); it should be recalled, in this connection, that Article 8 of the Convention establishes that the law of the land shall not be such as to impair nor shall it be so applied as to

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[1] See, in this connection, the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127), Paragraph 16.

[2] For example, Portugal (Legislative Decree No. 23870 of 1934).

[3] For example, Brazil (Act No. 4330 of 1964, ss. 10, 23 and 25, Consolidated Labour Laws, s. 872), Cuba (Act No. 1022 of 1962, s. 36), Dominican Republic (Labour Code, ss. 374, 377, 633 and 655), Haiti (Labour Code, ss. 190, 191, 192, 197, 199 and 210), Iran (Labour Code, Chapter IX), Libyan Arab Republic Labour Law, ss. 143 and 146), Mali (Labour Code, ss. 268, 269, 274, 278 and 280), Paraguay (Labour Code, ss. 284, 296, 302 and 308), Peru (Supreme Decree of 8 August 1956, s. 2, Supreme Decree No. 009 of 1963 and Supreme Decree No. 006-71-TR of 1971), Spain (Decree No. 1376 of 1970), Tanzania (Tanganyika) (Permanent Labour Tribunal Act, 1967), Zambia (Industrial Relations Act, 1971).

The situation is somewhat different in the USSR, where the Labour Code of the RSFSR establishes (s. 10) that disputes between the management of an undertaking and the trade union committee concerned arising on the occasion of the conclusion of a collective agreement shall be settled by the higher economic and trade union organs, with the participation of the parties.

[4] For example, Ethiopia (Labour Relations Proclamation, ss. 2 and 18), India (Industrial Disputes Act, 1947, ss. 10 and 23), Malaysia (Essential (Industrial Relations) Regulation 1969), Mauritania (Labour Code, Book IV, ss. 40 and 48), Nigeria (Trade Disputes (Emergency Provisions) Decree, 1968 and Trade Disputes (Emergency Provisions) (Amendment), Decree, 1969), Singapore (Industrial Relations Ordinance, 1960), Sri Lanka (Industrial Disputes Act, 1950, s. 4, as amended by Act No. 62 of 1957).

impair the guarantees provided for in the Convention, including the right of trade unions to organise their activities.

108. The situation is different where the law only imposes a temporary prohibition on strikes, as for example, during the conciliation and arbitration procedure, or during a cooling-off period, or before the lapse of a period of strike notice, or during the currency of a collective agreement. Restrictions of this type exist in several countries and they have usually been accepted by the Committee on Freedom of Association, with the proviso that the conditions which have to be fulfilled, under the law, in order to render a strike lawful, should be reasonable and, in any event, not such as to place a substantial limitation on the means of action open to trade union organisations.[1]

109. The situation may also be different where the right to strike is denied to a certain category of workers, especially public servants and workers in essential services. 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. While in many countries they are prevented from going on strike, in others their right to strike is recognised.[2] Strikes in essential services are also forbidden in a number of countries, although in certain cases the prohibition depends on whether the authorities decide to refer any unsettled dispute in this sector to compulsory arbitration. The concept of essential services may vary according to national legislation, and sometimes this term is used in a wide sense including such activities as the production, supply and distribution of fuel, dockwork, public transport, markets, agriculture, or all other activities which the government may consider appropriate.[3] 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.[4]

110. In certain countries strikes may be prohibited if the authorities consider that they may be prejudicial to the public order or to the general interest, or may affect economic development.[5] Provisions drafted in such general terms entail the risk of being applied in a wide range of circumstances and not only in cases of real emergency, thus creating an obstacle in the free organisation of trade union activities.

111. 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, such as adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can participate at all stages and in which the awards are binding on both parties and are fully and promptly implemented.

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[1] See, for example, Committee on Freedom of Association, 58th Report, Case No. 192 (Argentina), para. 445; 92nd Report, Case No. 454 (Honduras), para. 185.

[2] This appears to be the case, for example, in Dahomey, France, Italy, Ivory Coast, Mexico, Norway, Senegal, Sweden, Togo.

[3] See, for example, Colombia (Labour Code, s. 430), Costa Rica (Labour Code, s. 369), Kenya (Trade Disputes Act, 1965), Malawi (Trade Disputes (Arbitration and Settlement) Ordinance), Pakistan (Industrial Relations Ordinance, 1969), Sierra Leone (The Regulation of Wages and Industrial Relations Act, 1971), Trinidad and Tobago (Industrial Relations Act, 1972), Uganda (Trade Disputes (Arbitration and Settlement) Act, 1964).

[4] See, for example, Committee on Freedom of Association, 74th Report, Case No. 363 (Colombia), para. 230.

[5] See, for example, Argentina (Act No. 16939 of 1966), Chile (Act No. 12927 of 1958), Ivory Coast (Labour Code, s. 183), Mali (Labour Code, s. 278), Pakistan (Industrial Relations Ordinance, 1969, s. 32, as amended), Senegal (Labour Code, s. 238), Tunisia (Labour Code, s. 387).

