INDUSTRIAL RELATIONS

Application of the Principles of the Right to Organise and to Bargain Collectively, Collective Agreements, Conciliation and Arbitration, and Co-operation between Public Authorities and Employers' and Workers' Organisations

Eighth Item on the Agenda
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PREFACE

At its 30th Session, the International Labour Conference decided to place on the agenda of its 31st Session the two following items relating to the problems of "freedom of association and industrial relations":

1. Freedom of association and protection of the right to organise (single-discussion procedure).

2. (a) The application of the principles of the right to organise and to bargain collectively, (b) collective agreements, (c) conciliation and arbitration, and (d) co-operation between the public authorities and employers' and workers' organisations (double-discussion procedure).

As regards the first item, the Office, in accordance with Article 31 of the Standing Orders of the Conference, submitted a questionnaire on the subject to all Governments in August 1947.

With regard to the second item, in accordance with Article 32, paragraph 1, of the Standing Orders of the Conference, which prescribes the preparatory stages of the double-discussion procedure, the Office is required to send to all Governments a preliminary report setting out the law and practice in the different countries, together with a questionnaire.

The present report has been prepared with this object. It comprises four parts, corresponding to the four heads of the second item thus placed on the agenda. Part I deals with the right to organise and to bargain collectively, Part II with collective agreements, Part III with conciliation and arbitration, and Part IV with co-operation between public authorities and employers' and workers' organisations. Further, Part IV is divided into three main chapters, in which co-operation at the level of the undertaking, co-operation at the level of the industry, and co-operation at the national level are discussed in turn.


As these four parts of the report, though closely connected one with another, relate to four separate subjects on which the Conference is called upon to reach a decision, it has seemed necessary to submit to Governments four separate questionnaires, which, preceded in each case by a brief commentary, immediately follow the respective parts of the report.

The question with which this report deals was included in the agenda of the next session of the Conference less than eighteen months before that session is due to open; therefore, in accordance with Article 32, paragraph 5, of its Standing Orders — the amended text of which was adopted by the Conference at the 30th Session — the Officers of the Governing Body have decided, in agreement with the Director-General, that the preliminary report should reach Governments not later than 1 December 1947.

In view of the brief space of time left to the Office for preparation of this report, and of the time — also brief — which Governments will have in which to draft their replies to the questionnaires, the Office has had to restrict itself to dealing, in the present report, only with the essential features of the problems covered, as they appear in the law and practice of the different countries.

According to paragraph 3 of the above-mentioned Article 32, the Office will draft a definitive report, based on the replies and reasons given by the Governments, and this will be submitted to the Conference at its next session.

In order that the Office may study these replies, prepare the definitive report, and submit it to Governments in sufficient time for the latter to be able to examine it and for the necessary consultations to take place before their delegations leave for the Conference, it is important that the replies of the Governments should reach the International Labour Office in Geneva as early as possible, and in any case not later than 1 March 1948.

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PART I

APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY
APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

The provision by the State of a guarantee for freedom of association should enable the employers and workers to form organisations capable of determining wages and other conditions of work by means of collective agreements. It would however be difficult to achieve this result if the parties themselves questioned or impeded the exercise of the right of association or refused to engage in good faith in negotiations for the conclusion of such agreements. The recognition of workers' unions by employers should therefore be a corollary to the recognition of freedom of association by the State.

It is indeed evident that the individual worker is in a position of inferiority in his relations with the employer, and that equality between the parties can only be established by unions which can oppose the solidarity of labour to the economic strength of the employers. But a union will only be able to achieve this object if it obtains recognition from the employer.

In all countries this recognition has been the subject of long and bitter struggle. In some it has been finally secured, and embodied in agreements between the parties, thanks to the extremely powerful character of the labour unions. This problem is examined below in the first section of the present part of the report.

In other countries, legislative intervention has been necessary to prohibit acts directed against organised workers or against the unions themselves. Legislation of this character is examined in the second section.

As a result of this recognition, the union becomes the qualified representative of the workers. It thereby acquires rights, but it also assumes certain responsibilities. It can naturally not have recourse to illicit action in order to impose its will either on the employer or on unorganised workers; like any other association or person, it must act in conformity with the law and may not cause a disturbance of the peace. But is it illicit to include, in a collective agreement, a stipulation providing for compulsory
membership in a certain union as a condition for engagement or for maintenance in employment? These questions are examined in the third and fourth sections.

A final section deals with the measures taken in the different countries to provide for supervision and to secure the enforcement of legislation and agreements regarding the protection of the right to organise and negotiate.

1. Mutual Recognition of Organisations

The best method of guaranteeing the exercise of the right of association and negotiation is certainly that of spontaneous agreement between the parties for their mutual recognition, without intervention by the authorities.

The classical instance of this method is provided by the United Kingdom. In that country the trade unions, with their progressive liberation from legal restrictions, have obtained practical recognition from the employers and employers' associations. The principle of collective bargaining is in fact unreservedly accepted by both parties. The proof of this may be seen in the network of collective agreements covering most industries, and in the existence of bargaining machinery instituted by the parties in order to facilitate the preparation, renewal and implementation of the agreements and the settlement of all industrial disputes.

This is a purely voluntary system, the operation of which depends essentially on the good will of the parties. The obligations accepted under it are regarded as of a moral rather than of a strictly legal character. The existence of the collective agreements consequently implies — although this is not expressly stated in any law or in the agreements themselves — an obligation on both the employers' and workers' organisations, and on their members, to respect the right of the other party to organise and bargain, for these rights are the foundation of the whole system. In such circumstances it has not been considered necessary, or even desirable, to enact special legislation for the protection of these rights against possible attack by one or other of the parties to the employment relationship.

It should however be added that legislative action has contributed indirectly to this result, particularly in two ways: first, by giving trade unions immunity from criminal proceedings, and to a large extent from civil liability, in case of industrial dispute;
and secondly, by fixing minimum wage rates in "unorganised" industries or occupations, and in agriculture.

In other countries, mutual recognition arises out of agreements of national scope concluded between the employers' and workers' central organisations, as for example, the Danish "Concordat" of 1899; the Swedish "December compromise" of 1906, renewed and amplified by agreement of 1938; and the Norwegian national agreement of 1935. In these instruments the two parties undertake to respect freedom of association, to conduct their mutual relations through a system of collective bargaining, and to have recourse to conciliation and arbitration in collective industrial disputes. More recently, in 1944, a similar agreement was reached in Finland between the Confederation of Trade Unions and the Central Federation of Employers.

In France, on 17 July 1947, the General Confederation of Labour and the National Council of French Employers concluded an agreement which, though relating in the first place to the problem of wages and prices, lays down certain principles to govern relations between employers and employees. The existence of numerous social conflicts, due to the chaotic situation as regards wages and prices, led the Confederation and the National Council to proceed to direct discussion. The two parties recognise that the achievement of an increase in production and a higher rate of productivity in all the branches of the national economy remains the decisive means of improving the general situation. This object can be attained by normal relations between the great workers' and employers' organisations, by a fair distribution of the national income, securing decent conditions of life for the workers and normal profits for the employers, and by improving the situation of employed persons progressively according as production and the productivity of labour increase.