112. Finally, there is the special situation in some countries where trade unions, having voluntarily decided to register with the authorities (which in turn entitles them to use the state machinery for the settlement of labour disputes by means of conciliation and arbitration proceedings with binding awards), are not allowed to strike if a strike ban has been included in an award or where they are bound by the terms of an award.[1]

113. In several countries the legislation provides for certain restrictions on the political activities of occupational organisations, or such activities may be completely prohibited. In some cases [2], trade unions are not allowed to make financial contributions to a political party or to persons running for political office. More often, however, the law contains a flat prohibition for the organisations to engage in party politics [3] or in any political activity whatsoever.[4] The extent of such prohibition depends on the interpretation given to the term political activity and on the practical application of the legislation. As the Committee has already indicated on previous occasions, such provisions of a general scope and referring especially to occupational organisations, may, by establishing a prohibition *a priori*, raise difficulties by reason of the fact that the interpretation given to them in practice may change at any moment and restrict considerably the possibility of action of the organisations.[5] A general prohibition of political activities of any kind is not only incompatible with the principles and guarantees of the Convention, but it would also seem to be unrealistic as regards its application in actual practice. Trade unions may wish to make publicly known their position on matters of economic and social policy which affect their members or even decide to give support to a political party as a means towards the advancement of their economic and social objectives. It is important, however, that when trade unions—at the decision of their members—undertake or associate themselves with political action for these purposes, this action shall not be "of such a nature as to compromise the continuance of the trade union movement or its social and economic functions, irrespective of political changes in the country".[6] It is for these reasons that the Committee would again stress that States should be able, without prohibiting in general terms and *a priori* all political activities by occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which had lost sight of the fact that their fundamental objective should be the economic and social advancement of their members.[7]

114. There are a number of countries where through legislative or other means trade unions are closely associated with a political party.[8] Here again, references

[1] This is the case in Australia (Commonwealth Conciliation and Arbitration Act) and New Zealand (Industrial Conciliation and Arbitration Act).

[2] For example, Argentina (Decree No. 969 of 1966, section 2), Liberia (Labour Practices Law, section 4110).

[3] For example, Argentina (Decree No. 9080 of 1965), Brazil (Consolidated Labour Laws, section 521), Colombia (Labour Code, section 379), Costa Rica (Labour Code, section 280), Ecuador (Act No. 70-05), El Salvador (Labour Code, section 207), Guatemala (Labour Code, section 207).

[4] For example, Chad (Labour Code, section 36), Ethiopia, (Labour Relations Proclamation, section 22), Greece (Legislative Decree No. 890, section 5), Madagascar (Labour Code, section 3), Paraguay (Labour Code, section 302), Somalia (Labour Code, section 28).

[5] See, for example, RCE, *General Survey*, 1959, para. 69.

[6] Resolution concerning the independence of the trade union movement, adopted by the International Labour Conference in 1952.

[7] RCE, *General Survey*, 1959, para. 69.

[8] For example, Byelorussian SSR (Constitution, article 101), Mauritania (see Committee on Freedom of Association, 127th Report, Case No. 660, paras. 257-306), Spain (Trade Unions Act,

may be made to the resolution on the independence of the trade union movement, 1952, which establishes that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

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sections 1, 34 and 52), Tanzania (Tanganyika) (National Union of Tanganyika Workers (Establishment) Act, 1964, First Schedule, section 3(2)), Ukrainian SSR (Constitution, article 106), USSR (Constitution, article 126).

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International Labour Conference 69th Session 1983

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

General Survey by the Committee of Experts on the Application of Conventions and Recommendations

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

General Survey by the Committee of Experts on the Application of Conventions and Recommendations

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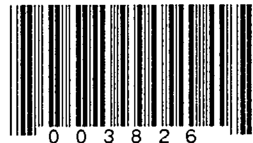
69th Session 1983

Report III
(Part 4 B)

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

Freedom of Association and Collective Bargaining: General Survey

Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)



International Labour Office
Geneva 1983

CHAPTER VII

Right of workers' and employers' organisations to organise their administration and activities and to formulate their programmes

180. Article 3 of Convention No. 87 provides that workers' and employers' organisations have the right "to organise their administration and activities and to formulate their programmes" and that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

181. As with the other rights guaranteed by Article 3, the principle of non-interference by the public authorities, recognised in paragraph 2 of this Article, is essential to protect the free exercise by the organisations of the right to organise their administration and activities and to formulate their programmes.

Administration

182. As indicated in Chapter VI above, trade union legislation in many countries contains provisions relating to the contents of the constitutions and rules of organisations, particularly as regards the management of funds. The purpose of these provisions is often to protect the rights of the members and to provide for a sound administration and, as such, they are not incompatible with the Convention.

183. Generally speaking, trade unions are required to include in their rules all relevant provisions concerning the source of the organisation's funds (admission fees, if any, regular contributions, special contributions and dues, fines, if any), the use of its funds, its internal financial administration and, sometimes, the distribution of assets in the event that the organisation is dissolved, wound up or merged. These provisions are mainly intended to ensure as far as possible the honest and efficient management of union funds and other assets.

184. Many countries have specific legislative provisions on the subject, generally designed to prevent abuses and to protect the members against bad administration of their funds.

185. Sometimes, however, the legislation confers on the public authorities extensive powers whereby they can exercise permanent control over the administration of funds. This is the case in countries where the law establishes the minimum contribution of members,[1] specifies the proportion of union funds that has to be paid

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[1] For example, Ecuador (Labour Code, s. 443); India (Trade Unions Act, s. 6).

to the federations,[1] or requires that the budget, expenditure or investment of a trade union must be approved by the public authorities.[2] In some countries organisations are prohibited by law from receiving funds from abroad without the prior authorisation of the ministry of labour.[3]

186. The legislation of many countries stipulates that periodic financial reports (usually annual) must be submitted to the competent authorities, which are often empowered to request additional information on any point that is not clear. The degree of supervision that may be exercised by the authorities sometimes exceeds a formal requirement that unions must furnish financial returns at regular intervals. In such cases the ministry of labour[4] or the registrar[5] may apparently request information or inspect books of account practically at any time. There are also countries whose legislation contains provisions relating to the investigation by the authorities of union finances or of internal union matters in general. In these cases the authorities are empowered to intervene when they presume that certain irregularities have occurred or when they have received complaints from union members.

187. The Committee considers that, although the application of legislative provisions and union rules concerning an organisation's administration must by and large be left to the members of the trade union, the principles set out in the Convention do not exclude external control of the internal acts of an organisation where they are alleged or where there are major reasons for believing them to be against the law (which should not of course infringe the principles of freedom of association) or the union's constitution.

188. Supervision of union finances should not normally go beyond a requirement for the organisation to submit periodic financial returns. If, on the other hand, the administrative authority has

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[1] For example, Iraq (Labour Code).

[2] For example, Syrian Arab Republic.

[3] Philippines (Labour Code, s. 271); Zambia (Industrial Relations Act and information supplied by the Government). See also para. 250 below.

[4] For example, Argentina (Act No. 22105/1979 on occupational associations); Bolivia (General Labour Act, s. 101); Colombia (Labour Code, s. 486); Costa Rica (Labour Code, ss. 275 and 279); Dominican Republic (Resolution No. 13/1974); Haiti (Labour Code, s. 278); Kuwait (Labour Act, s. 76); Libyan Arab Jamahiriya (Act No. 107/1975, ss. 18-22); Nicaragua (Labour Code, s. 36); Panama (Labour Code, s. 376(4)); Philippines (Labour Code, s. 275); Syrian Arab Republic (Decree No. 84, ss. 32, 34 and 35, and Legislative Decree No. 250, s. 6).

[5] For example, Bangladesh (Industrial Relations Ordinance, s. 10); Ghana (Trade Unions Ordinance, s. 26); India (Trade Unions Act, s. 26); Kenya (Trade Unions Ordinance, s. 50); Nigeria (Decree No. 31/73, ss. 42-43); Pakistan (Industrial Relations Ordinance, s. 8); Trinidad and Tobago (Trade Unions Ordinance, s. 16).

In Malaysia (Trade Unions Act, s. 57) and Singapore (Trade Unions Act, s. 53), the Registrar is empowered to verify the administration of union funds at any "reasonable" moment.

discretionary power to examine the books and other documents of an organisation, conduct an investigation and demand information at any given time, there is a grave danger of interference which may be of such a nature as to restrict the guarantees provided for in Convention No. 87. Investigatory measures should be restricted to exceptional cases, when they are justified by special circumstances such as presumed irregularities that are apparent from annual financial statements or complaints reported by members of the trade union. Furthermore, in order to guarantee the impartiality and objectivity of the procedure, these controls should be conducted subject to review by the competent judicial authority. Legislation which empowers the administrative authorities to investigate the internal affairs of a union at their entire discretion does not conform to the principles of the Convention.[1]

Inviolability of union premises, correspondence and communications

189. Freedom to administer a trade union implies that it should be able to dispose of its assets unhindered and that the public authorities should refrain from interfering without due cause with the organisation's premises and correspondence.

190. Although most legal systems provide for the protection of private premises, and therefore of union premises and correspondence, they often make exceptions in emergency situations or in the interests of public order. While recognising that, as for any other associations or individuals, a trade union cannot claim immunity against the searching of its premises, the Committee considers that it should only be possible for such action to be taken when a warrant has been issued for the purpose by the regular judicial authority, when the authority is satisfied that there is good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law and provided the search is restricted to the purpose for which the warrant was issued.