With this end in view, the General Confederation of Labour and the National Council of French Employers have jointly declared that "within the framework of existing legislation, the General Confederation of Labour does not contest the authority of management, and similarly the National Council of French Employers does not contest the exercise of trade union liberties". The two parties will study the facilities which it may be possible to provide for the exercise of these liberties, and will strive to hasten the conclusion of collective agreements. 1

1 Le Peuple, 19 July 1947.
On 6 August 1947 the French Confederation of Christian Workers and the employers’ central organisation concluded a similar agreement, in which they adhere to the principles expressed in the joint declaration of the General Confederation of Labour and the National Council of Employers.¹

These examples show that the exercise of the right to organise and bargain collectively can be effectively protected, apart from any legislative intervention, by the organisations themselves. As the example of Great Britain and the Scandinavian countries indicates, this result will be most surely reached if the labour unions succeed in bringing the majority of the workers together in a single, powerful organisation, and in raising the practice of collective bargaining to the status of a general custom, firmly established and not less effective than the law.

2. Statutory Protection of the Right to Organise and to Bargain Collectively

In many countries, legislative action has been taken to secure the exercise of the right of association and negotiation. Before this had been done, unilateral acts on the employer’s part — for instance, the dismissal of or refusal to engage a worker by reason of his membership of a union, or an agreement between an employer and an employee to the effect that the latter shall not join or shall resign from a union — were perfectly permissible under common law. In the same way, the employer was free to refuse to recognise a union, or to refuse to enter into negotiation with it, or even to interfere in its internal affairs. Nevertheless, such acts amounted in fact to the use of pressure, by which the employer, thanks to his economic position, attempted to prevent his employees from organising in independent unions and to restrict the activity of such unions. Special legislation was necessary to make these restrictive measures illegal and to prevent or repress them.

PROTECTION OF FREEDOM OF ASSOCIATION FOR INDIVIDUAL EMPLOYEES

The legislation of some countries, by using a very general formula, aims at making the protection of freedom of association

¹ Syndicalisme, 7-13 August 1947.
as comprehensive as possible. Thus, the Belgian Act of 24 May 1921 guarantees freedom of association "in every field", and the Swedish Act of 11 September 1936 provides that there shall be no infringement of the right of association.

In many cases there is insistence on the fact that no one may be obliged to belong or not to belong to an association (as, for example, in Belgium, Costa Rica, Cuba, Dominican Republic, Finland, Haiti, Iran, Nicaragua, Turkey, Venezuela).

In France, according to the Collective Agreements Act of 23 December 1946, national agreements must contain stipulations concerning freedom of association and freedom of opinion for the workers and governing engagement and dismissal, but these stipulations may not affect the freedom of the workers to choose their own unions. For instance, an agreement concluded on 12 February 1947 between the Banks Association on the one hand and the federations representing bank employees on the other, which was approved, under the terms of the Act, by an Order of 20 August 1947, includes the following provisions:

The signatory parties recognise freedom of opinion and freedom to join or to belong to any trade union established in accordance with Book III of the Labour Code.

In no case may a decision taken, and particularly one relating to engagement, distribution of work, vocational training, general discipline, promotion, penalty or dismissal, be based on the fact that the worker concerned does or does not belong to a trade union.

The management of an undertaking or its representatives may not use any form of pressure in favour of or against any labour organisation.

The law and the customs of the occupation should always be respected in the course of the exercise of freedom of association...

Any employee or occupational group concerned, who or which considers that a decision has been taken in any undertaking in violation of the right to organise, may appeal from the employer’s decision to the regional joint committee ...

If, in the final ruling, it is recognised that the decision to which objection has been taken constituted a violation of the right to organise, the employee against whom such decision was taken shall be reinstated in all his rights.

As a rule, the acts which constitute pressure improperly affecting freedom of association are defined in the appropriate legislation.

First, contracts of employment which restrict the exercise of the right to organise are declared null and void. In the United

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1 I.L.O.: Legislative Series, 1921, Bel. 2-3.
2 Idem, 1936, Swe. 9.
3 Journal officiel, 13 September 1947.
States, the Norris-LaGuardia Act of 23 March 1932 renders illegal all contracts of employment under which one of the parties undertakes not to join an occupational organisation or to leave such an organisation. Contracts of this sort are also declared null and void in the following countries: Canada, Cuba, Egypt, Finland, Haiti, Netherlands (Collective Agreements Act), Turkey, Uruguay, etc.

Secondly, in many national laws certain unilateral acts on the employer’s part are expressly prohibited, as for example:

(1) In Argentina, Belgium, Canada, Ecuador, France, United States, Venezuela, etc., the employer may not make the engagement of an employee dependent on the condition that he does not belong to a union or will leave the union to which he does belong.

(2) In Argentina, Australia, Belgium, Brazil, Canada, Colombia, Egypt, Union of South Africa, United States, etc., the employer may not penalise a worker during his employment because of his membership of a union or his union activities, either by reducing his pay, or by transferring him, or by any other discriminatory act.

(3) In Argentina, Australia, Belgium, Brazil, Canada, Colombia, Egypt, France, New Zealand, Union of South Africa, United States, etc., the employer may not dismiss an employee or threaten him with loss of employment because of his membership of a union or his union activities.

(4) In Argentina, Belgium, Bolivia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, France, Mexico, Nicaragua, Uruguay, United States, Venezuela, etc., the employer may not use any form of pressure, intimidation or compulsion such as may directly or indirectly involve a restriction of the worker’s freedom of association.

In the United States, and similarly in Canada and Argentina, such acts are considered to be "unfair practices". However, under the recent Labor-Management Relations Act of 23 June 1947, known as the Taft-Hartley Act, which amends the National Labor Relations Act of 1935, the expression or dissemination of views in written or other form does not constitute and is not
evidence of an unfair practice, if it contains no threats of reprisals or force, or promises of benefits.

It will be seen from this brief enumeration that at present the legislation of a large number of countries attempts, in one way or another, to protect the worker in the exercise of his freedom to associate. This protection is accorded to workers seeking employment as well as throughout the whole duration of their engagement. It relates both to acts of open coercion and intimidation and to those which, under cover of the law, in fact constitute disguised pressure of an economic kind.

**Protection of Freedom of Association of Workers’ Organisations**

In order to shelter workers’ organisations from any intervention on the employers’ part, the legislation of several countries has sought to secure their full independence. A union would not, indeed, be in a position to defend the interests of the workers in any real sense if it were under the employers’ influence. In many cases, therefore, employers and their organisations are forbidden to intervene in the constitution or administration of workers’ organisations, or to support them financially or in any other way (e.g. in Argentina, Brazil, Canada, Colombia, Venezuela).