Activities and programmes

191. Workers' and employers' organisations should have the right to organise their activities and formulate their programmes in complete freedom. Although this would appear to be the case in a substantial number of countries, some impose certain legal restrictions on the

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[1] In the case of Uruguay, the Committee noted with satisfaction in 1982 that Act No. 15137/1981 and Regulation No. 513/981 represented a considerable improvement over the original draft Bill; in particular, the limitation on the duration of trade union assemblies and the extensive powers accorded to the public authorities to request reports on trade union activities had been removed.

With regard to Barbados, the Committee noted with satisfaction in 1975 an amendment to section 35 of the Trade Unions Act enabling trade unions to appeal to the Supreme Court against decisions of the Registrar of Trade Unions concerning violations of the regulations on the use of union funds.

guarantees provided for under the Convention, in particular on political activities and the right to strike.[1]

Political activities

192. In certain countries the law restricts the political activities of trade unions, for example by prohibiting them from making financial contributions to a political party or to persons seeking a political appointment.[2]

193. Elsewhere, there is a total ban on political activities. In many cases, for instance, the law prohibits the organisations purely and simply from engaging in party politics or any political activity whatsoever.[3]

194. By contrast, legislative or other provisions in certain countries establish close links between the trade unions and the sole political party in power.[4]

195. It is increasingly apparent, as was mentioned during the preparatory work on Convention No. 87,[5] that a trade union's activities cannot be restricted solely to occupational questions, since the choice of a general policy - in economic affairs for example - is bound to have consequences on the situation of workers (remuneration, holidays, working conditions, the running of enterprises, etc.). Developments in the trade union movement show that the promotion of working conditions through collective bargaining, though still a major feature of trade union action, increasingly involves participation by organisations in economic and social policy making bodies. This in turn means that trade unions must be able to devote attention to matters of general interest - i.e. "political" in the broadest sense of the word - and that, for example, they must be able to express their views publicly on a government's economic and social policy, since the fundamental objective of the trade union movement is to ensure the development of the social and economic well-being of all workers.

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[1] As for restrictions on collective bargaining, see below, Chapter XII.

[2] For example, Liberia (Labour Practices Law, s. 4110).

[3] For example, Argentina (Act No. 22105/1979, s. 8); Brazil (Consolidated Labour Laws, s. 521); Chad (Labour Code, s. 36); Colombia (Labour Code, s. 378a, Decree No. 2655/1954 and Resolution No. 4/1952); Costa Rica (Labour Code, s. 280); El Salvador (Labour Code, s. 229(a)); Ecuador (Labour Code, s. 443); Kuwait (Labour Act, s. 73); Nicaragua (Labour Code, s. 204); Paraguay (Labour Code, s. 302); Peru (Decree No. 009/1961); Somalia (Labour Code, s. 28); Turkey (1982 Constitution, Art. 52).

In the case of Madagascar, the Committee noted with satisfaction in 1976 that the new Labour Code eliminated a sentence in the previous Code forbidding trade unions to engage in any political activity.

[4] See para. 135 above.

[5] During the preparatory work on Convention No. 87, the Workers' members and several Government members opposed any amendment of the text proposed by the Office that might restrict trade union activities solely to occupational matters. See ILO, Record of Proceedings, ILC, 30th Session, 1947, p. 570.

196. However, as the International Labour Conference indicated in its 1952 resolution concerning the independence of the trade union movement, when trade unions in accordance with the law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions, irrespective of political changes in the country.

197. Moreover, when governments endeavour to enlist the collaboration of the trade unions in the implementation of their economic and social policy, they should appreciate that the value of such collaboration depends largely on the freedom and independence of the trade union movement, as an essential factor in social progress, and should not seek to transform it into a political instrument for the attainment of their own political objectives. Finally, they should not attempt to interfere in the normal activities of a union under the pretext of its freely established relationship with a political party.

198. The Committee therefore considers that legislative provisions prohibiting all political activities or, on the contrary, establishing a close link between the unions and a political party are incompatible with the principles of the Convention.

Protest action and the right to strike

199. Workers' organisations have a number of means at their disposal to promote and defend their economic and social interests. Some of these are simple protest actions, for example protest meetings or petitions, which do not cause any direct damage to the employer. Others, however, are aimed at exerting pressure by causing prejudice to the employer, e.g. slowing down of work (go-slow), the strict application of the rules (work-to-rule), or recourse to strike action.

200. The Committee considers 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. These interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers.[1]

201. In international law, the right to strike is explicitly recognised in Article 8 of the International Covenant on Economic, Social and Cultural Rights. At the regional level, the European Social Charter was the first international text to recognise explicitly the right to strike in the case of a conflict of interests, subject to any commitments under collective agreements in force.