In the United States such acts are included in the list of unfair practices laid down by the National Labor Relations Act of 1935. Company unions, dominated by the employer, are consequently prohibited. The amending Act of 1947 even states that the support given by an employer to a workers’ association affiliated to a national or international federation should also be considered as an unfair practice, although this has not hitherto been the case.

In many countries (such as Australia, Brazil, China, New Zealand, Union of South Africa, etc.) there are special provisions intended to protect union officials and agents — persons particularly exposed to reprisals by the management — against any discriminatory or punitive action which the employer may take against them either when engaging them or during their employment.

In several Latin-American countries (Bolivia, Chile, Colombia, Ecuador, Venezuela, etc.) the employer may not dismiss a union official without good reason, which must be established and approved by the competent authority.
THE RIGHT AND DUTY TO BARGAIN COLLECTIVELY

In many countries — as stated above — the employers' and workers' organisations recognise one another mutually as the authorised representatives of the employees and the management as a whole, and thereby agree to regulate wages and other conditions of work by collective bargaining.

Failing such mutual recognition, however, the workers' organisations are obliged to have recourse to economic pressure in order to induce employers to enter into negotiations with them. Such conflicts are particularly serious, since they involve the principle of occupational solidarity, and may consequently spread throughout the whole of industry. Indeed, one of the main objects of the basic agreements concluded in the Scandinavian countries, in France and in Belgium, was to put an end to conflicts regarding union recognition; it was also one of the objects of the United States National Labor Relations Act of 1935 (the Wagner Act), which effectively terminated a wave of strikes of this same type.¹

To prevent such conflicts, the legislative bodies of several countries (Canada, Colombia, Ecuador, Mexico, Sweden, United States, etc.) have attempted to solve the problem of union recognition. With this object they give the unions the right to bargain and impose on employers and their organisations the obligation not to refuse to enter into negotiations. The legislator has therefore found it advisable to define the right of negotiation in two respects — i.e., to indicate which organisations have the right to negotiate, and in what this right consists.

The Problem of the Representative Organisation

In the countries where employers and workers, freed at an early stage from all legal restriction, have been able to form powerful unitary organisations, as in the United Kingdom and the Scandinavian countries, the State can leave this matter entirely in the hands of the parties concerned. The existing organisations represent the parties to collective bargaining in fact as well as in law. In Sweden there is formal legislative confirmation of the right to negotiate, but it is possible in such circumstances simply to confer this right on any employer and the organisation to which he belongs, and on any organisation of which the employed persons in question are members.

¹ Annual reports of the National Labor Relations Board.
A different situation arises, however, in countries where the trade union movement is divided, for there the employer may be approached by several rival organisations, and should be in a position to know which of these he must recognise if he is to remain within the law. The question arises, can a union which includes only a very small minority of workers claim the same rights as an organisation with a firmly established position?

As this problem will be examined in greater detail in Part II of the present report, dealing with collective agreements, it will be sufficient here to summarise very briefly the principal legislative solutions.

Recognition of the Most Representative Organisations.

In some countries, and particularly in those where the trade union movement is divided between various religious or political tendencies (as, for instance, in Belgium and France), the "most representative" organisations — a term borrowed, as is well known, from the Constitution of the International Labour Organisation — represent the parties in the negotiations undertaken within the joint committees which are established for the purpose by the appropriate Act or regulations.

Recognition of a Single Representative Organisation.

In a number of other countries, one single organisation is entitled to represent the workers. There is, however, a fundamental difference between the systems which grant this right to a union because it has the monopoly of organising the workers in question, and those which grant this right to a union because it is the most representative of several organisations.

Legal monopoly. In the U.S.S.R., the unions directed by the Central Trade Union Council and organised in accordance with the economic structure of the State, alone conclude collective agreements, the essential purpose of which is to divide among the different establishments that proportion of the national income which is earmarked for wages.

"De facto" monopoly. In the countries of Central Europe (Bulgaria, Czechoslovakia, Poland, Yugoslavia, etc.), the trade union movement has been reconstituted since the war on a unitary basis. Thanks to this de facto situation — which has, in Czechoslovakia for instance, been legalised by the United Labour Organi-

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1 See below, Part II, Section 1, page 39.
sation Act of 16 May 1946 — a single organisation is invested with the right to represent workers and to conclude collective agreements on their behalf.

Registration of the representative union. In several other countries (such as Argentina, Australia, Mexico, New Zealand, Union of South Africa, etc.) a single union is recognised as the representative of the workers for collective bargaining purposes, and is registered as such, but on condition that, and only so long as, it effectively has a representative character. Once a given union has been so registered, registration may be refused to any other organisation.

Application of the majority principle. In the United States and Canada, according to the legislation on labour relations, the representatives designated for collective bargaining by the majority of the employees of the economic unit to which the negotiations are to relate (undertaking, group of undertakings, department of an undertaking, etc.), are the exclusive representatives of all the employees therein, and are consequently qualified to conclude collective agreements on behalf of all of them. If there is a dispute regarding the representation of the employees, the labour relations board makes an investigation and organises and supervises a vote by secret ballot.

Extent of the Duty to Bargain

The parties on which the obligation to negotiate is imposed by law are not thereby obliged effectively to conclude a collective agreement, but must, as the Canadian Act provides, negotiate in good faith and attempt as far as possible to conclude such an agreement. This is also the sense of the relevant provisions of the labour codes in force in Bolivia, Colombia, Ecuador, Mexico and Venezuela, according to which an employer whose personnel includes workers belonging to a given union is obliged, if that union so requests, to conclude a collective agreement with it.

The Swedish Act of 1936 makes it clear that the right, and the corresponding obligation, to negotiate involves the duty of appearing at the meeting at which the negotiations are to take place, and if necessary to submit a proposal for the settlement of the question at issue, indicating reasons.

Similarly, the United States Labor-Management Relations Act of 1947 provides that the employer and the representative of the employees shall "meet at reasonable times and confer
in good faith with respect to wages, hours, and other terms and conditions of employment or the negotiation of an agreement", and to execute a written contract if either party so requests, but such obligation does not compel either party to agree to a proposal or to make concessions. From the moment at which the labour organisation ceases to be the recognised representative of the employees within the meaning of the Act, the employer is no longer obliged to negotiate.

In most of the national schemes only the employer's refusal to enter into collective bargaining ranks as an infringement of the right of association. The Canadian and Swedish Acts, however, have always placed the two parties on an equal footing, and the Swedish Act provides more particularly that the right of the one party to negotiate involves the corresponding obligation for the other.

In the United States the amending Act of 1947 brings out this reciprocity still more clearly by classifying refusal to negotiate with an employer as an unfair practice on the part of the labour organisation.

3. Protection of Freedom of Association of Employers and Third Parties

The measures examined in the preceding sections are intended to protect the worker and workers' organisations against acts on the part of the employer or employers' organisations infringing freedom of association. In the legislation of some countries, however, the idea of such infringement is given a wider application.