202. The study of national legislation shows that the extent to which the right to strike is recognised differs from country to country: while tacitly or explicitly accepted in some countries, in many others it is limited by restrictions of varying scope and severity.

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[1] See, for example, ILO: Committee on Freedom of Association, 214th Report, Case No. 1081, para. 261.

203. As regards the majority of the socialist countries, their legislation contains no provision relating to the legality or illegality of a strike. In view of the nature of the particular economic and political systems of these countries, the governments consider that trade unions have no need to resort to direct action in order to defend their interests.

General prohibition of strikes

204. A general prohibition of strikes and the suspension of the right to strike, such as occurs in certain countries, may arise from specific provisions in the law.[1] The prohibition of strikes may also result, for all practical purposes, from the cumulative effect of the provisions relating to the established dispute settlement machinery, according to which labour disputes are channeled through compulsory conciliation and arbitration procedures leading to a final award or decision which is binding on the parties concerned; a similar situation may arise in cases where, in the absence of an agreement between the parties, disputes can be settled by compulsory arbitration or decision at the discretion of the public authorities.[2] Under these systems, it is possible to prohibit or put a rapid stop to almost any strike.

205. 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 organise their activities (Article 3) and is, therefore, not compatible with the principles of freedom of association.

206. A general prohibition of strikes or a temporary suspension of the right to strike sometimes results from provisions adopted under

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[1] For example, Argentina (Act No. 21261/1976 prorogued by Act No. 21400/1976); Bangladesh (Ordinance No. XXVI/1982, s. 8); Chad (Ordinance No. 30/1975); Colombia (for federations and confederations, Labour Code, s. 417); Liberia (Decree No. 12/1980); Nicaragua (Decrees Nos. 911/1981 and 955/1982); Pakistan (Proclamation of 16 October 1979); Syrian Arab Republic (Agricultural Labour Code, s. 160); Thailand (Decree No. 3/1976, read in conjunction with ss. 133 and 141 of the Industrial Relations Act).

[2] For example, Algeria (Act No. 82-05,, ss. 40-42); Bolivia (General Labour Act, s. 113(c)); Brazil (Consolidated Labour laws, s. 872); Colombia (Act No. 48/1968, s. 3); Cyprus (Rule 79B); Dominican Republic (Labour Code, ss. 374, 377, 633 and 655); Ecuador (Constitution, Article 31K and Labour Code, s. 466); Ethiopia (Labour Proclamation of 1975, ss. 99 and 106); Gabon (Labour Code, s. 239 et seq.); Ghana (Industrial Relations Act, 1965, ss. 18 and 21); India (Industrial Disputes Act, 1947, s. 10); Jamaica (Labour Relations and Industrial Disputes Act, 1975, as amended, s. 15); Kenya (Trade Disputes Act, 1965, ss. 21 and 22); Lesotho (Laws Nos. 34 of 1975 and 21 of 1982); Malaysia (Industrial Relations Act, s. 26); Malta (Industrial Relations Act, s. 27); Mauritius (Industrial Relations Act, ss. 82-83); Mauritania (Labour Code, Book IV, ss. 40 and 48); Nigeria (Industrial Disputes Decree No. 7/1976); Paraguay (Labour Procedure Code); Singapore (Industrial Relations Act, s. 31); Sri Lanka (Industrial Disputes Act, ss. 40 and 43); Sudan (Industrial Relations Act, 1976, ss. 17-31); Tanzania (Permanent Labour Tribunal Act, 1967, s. 22); Tunisia (Labour Code, ss. 384 to 387); Zambia (Industrial Relations Act, 1971).

emergency powers or may be attributed by governments to the existence of a crisis. The Committee considers that, inasmuch as the prohibition or general suspension of strikes constitutes a major restriction of one of the essential means available to workers and their organisations for furthering and defending their interests, such measures cannot be justified except in a situation of acute national crisis, and then only for a limited period.

Specific restrictions on the right to strike

207. In some countries the legisation, while admitting the principle of the right to strike, introduces a number of more or less important restrictions on such action: these restrictions concern certain categories of workers; or they are imposed in the light of the objectives of the strike or the methods employed; or they are derived from provisions imposing time limits which must elapse before workers can resort to strike action.[1]

Restrictions relating to public servants and workers in essential services

208. National legislations differ radically on the subject of the legality or otherwise of work stoppages decided by public servants. A comparison of current legislation in a number of countries shows that a variety of possibilities are provided for, along with several possible solutions.