**General Measures**

With the object of protecting all persons, without any distinction, in the exercise of freedom of association, several Acts provide in general that no one may be obliged to belong to an association. Such provisions evidently apply as much to employers as to employees. (Such is the case in Costa Rica, Cuba, Egypt, Nicaragua, Turkey and Venezuela.)

**Protection of the Freedom of Association of the Employer**

Some other Acts which specifically protect the exercise of freedom of association by the workers provide a similar guarantee for employers also.
In Australia, for instance, the Conciliation and Arbitration Act makes it illegal for workers to go on strike for the sole reason that the employer is an agent or member of an employers' organisation.

In Canada, workers' organisations and persons acting on their behalf are prohibited from participating in the formation or administration of an employers' organisation or intervening therein.

In the United States, the Labor-Management Relations Act of 1947 considers it to be an unfair practice on the part of a labour organisation or its agents:

(1) to restrict or coerce an employer in his free choice of his representatives; and (2) to organise a strike in order to force an employer or self-employed person to join an employers' or workers' organisation.

Protection of Third Parties

Legislative bodies as a rule hesitate to place attacks on the freedom of association of employers and employers' organisations on exactly the same footing as those of which workers or their organisations may be victims. Indeed, thanks to his more favourable economic position, the employer is able to practise discrimination regarding trade union activity simply by using his freedom to "hire and fire". Consequently, legislation is required in order to prohibit acts which, without it, would as a rule be legal under common law.

Workers and workers' organisations, on the other hand, are not as a rule in a position to attack other persons' rights, and more particularly those of unorganised workers or members of rival labour organisations, without committing acts of illicit pressure for which there is a common law penalty (e.g. assault, intimidation, violence, sabotage, etc.). Legislative bodies have therefore in most cases refrained from passing special measures to make such acts illegal.

Nevertheless the legislation of certain countries aims at placing the freedom of third parties out of reach of any attack.

According to Canadian legislation, no-one may have recourse to any act of coercion or intimidation in order to oblige or influence any person to become a member of a trade union or labour organisation.

The Belgian Freedom of Association Act of 24 May 1921 is still more specific when it states that "any person who, for the
purpose of compelling a particular individual to join or refrain from joining an association, resorts to violence, molestation or threats, or who causes him to fear the loss of his employment or injury to his person, family or property, shall be punished...

It should, however, not be forgotten that section 310 of the Belgian Penal Code, providing for the punishment of interference with the free exercise of labour, was repealed on the same date. Certain passages from the preamble to the repealing Act are still of the greatest importance today. We read:

the offences to which the above-mentioned section relates are, with very few exceptions, common law offences covered by numerous sections of the Penal Code... It may be argued that acts of this character should be punished in a special way and with additional severity because they relate to disputes arising out of the contract of employment. It would be difficult to find convincing arguments in justification of such exceptional treatment. Re-read the sections of the Penal Code which relate to the use of violence and abuse and to material damage, and it will be easily recognised that the penalties for which they provide involve quite sufficient guarantees for social order, even with regard to offences and infringements connected with disputes between capital and labour.

In the United States, the Labor-Management Relations Act of 1947 describes as an unfair practice for a labour organisation or its agents, apart from the cases mentioned above, the following:

(1) to restrain or coerce employees in the exercise of the right to self-organisation and the right to refrain from organising (it is, however, provided that “this paragraph shall not impair the right of a labour organisation to prescribe its own rules with respect to the acquisition or retention of membership therein”);

(2) to cause an employer to discriminate against an employee in regard to hire or tenure or any condition of employment, or against an employee to whom membership in an organisation has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required;

(3) to cause or attempt to cause an employer to pay for services which are not performed (“feather bedding”); or

(4) to engage in a strike of which it is an object:

(a) to force the employer to cease commercial relations with another employer (“secondary boycott”);

(b) to force any other employer to recognise or bargain with a labour organisation which has not been certified as the employees’ representative in accordance with the Act;

(c) to force an employer to recognise or bargain with a particular labour organisation if another labour organisation has been certified as his employees’ representative in accordance with the Act; or

(d) to force an employer to give preference to employees belonging to a particular labour organisation or to a particular
trade, craft or class when assigning particular work, provided the employer has not failed to conform to an order of the Labor Relations Board regarding the recognition of a union.\(^1\)

The worker is, however, entitled to refuse to enter the premises of an employer other than his own, if the employees there are engaged in a strike approved by their representative organisation, i.e., he is entitled to refuse to act as a strike breaker. It should also be noted that the Act expressly recognises the right of employees to strike within the limits which it defines.

Like the employers, the workers' organisations may freely express or disseminate any view, argument or opinion, and this neither constitutes nor is evidence of an unfair practice, provided no threats of reprisals or force or promises of benefits are involved.

4. The Problem of "Union Security"

In a number of countries the workers' organisations attempt, in negotiating with employers for the conclusion of collective agreements, to obtain the inclusion of a so-called "union security" clause. This may take the form of an undertaking by the employer to engage as employees only persons belonging to the negotiating union ("closed shop"), or that of an undertaking by the employer to retain only such of his employees as belong to the union or join it within an agreed period ("union shop"), or at least to give preference to organised workers. Another stipulation, frequently linked up with the preceding one, requires the employer to deduct his employees' union contributions from their wages and to transmit the resulting amounts to the union ("check-off").

In several countries these stipulations are prohibited by legislation, in others no express ruling is given, and in others again such stipulations are expressly or implicitly permitted. The following examples speak for themselves.

In the Netherlands, the Collective Agreements Act of 24 December 1927\(^2\) declares null and void any stipulation in a collective agreement prohibiting the employer from engaging workers of a particular religion or political party or members of a specified association, or obliging him to engage such workers only.

\(^1\) For other restrictions on the right to strike, see below, Part III, Section 2.
\(^2\) I.L.O.: Legislative Series, 1927, Neth. 2.
In Costa Rica also, any stipulation obliging an employer to change his personnel at the union’s request, or any other stipulation placing unorganised workers in a state of manifest inferiority, is declared null and void.  

The Belgian Act of 24 May 1921 provides for the punishment of “any person who, with intent to attack freedom of association, makes the conclusion, the execution or (even with due regard to customary notice) the continuance of a contract of work or service conditional upon the affiliation or non-affiliation of one or more persons to an association...”

Under the French Collective Agreements Act of 23 December 1946, national agreements (agreements of narrower scope may only be concluded within the framework of an existing national agreement) must contain stipulations regarding the freedom of association and freedom of opinion of the workers, and also governing employment and dismissal, and such stipulations may not affect the free choice of their union by the workers.

In the Union of South Africa, the legislation on conciliation and arbitration, which governs industrial relations, makes no special mention of the closed or union shop, but the authorities recognise and give compulsory force to collective agreements providing that no employee not belonging to the contracting union shall be employed by a member of the contracting employers’ organisation, and that no employee belonging to the contracting union shall work for an employer not belonging to the employers’ organisation.

Under the Mexican Labour Code, a stipulation in a collective agreement by which the employer undertakes not to engage unorganised workers as his employees is permissible, but may not be applied to the detriment of unorganised workers already in the service of the employer when the agreement is concluded.

In Australia, the Conciliation and Arbitration Act empowers the competent authority, in its awards (which take the place of collective agreements or confirm these when concluded), to “direct that, as between members of organisations of employers or em-

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2 I.L.O.: Legislative Series, 1921, Bel. 2-3.
3 Idem, 1948, Fr. 15.
5 I.L.O.: Legislative Series, 1931, Mex. 1.
ployees and other persons... offering or desiring service or em-
ployment at the same time, preference shall be given to such
members, other things being equal”.¹

The New Zealand legislation is still stricter. Under the Conci-
liation and Arbitration Amendment Act of 1936², every award
must include a provision to the effect that “it shall not be lawful
for any employer bound thereby to employ... any adult person
who is not for the time being a member of an industrial union ”;
and every industrial agreement is presumed to include a stipu-
lation to the same effect. Employers may only engage unorganised
workers if members of unions are not available.

It should be noted finally that the United States National
Labor Relations Act of 1935, and also Canadian legislation, allow
collective agreements which stipulate membership in a union as a
condition of engagement (“closed shop”) or of maintenance
in employment (“union shop”). In the United States, however,
the Labor-Management Relations Act of 1947 considerably restricts
the scope of this stipulation. The employer is no longer obliged
to engage organised workers only — i.e. the closed shop is illegal;
on the other hand, the parties may agree that membership in
the union shall be regarded as a condition of employment in the
undertaking in question as from the thirtieth day from the begin-
ing of employment or from the effective date of the agreement —
i.e., the union shop is retained. For this stipulation to be valid,
however, the following conditions must have been fulfilled:

(a) the union must be the recognised representative of the
employees, as provided in the Act;

(b) the Labor Relations Board must have certified that, in
a ballot held by it in the unit concerned, a majority of the
employees eligible to vote have authorised the union to make
such an agreement. In applying to have such a ballot held, the
union must file a petition with the Board, alleging that 30 per
cent. or more of the employees concerned desire a union shop
agreement.

During the period of validity of the agreement, the Board
may take a ballot regarding the abolition of the union shop,
provided 30 per cent. or more of the employees concerned have

¹ I.L.O.: Legislative Series, 1928, Austral. 2. For the 1947 amendment cf.
Legislative Series, 1947, Austral. 2.
filed a petition to that effect. However, no more than one ballot may be held in an undertaking within any period of twelve months.

An employer is not required to apply the union shop clause against an employee to whom membership of the union was not available on the terms applicable to other members, or if membership was denied or terminated for reasons other than the failure of the employee to pay his subscription or entrance fee; and it would be regarded as an unfair practice if a union attempted to force an employer to discriminate against such an employee.

It should be noted, lastly, that the Act does not over-ride the provisions of a State law under which membership in a labour organisation may not be made a condition of employment.

In order to protect the workers who are required to join a given union against any arbitrary action by the latter, it is usually provided that unions may not restrict their membership or discriminate between their members.

In Australia, the registration of a union may be annulled if its rules do not provide sufficient facilities for the admission of new members or impose oppressive conditions on the workers.

In New Zealand, any person required to join a union is entitled to become a member of it, and any provision to the contrary contained in the rules of a union is null and void.

In the United States, it is illegal for a labour organisation to require employees to whom the union-shop clause applies to pay an entrance fee which the Labor Relations Board considers excessive or discriminatory.

5. Supervision and Sanctions

The Competent Authorities

Provision is usually made for the establishment of authorities with supervisory powers, competent to deal with any violation of the law and to impose penalties.

Where the right of association and negotiation is laid down in a collective agreement or some more general instrument, disputes arising out of the agreement are subject to the conciliation and arbitration machinery accepted by the parties, such as the joint labour market board set up in Sweden under the agreement
of 1938, the boards and committee provided for in the collective agreements of the United Kingdom, France, etc.

In Australia, New Zealand and the Union of South Africa, the conciliation and arbitration authorities are competent to conduct the necessary investigations and to impose penalties.

In the countries where there are labour courts or arbitration boards with judicial powers, as for instance in the Scandinavian countries and many of the Latin-American republics, these authorities are responsible for settling disputes.

The Swedish Act of 1936 provides, apart from recourse to the labour court, for a special conciliation and arbitration procedure. This must be initiated by the central workers' organisation. When the parties submit a dispute for settlement by this procedure, they undertake to keep a truce — i.e., not to have recourse to a strike, lockout or boycott during a certain period. This undertaking takes effect in two ways — first, it is an obligation on the unions and their central organisation; and, secondly, it is an obligation on the employers towards the workers' organisation concerned and its members. In order to settle disputes, the competent authority appoints an independent person who is required to direct the negotiations or to set up a committee of three persons if the question is particularly important or complicated. If the conciliation fails, an arbitration board may be set up. The parties are not obliged to accept the board's proposals or recommendations, but the board's report is made public, and it is presumed that under the pressure of public opinion neither party will in fact refuse to accept the recommendations.

In the United States, Canada and Argentina, national labour relations boards have been established and are empowered to deal with all the cases of unfair practices which have been enumerated above. These bodies may undertake the necessary investigations, require witnesses to attend and testify, etc. In the United States the orders of the Labor Relations Board are enforceable only through a Federal Court. This latter authority, after examining the petition filed by the Board or one of the parties, may modify or set aside the Board's order. The Court's decision is subject to review by the Supreme Court of the United States.

In Canada there is no appeal on matters of substance from the orders of the Labour Relations Board.

The United States Labor-Management Relations Act of 1947 has introduced certain changes of procedure, arising particularly
out of the fact that the Board is now competent not only as regards unfair practices on the employer's part, but also as regards those of which workers' organisations may be guilty.

Unlike the Act of 1932, which prohibits the use of injunctions in labour disputes, the new Act empowers the Labor Relations Board to petition a Federal Court for "appropriate temporary relief" if it has received any complaint of an unfair practice. Indeed, the necessary preliminary investigation must be made forthwith, and has priority over all other cases, if the unfair practice has been committed by a labour organisation and it is alleged that it will cause substantial and irreparable injury to the plaintiff.

Sanctions

The sanctions for which provision is made may be both penal and civil in character (as in Australia, Belgium, Canada, China, Mexico, New Zealand, Sweden, United States, etc.). The penalty which has proved most effective in practice consists in requiring the reinstatement of the dismissed worker with payment of arrears of wages. Thanks to such action, the Labor Relations Board of the United States has been able, with a maximum of success, to penalise offences against freedom of association.