209. At one extreme there are countries whose legislation specifically recognises the right to strike of public servants[2] and where, if a dispute can be settled neither by existing machinery nor through consultation or negotiation, they can lawfully engage in strike action. The laws and regulations in force may, however, restrict the exercise of this right by people in certain positions.[3]

210. Some countries make no distinction between strikes in the public sector and strikes in other sectors of the economy: public servants must simply observe the normal procedure laid down in the general legislation of the country.[4]

211. In another group of countries, there are no laws or regulations concerning the legality or otherwise of strikes by public

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[1] With regard to Panama, the Committee noted with satisfaction in 1982 that Act No. 8/1981 had removed the limitation imposed on the exercise of the right to strike which made such exercise subject to the condition that the demands for better working conditions made by workers should not, in the opinion of the administrative authority, affect the profitability of the undertaking.

[2] For example, Benin, Canada, Comoros, Finland, France, Greece, Ivory Coast, Luxembourg, Mexico, Niger, Norway, Portugal, Senegal, Sweden, Togo, Zaire.

[3] See para. 212 below.

[4] For example Italy and Sweden.

servants. Since the silence of the legislation on the matter is open to different interpretations, various legal solutions have been adopted by the countries concerned in such cases. On the one hand, the legality of a strike may be tacitly recognised or implied by the government's attitude towards the recognition or registration of trade unions.[1] (If a trade union's constitution, rules or other documents that have to be submitted to a competent authority provide for strike action and the authority does not raise any objection, it can be assumed that work stoppages are legal.) On the other hand, the issue may remain a matter of controversy.[2] Finally, the absence of any general or specific provisions relating to strikes in the public service may be interpreted as their tacit prohibition.[3] In a number of countries, the legislation explicitly denies the right of public servants to strike.[4]

212. Even the fact that the right to strike in the public service is explicitly or tacitly recognised does not mean that all public servants enjoy unlimited freedom in this respect. On the contrary, various limitations and restrictions have been introduced by law and in practice in a considerable number of countries that authorise strikes in the public service. These restrictions appear to be based on a variety of criteria, such as the level of responsibility of the officials concerned, their place in the administration hierarchy, the nature of the services they perform and the conditions in which a strike is called and conducted.[5]

213. Numerous countries also have provisions prohibiting or limiting strikes in essential services. However, the concept of essential services varies from one national legislation to another. In some cases, a long list of such services is given in the law itself;[6]

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[1] For example, Israel, Madagascar, United Kingdom.

[2] For example, Austria, Belgium, Denmark, Netherlands.

[3] For example, Federal Republic of Germany.

[4] For example, Bolivia, Brazil, Burundi, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Kuwait, Lebanon, Morocco, Nicaragua, Philippines, Rwanda, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, United States, Uruguay, Zimbabwe.

[5] For example, Canada, Finland, Japan, Luxembourg, Madagascar, Mexico, Norway.

[6] For example, Brazil (Legislative Decree No. 1642/1978); United Republic of Cameroon (Labour Code, s. 165, paragraph 3, and Decree No. 74/969, s. 2); Canada (the legislation of the Province of Alberta); Colombia (Labour Code, s. 430 and Decrees Nos. 414/1952, 1593/1959, 1167/1963 and 57 and 534/1967); Costa Rica (Labour Code, s. 369; however, subsection (b) of s. 369 (concerning transport and port work) has been declared unconstitutional); Dominican Republic (Labour Code, ss. 370 and 371); Guyana (Law on Public Utilities, Cap. 54:01); India (Essential Services Maintenance Act, No. 40, 1981); Jamaica (Labour Relations and Industrial Disputes Act, 1975, as amended, ss. 15 and 28); Kenya (Trade Disputes Act, 1965); Lesotho (Act No. 34/1975, amended in 1982); Malawi (Trade Disputes (Arbitration and Settlement) Ordinance); Pakistan (Industrial Relations Ordinance, ss. 31-33); Poland (Trade Unions Act, 1982, s. 40(1) and (2)); Sri Lanka (Essential Services Act, 1979); Swaziland (Industrial Relations Act, 1980, s. 65 and Note No. 54/1982); United States (Labor-Management Relations Act,

(Footnote continued on next page)

sometimes, the definition of such services covers all activities which the government may consider appropriate or all strikes that may be contrary to public order, the general interest or economic development.[1]

214. In the opinion of the Committee, 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. As the Committee has already mentioned in previous general surveys,[2] the prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.[3] Moreover, if strikes are restricted or prohibited in the public service or in essential services, appropriate guarantees must be afforded to protect workers who are thus denied one of the essential means of defending their occupational interests. Restrictions should be offset by adequate impartial and speedy conciliation and arbitration procedures, in which the parties concerned can take part at every stage and in which the awards should in all cases be binding on both parties. Such awards, once rendered, should be rapidly and fully implemented.

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1947, ss. 206-210); Venezuela (Labour Act (Regulations), s. 393); Zambia (Industrial Relations Act, s. 3).