According to the Act of 1947, payment of arrears of wages may also be required from a labour organisation when it has been responsible for discrimination against the employee in question. It is also provided that if the employee was suspended or dismissed "for cause", i.e. with good reason, he shall not be entitled to compensation. Further, an employee covered by a collective agreement loses all his rights if he has taken part in a strike called or directly or indirectly approved by the union without serving a written notice upon the other party 60 days prior to the expiration of the agreement.

Conclusions

The International Labour Conference decided at its 30th Session (Geneva, June-July 1947) to place the question of "freedom of association" and "protection of the right to organise" on the agenda of the 31st Session with a view to the adoption

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of one or several international labour Conventions. These questions were the subject of a questionnaire submitted to Governments in August 1947, in order to provide a basis for the drafting of these Conventions.¹

However, the protection of the right to organise being a complex problem, the 30th Session of the Conference singled out, for possible international regulation in 1948, only the principle of such protection, whereas the application of the principle of the right to organise and to bargain collectively was placed on the agenda of the 31st Session for a first discussion. The questionnaire to be found at the end of Part I of the present report relates to this question.

The object of international regulations on this subject would be to guarantee exercise of the right to organise in the field of relations between employers and workers or between employers’ and workers’ organisations, and in that field alone. This means that the wider problem of guaranteeing the right of association in general lies outside the scope of the proposed regulations. But with this reservation the questionnaire relates to all those aspects of the problem of the protection of the right to organise and to bargain collectively which appear to lend themselves to international regulation.

In preparing the questionnaire, the Office has taken into account not only the legal and factual situation in the different countries, but also the discussions which took place both in the Committee on freedom of association and industrial relations and in the plenary sittings of the Conference.

In order to facilitate the preparation of their replies by Governments, the significance of those questions which seem particularly in need of a commentary is briefly explained below.

I. DESIRABILITY AND FORM OF THE REGULATIONS

In question 1, Governments are asked whether the International Labour Conference should adopt international regulations concerning the application of the principles of the right to organise and to bargain collectively, in the form of a Convention. At its 30th Session the Conference replied in advance, in a certain sense,

to this question, since it decided unanimously that the problem of protection of the right to organise and to bargain collectively should be placed on the agenda of the next session. The statement of law and practice also shows that in most countries the problem has already received a satisfactory solution or at least has been studied with a view to settlement in the near future. The question, therefore, seems ripe for international regulation.

II. GUARANTEE OF THE WORKERS’ RIGHT TO ORGANISE

Questions 2 and 3 relate to cases of infringement of the workers’ right to organise on the part of the employer or his agents. It will be noted that the infringements in question are exclusively acts of anti-union discrimination with regard to employment, either tending to make the engagement of a worker subject to the condition that he does not join a union or withdraws from one to which he already belongs, or involving his dismissal or other injury to him by reason of his membership of a union or his union activities.

The terms "by reason of his membership of a union or his union activities" appear sufficiently comprehensive to cover the other cases of infringement of the workers’ right to organise which cannot all be expressly mentioned in international regulations; the intention is to cover cases in which the employer engages in reprisals against the members, agents or officers of a union who, in the legitimate performance of their functions, organise or direct labour conflicts, appeal to the labour authorities established to deal with infringement of union rights or social legislation, represent the workers on bodies for the defence of their occupational interests, etc.

It should be noted that under the various national regulations for the protection of the right to organise, these acts are considered illegal whenever they involve anti-union discrimination with regard to employment, even if it is not accompanied by illicit pressure.

On the other hand, this definition of the protection of the right to organise does not question the right of the employer to choose his personnel freely, in so far of course as the choice implies no anti-union discrimination with regard to employment.
III. GUARANTEE OF THE RIGHTS OF WORKERS’ ORGANISATIONS

Questions 4 and 5 relate to cases of infringement of the rights of workers’ organisations by acts either favouring the establishment of unions under the employers’ control, or involving interference in the establishment or conduct of a union or its support by financial or other means.

These too are acts considered to be illicit by the various national regulations, whenever they constitute interference in the workers’ right to organise freely.

IV. GUARANTEE OF THE RIGHT TO ORGANISE OF EMPLOYERS AND THIRD PARTIES

Questions 6 and 7 relate to cases in which the right to organise of employers and third parties (workers who are not organised or belong to rival unions) is infringed by acts of illicit pressure (assault, intimidation, violence).

It will be noted that whereas the acts of anti-union discrimination with regard to employment, or of interference with the workers’ right of free organisation, to which the four preceding questions refer are declared ipso facto illegal, infringements of the right to organise of employers or third parties — referred to in questions 6 and 7 — can only result from acts of illicit pressure. The distinction thus made, on the model of most of the national regulations, is by no means arbitrary, since it proceeds from the very nature of employment relationships.

Indeed, when the employment relationship is established, the employer — thanks to his more favourable economic position — is in a position to practise anti-union discrimination with regard to employment without needing to have recourse to pressure of any sort. Organised workers or workers’ organisations, on the other hand, are evidently not in a position to impede the right of organisation of employers or third parties except by recourse to acts of coercion as already defined.

Furthermore, it appears from the statement of law and practice that, with a very few exceptions, most countries have chosen not to make special provision for cases of infringement of the right to organise of employers or third parties. The reason is that acts of illegal pressure are as a rule common law offences which may
be punished as such. Consequently, organised workers and workers’ organisations, if they so act, commit common law offences and consequently enjoy no special protection; on the other hand, they are subject to no discriminatory treatment as compared with other individuals or organisations.

In any case, it will be for Governments to decide whether common law provides sufficient guarantees, or whether in their opinion the international regulations should include special provisions under this head; it would appear, however, that, if the protection of the right to organise is not to be rendered ineffective, such provisions should only relate to specific acts of pressure, clearly defined at the national level, such as assault, intimidation and violence.

V. UNION SECURITY CLAUSES

Question 8 refers to closed or union shop clauses, by which the parties to a collective agreement undertake to make a worker’s compulsory membership of the contracting trade union a condition for his engagement ("closed shop") or a condition for his maintenance in employment ("union shop").

It should be remembered in this connection that the problem of the closed shop was the subject of warm discussion at the 30th Session of the Conference. Some Government members, and the Employers’ group as a whole, considered that it should not be possible for any worker to be obliged to join a union in order to obtain or keep employment, for this would infringe his individual freedom. On the other hand, the majority of the Government members and of the Workers’ members declared themselves in favour of closed or union shop clauses and, in support of their argument, referred particularly to the fact that in many countries such clauses are legal.

In fact — as the statement of law and practice shows — this problem continues to be a subject of considerable controversy, and the solutions adopted in the different countries vary widely. Most have refrained from expressly regulating the matter, but treat the clauses in question as legal provided they have been freely agreed to between the representative organisations of employers and workers and have as their sole object the defence of occupational interests. Other countries formally recognise them as legal, with the single reservation that the union concerned shall place no unreasonable obstacle in the way of affiliation by
hitherto unorganised workers. Others again declare the clauses illegal.

With such diversity in national legislation, the international regulations can hardly take up a position for or against the closed shop. On the other hand, in the interests of the two parties concerned, it is impossible to pass the question over in silence, for certain forms of anti-union discrimination with regard to employment, or certain acts of pressure on the part of workers' organisations, will be considered licit or illicit according as national law or usage does or does not accept the practice of the closed shop. Having regard to this situation of fact, question 8 merely asks Governments whether, in their opinion, the international regulations should include a provision to the effect that legislation — or a collective agreement concluded in conformity with legislation — requiring membership in a given union as a condition for engagement or as a condition to maintenance in employment, is compatible with the provisions of the proposed international regulations concerning the protection of the right to organise.

Drafted in this way, the relevant provision of the international regulations would involve no obligation on countries to introduce the closed shop, but would constitute an indispensable safeguard for those which regard it as legal.

VI. GUARANTEE OF THE PRINCIPLE OF COLLECTIVE BARGAINING

Question 9 relates to the mutual obligation of employers or employers' organisations and of workers' organisations to give effect to the principles of union recognition and collective bargaining.

According to the proposals submitted by the Office to the 30th Session of the Conference, only the refusal of employers or employers' organisations to recognise workers' organisations or to negotiate with them for the conclusion of collective agreements ranks as an infringement of the right to organise. It may indeed appear so evidently in the interest of workers' organisations to have their conditions of work regulated by collective agreement as to be unnecessary to place upon them a statutory obligation to that effect.

However, there is no objection to providing, as is at present the case in several countries, for reciprocity with regard to this obligation, which can only lead to greater stability in labour-management relations.
VII. SUPERVISORY MEASURES

Question 10 relates to the bodies required to secure respect for the right to organise, if this is necessary.

The statement of law and practice shows that in many countries special machinery has been established to deal with infringement of the right to organise — which is thus removed from the jurisdiction of the ordinary courts — and to impose the appropriate penalties.

In view of the very great diversity in national judicial systems, however, it will be useless to propose detailed rules which would have little hope of suiting all countries. The essential purpose is to ensure, in some form or other, that appropriate bodies shall be set up to which the parties may apply without needing to go through the long and expensive procedure of the ordinary courts.

VIII. METHODS OF APPLYING THE INTERNATIONAL REGULATIONS

Questions 11 and 12 relate to the two following methods of applying the proposed international regulations: (1) normal method of application by legislative action; (2) method of application by agreement.

The statement of law and practice shows that in a very large number of countries the guarantee of the right to organise and to bargain collectively is the subject of legislation. For these countries, therefore, there is no obstacle of a technical character to the rapid implementation of the international regulations by normal methods — i.e., by legislative action.

However, in other countries, which are particularly representative in the field of industrial relations (the United Kingdom and the Scandinavian States, for instance) the right to organise and to bargain collectively is effectively guaranteed by means of agreements, explicit or implicit, between the employers' and workers' organisations. It may even be said that the various problems successively mentioned above have been solved more aptly in this way than could have been done by the most appropriate legislative scheme. Therefore, if the situation of fact in a given country would enable its Government, in principle, to ratify a future Convention on the protection of the right to organise, it is questionable whether it would be wise to impose on that
country legislative action for which there was no genuine need and which the organisations themselves might not desire.

The proposals submitted by the Office to the 30th Session of the Conference also contemplated the possibility of giving effect to the provisions of any international regulation of the right to organise and to bargain collectively by means of agreements between the central organisations of employers and workers. The Conference supported this view, declaring that appropriate measures should be taken to guarantee exercise of freedom of association where full and effective protection is not already afforded.

The Conference is sovereign, within the limits of the Constitution, to decide by which means it considers that effect should be given to international labour Conventions. It may be recalled in this connection that at its 28th Session (the Seattle Maritime Session) the Conference adopted several Conventions to which effect could be given either by legislation, or by collective agreement, or by a combination of these two methods.¹

It should, however, be noted that the international Conventions adopted at Seattle apply only to a single branch of economy (transport by sea) and deal only with such questions as can conveniently be covered by collective agreements.

In the present case, on the other hand, the international regulations will cover a national economic system with all its branches. Furthermore, questions appropriate for treatment in an international Convention do not always lend themselves to regulation by collective agreement. For instance, the fundamental question of the mutual recognition of labour and management organisations is a pre-condition even to the conclusion of collective agreements; this means that it is not the collective agreement in the usual sense of the term (concluded, for instance, between an employer or group of employers and one or several workers' unions) but rather a general agreement entered into by the central organisations of employers and workers which would be an appropriate instrument for the application of the provisions of international regulations on the protection of the right to organise.

As was seen in the statement of law and practice, it is in these agreements of a general character that the employers' and workers' central organisations recognise one another and undertake formally to respect the right to organise; they are only the starting

¹ Cf. particularly the Wages, Hours of Work and Manning (Sea) Convention 1946 (No. 76), Articles 21 et seq.
point of the collective negotiations between the employers' and workers' organisations affiliated to the respective central bodies, and it is the collective agreements concluded under such basic agreements which govern in practice the mutual relations of the very great majority of employers and workers in the country.

In other words, the scope of such agreements is practically identical with that of national Acts.

It follows from the above that the conditions which must be fulfilled in order that effect may be given by collective agreement to the provisions of an international Convention on protection of the right to organise will in practice seldom be fulfilled.

Therefore, in order to prevent a situation in which this method of applying the proposed international regulations — i.e., by agreements between the parties — might affect the principle of reciprocity of obligations which is at the basis of all international engagements, the Office has enumerated in question 12 the conditions which should be fulfilled before a State may rely on agreements as a means of applying the Convention.

First, the employers' and workers' organisations should recognise one another and undertake to provide effective guarantees for the exercise of the right to organise and to bargain collectively.

Secondly, the employers' and workers' organisations parties to such agreements should include a substantial proportion of all employers and employed persons in the country concerned (the Conference would have to determine this proportion).
QUESTIONNAIRE

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning the application of the principles of the right to organise and to bargain collectively, in the form of a Convention?

II. Guarantee of the Workers' Right to Organise

2. Do you consider that the international regulations should include provisions regarding the protection of the workers' right to organise?

3. If so, do you consider that the international regulations should prohibit all acts of anti-union discrimination on the part of the employer or his agents through which

   (a) the employment of a worker is made dependent on the condition that he shall not join a union or shall withdraw from one to which he already belongs?

   (b) a worker is prejudiced by reason of his membership of a union or his union activities?

   (c) a worker is dismissed by reason of his membership of a union or his union activities?

III. Guarantee of the Rights of Workers' Organisations

4. Do you consider that the international regulations should include provisions regarding the protection of the rights of workers' organisations?
5. If so, do you consider that the international regulations should prohibit all acts on the part of employers, employers' organisations or their agents, infringing the workers' right to organise by

(a) furthering the establishment of unions under the domination of employers?
(b) interfering in the establishment or conduct of a union or supporting it by financial or other means?