In New Zealand, the Industrial Relations Act, 1973, lays down certain procedures to be followed before calling a strike in essential industries and export slaughterhouses (sections 125 and 125A). The Trade Act, 1975, authorises the Court of Arbitration to order a resumption of work on the grounds that the economy of the country is or may be seriously affected by a strike. A request to this effect may be addressed to the Court by a Minister or by a person directly affected by the strike (section 119C). Finally, an amendment to the Industrial Relations Act adopted in 1981 confers special powers on the Minister of Labour in the event of a strike or threat of strike in essential industries and export slaughterhouses affecting the public interest (section 125B-E).

[1] For example, Cyprus (Supply and Services (Transitional Powers) (Continuation) Law, Cap. 175A); Philippines (Labour Code, s. 264); Trinidad and Tobago (Industrial Relations Act, s. 65); Tunisia (Labour Code, s. 389).

[2] See RCE, Report III (Part IV), ILC, 43rd Session, 1959, para. 68, and General Surveys of 1973, para. 109, on freedom of association and collective bargaining and of 1978 on forced labour, para. 123. See also, ILO: Committee on Freedom of Association, 218th Report, Case No. 1131, para. 779.

[3] The Committee on Freedom of Association has, for example, considered that the hospital sector and air traffic control are essential services; but it has considered that banking, agricultural activities, ports, the metal, petrol, tobacco, and printing industries, teaching and radio and television, for example, are not essential services in the strict sense of the term.

Requisitioning, minimum service

215. Under the legislation of some countries, workers on strike can be requisitioned.[1] The requisitioning of workers could be abused as a means of settling labour disputes, and such action is therefore to be avoided except where, in particularly serious circumstances, essential services have to be maintained. Requisitioning may be justified by the need to ensure the operation of essential services in the strict sense of the term. In other sectors of the economy, on the other hand, the Committee considers that, if a total and prolonged stoppage of work in a major industrial sector is liable to endanger the life, safety or health of the population and cause an acute national emergency, the maintenance of a minimum service - concerning a specified category of workers - would seem to be justified. For such a measure to be acceptable, the minimum service should be restricted to operations that are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population; at the same time, the workers' organisations should, if they wish, be able to participate in defining the minimum service along with the employers and public authorities.[2] Such a system could also be used in the case of essential services in order to avoid a total ban on strikes in these services.

Restrictions relating to the objectives of a strike

216. In many countries political strikes are explicitly or tacitly recognised as unlawful. Elsewhere, restrictions on strikes can be applied in such a way that any strike may be considered as threatening the security of the State. The Committee considers that trade union organisations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticising a government's economic and social policies. However, strikes that are purely political in character do not fall within the scope of the principles of freedom of association.[3]

217. As for sympathy strikes, where workers come out in support of another strike, they are recognised as lawful in certain countries.[4] It would appear that more frequent recourse is being had to this form

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[1] For example, Cyprus (Supply and Services (Transitional Powers) (Continuation) Law, Cap. 175A); Portugal (Legislative Decree No. 637/74); Tunisia (Labour Code, s. 389); Upper Volta (Ordinance No. 82.003/1982).

[2] See, for example, ILO: Committee on Freedom of Association, 204th Report, Case No. 952, para. 162; 221st Report, Case No. 1097, para. 84. In Greece, for essential services, only a minimum service must be ensured in the case of a strike. The unions participate in defining the number and composition of the teams required for the essential service (Law No. 1264, 1982, s. 21).

[3] See, for example, ILO: Committee on Freedom of Association, 139th Report, Cases Nos. 737-744, para. 124.

[4] For example, France, Federal Republic of Germany, India, Italy, Spain (in its ruling of 8 April 1981 the Constitutional Tribunal considered that the provision declaring sympathy strikes unlawful was unconstitutional in that it tended to limit the exercise of the right to strike to those "directly" concerned), Sweden, United Kingdom.

of action because of the structure or the concentration of industries or the distribution of work centres in different regions of the world. The Committee considers that a general prohibition of sympathy strikes could lead to abuse and that workers should be able to take such action provided the initial strike they are supporting is itself lawful.

Restrictions relating to the methods used

218. Where the right to strike is guaranteed by a country's legislation, the first question that arises is whether the action taken by the workers constitutes a strike as defined by the law. Normally speaking, any work stoppage can be described as a strike, however short or limited it may be. The problem would seem to be more complicated, however, where there is no stoppage but merely a slowing down of work (go-slow) or the strict application of the rules (work to rule). Staggered, sit-down and lightning strikes, repeated walk-outs and picketing also pose a problem. The Committee shares the opinion of the Committee on Freedom of Association that, as far as the methods of exercising the right to strike are concerned, restrictions on working to rule, the occupation of an enterprise or working premises, sit-down strikes and picketing can only be justified if the action ceases to be peaceful.

Provisions imposing a waiting period on strikes

219. In a large number of countries the law requires notice to be given of an intention to strike, allows for a cooling-off period or stipulates that the majority of the workers concerned or the general assembly of the union must first signify their approval of a strike order.[1] Such procedures should not be so cumbersome as to render the lawful strike impossible in practice.

220. The legislation of many countries requires workers to notify the administrative authorities of an intention to strike and to resort to conciliation and arbitration procedures before a strike is allowed to commence.[2]

221. Finally, there is the special situation in some countries where trade unions, having voluntarily decided to register with the authorities (which in turn entitles them to use the official machinery for the settlement of labour disputes by means of conciliation and arbitration proceedings with binding awards), are not allowed to strike

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[1] For example, Burundi, Denmark, Honduras, Philippines, Poland, Switzerland, United Kingdom/Hong Kong, United States.

[2] In this regard, in countries where conciliation and arbitration are voluntary, due account should be taken of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), whose Paragraph 7 states that "no provision of this Recommendation may be interpreted as limiting in any way whatsoever the right to strike". As to compulsory conciliation and arbitration procedures, which can in practice be tantamount to a ban on strikes, the Committee draws attention to the comments in paragraph 204 above.

if a strike ban has been included in an award or where they are bound by the terms of an award.[1]

Sanctions against strikes

222. Most legislation that restricts the right to strike contains clauses providing for sanctions against workers who infringe these provisions. In some countries, striking illegally is a penal offence punishable by a fine or term of imprisonment.[2] Elsewhere, engaging in an unlawful strike may be considered an unfair practice and incur the corresponding civil action and disciplinary sanctions.

223. As regards strikes the Committee considers that penal sanctions should only be imposed where there are violations of strike prohibitions which are in conformity with the principles of freedom of association. In addition, in these cases the sanctions should be proportionate to the offences committed, and penalties of imprisonment should not be imposed in the case of peaceful strikes. The Committee considers that the application of disproportionate penal sanctions does not favour the development of harmonious industrial relations.

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224. Interference by the administrative authorities in trade union activities may raise difficulties in the application of Article 3 of Convention No. 87, particularly where an organisation's financial administration is concerned. The principles embodied in the Convention do not exclude the possibility of external control over the internal activities of an organisation if it is believed or alleged that the law or a union's rules are being infringed. In order to guarantee an impartial and objective procedure, however, such control should be subject to review by independent judicial authorities. Similarly, the inviolability of the premises and correspondence of trade union organisations should be secured by judicial guarantees.

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[1] For example, Australia (Conciliation and Arbitration Act), New Zealand.

[2] For example, Bahamas (Industrial Relations Act, s. 72); Bangladesh (Ordinance No. XXVI/1982, s. 8); Philippines (Labour Code, s. 273); Poland (Trade Union Law, 1982, s. 47 provides for sanctions against strike leaders); USSR (Penal Code of the RSFSR, s. 190).

In Japan, penal sanctions for strike action have been imposed by the Supreme Court on certain workers who have organised or instigated strikes in public services.

As regards the legislation in the USSR, the Committee on Freedom of Association has noted the formal assurance given by the Government of the USSR that a collective stoppage of work is not, and never has been regarded as absenteeism and that Soviet legislation does not provide, and never has provided any sanction in respect of a collective stoppage of work for the purpose of supporting the claims of the workers. The Committee has recommended the Government of the USSR to take appropriate steps to ensure that this assurance is generally known to the workers concerned (23rd Report, Case No. 111, para. 227). As regards section 190 of the Penal Code of the RSFSR mentioned above, the Government states that it does not share the Committee's opinion as concerns the interpretation given to this provision and the possibility of systematically applying penal sanctions in cases of strikes.

225. The most common restrictions on the right of trade unions to organise their activities and to formulate their programmes appear to concern the political activities of organisations and the right to strike. Given the development of the trade union movement, union action cannot nowadays be restricted solely to occupational matters. A general prohibition of political activities is not only incompatible with Convention No. 87 but it is also unrealistic for all practical purposes. Trade unions often undertake some measure of political action, including support for a political party, which they may consider necessary for the advancement of their economic and social objectives. Thus organisations should be able to make public their views on a government's economic and social policy, provided that their political action does not compromise the continuity of the union movement or of its economic and social functions; governments, in turn, must not endeavour to use organisations as political instruments.

226. With regard to the right to strike, a general prohibition - sometimes the result of express provisions or, as in many countries, the cumulative effect of provisions concerning the official disputes settlement machinery - constitutes a considerable limitation on the means available to trade unions to further and defend the interests of their members and on their right to organise their activities. A prohibition of this nature can only be justified in circumstances of acute national crisis and for a limited duration. A permanent ban on strikes should only be imposed on public servants acting in their capacity as public authority officials and on workers in essential services, and should be compensated by the existence of adequate impartial and speedy conciliation and arbitration procedures. Finally, 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.