IV. Guarantee of the Right to Organise of Employers and Third Parties

6. Do you consider that the international regulations should include provisions regarding the protection of the right to organise of employers and third parties?

7. If so, do you consider that the international regulations should prohibit recourse to assault, intimidation and violence with the object of forcing an employer or a worker to join or not to join an organisation of employers or workers?

V. Union Security Clauses

8. Do you consider that the international regulations should include a provision to the effect that legislation — or a collective agreement concluded in conformity with legislation — requiring membership in a given union as a previous condition to engagement, or as a condition to maintenance in employment, is not incompatible with the provisions of the present regulations?

VI. Guarantee of the Principle of Collective Bargaining

9. Do you consider that the international regulations should include a provision making it an obligation for employers or employers' organisations on the one hand, and for workers' organisations on the other, to give effect to the principles of union recognition and collective bargaining?
VII. Supervisory Measures

10. Do you consider that the international regulations should specify the obligation to establish appropriate machinery for the purpose of ensuring respect for the right to organise?

VIII. Methods of Applying the International Regulations

11. Do you consider that the international regulations should state that effect may be given to the present Convention:
   (a) By means of legislation?
   (b) By means of agreements between the organisations of employers and workers?
   (c) By means of a combination of (a) and (b)?

12. In case of an affirmative reply to question 11 (b) or (c), do you consider that the following conditions should be fulfilled:
   (a) The employers’ and workers’ organisations should recognise one another and undertake to provide effective guarantees for the exercise of the right of employers and workers to organise and to bargain collectively?
   (b) The employers’ and workers’ organisations parties to such agreements should include a substantial proportion of all employers and employed persons in the country concerned?

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13. Have you any proposal or suggestion to put forward on any point relating to the question of the application of the principles of the right to organise and to bargain collectively, which has not been mentioned in the present questionnaire?
PART II

COLLECTIVE AGREEMENTS
COLLECTIVE AGREEMENTS

When the International Labour Conference, at its 30th Session (June-July 1947), decided to place the question of collective agreements on the agenda of its next session, it not only took into account the particular importance of this question at the present time in relation to the activities of the International Labour Organisation, but also recognised the vital importance of collective bargaining as an essential element in the industrial and economic structure of modern States.

Although collective agreements had been the practice in many countries before 1914, it was not until after the First World War that the principle of collective bargaining gained general acceptance. Collective agreements came to be regarded between the wars as the most normal method of determining wages and other conditions of employment, and during that period collective bargaining machinery was developed and perfected while at the same time the industrial organisations concerned in collective bargaining were themselves developing. By 1939, collective agreements covered the great majority of workers in nearly all industrially-advanced countries and were also beginning to replace the traditional contractual relationships of employers and workers in countries whose industrialisation was comparatively recent, or even in its very early stages. Moreover, the tendency in many countries for collective agreements to be negotiated on an industry-wide basis was becoming increasingly apparent.

The dislocation due to the recent war has prevented many countries from publishing annual statistics relating to the numbers of workers in industry who are covered by collective agreements, so that it is somewhat difficult to assess how much further collective bargaining has advanced since 1939.

However, fairly recent figures are available for certain countries, as for example, the United Kingdom, the United States of America and Sweden. In the United Kingdom, in 1945, 12,500,000 workers were covered by collective agreements, while in Sweden, in 1944,
1,063,000 were so covered. In the United States, 14,800,000 were reported to be covered by collective agreements in 1946. These few available figures are an impressive indication of the extent of collective bargaining and collective agreements in those countries at the present time.

The question has been of great concern to the International Labour Office since its early days. In 1933, the Office published a comprehensive survey of collective agreements in agriculture, and in 1936, following a decision of the Governing Body at its 69th Session (January 1935), a general comparative report on collective agreements. Since that time it has concerned itself with the ever-increasing practice and legislation in this field, which have formed the subject of many articles in the International Labour Review and other publications of the Office.

In this part of the report, consideration will first be given to the machinery of collective bargaining. The first section deals with (1) the manner in which the representative parties who normally conclude collective agreements are determined, either by agreement or by law; (2) the agencies instituted either by the parties or by the law for the purpose of collective bargaining, with special reference to those cases in which the parties have set up permanent machinery to which legal recognition has subsequently been given, and to those types of permanent machinery which the law has created on its own initiative.

In the second section, an analysis is made of the legal regulation of collective agreements as regards (1) definition of the collective agreement; (2) conditions which require to be satisfied in order that collective agreements may be valid; (3) the contents of collective agreements; (4) the compulsory effects of collective agreements, with particular reference to the principle of non-derogation from the collective agreement by individual contracts.

The third section is concerned with the extension of collective agreements. In this section, consideration is given to (1) the voluntary determination of the scope of collective agreements; and (2) the legal extension of collective agreements (a) to cover a whole undertaking, and (b) to cover third parties.

3 Collective Agreements in Agriculture, I.L.O. Studies and Reports, Series K (Agriculture), No. 11 (Geneva, 1933).
4 Collective Agreements, I.L.O. Studies and Reports, Series A (Industrial Relations), No. 39 (Geneva, 1936).
The fourth section gives a brief survey of the responsibilities of the parties under collective agreements and of the methods of enforcing collective agreements, either with or without the invocation of court procedure.

The fifth section mentions briefly the various means by which the application of collective agreements may be supervised.

In the conclusions, certain observations and considerations are set forth relating to the main points which arise from the analysis and are directly related to the questionnaire.

1. Collective Bargaining Machinery

The Parties to Collective Agreements

The guarantee of freedom of association in relation to the State and of the protection of the right to organise and to bargain collectively gives employers and workers complete freedom to establish genuinely independent organisations which are capable of determining wages and other conditions of employment by means of freely concluded collective agreements reached as a result of voluntary negotiation.

The first point which naturally arises is the need to determine, especially when there are competing organisations, which organisations should be competent to represent the persons affected by collective bargaining. Such determination is necessary if jurisdictional disputes are to be avoided.

Determination of Representative Bargaining Agencies

This may be settled by voluntary agreement between the parties, without any intervention on the part of the legislative or other authority, or, alternatively, the law may lay down rules designed to secure the effective recognition of certain organisations as representative organisations for the purpose of concluding collective agreements.

Determination by Agreement.

In certain countries the law not only leaves employers' and workers' organisations entirely free to conclude collective agreements, but also leaves them free to recognise each other volun-
tarily as the appropriate representative bargaining agencies for the categories of persons involved.

This is especially true of such countries as the United Kingdom and the Scandinavian States, whose employers' and workers' organisations, freed at an early date from legal restrictions, have been able to organise themselves as strong unified associations whose representative character is never questioned, either as regards the right to conclude collective agreements or as regards the right to participate on equal terms in permanent joint machinery for the purpose of concluding collective agreements. In the Scandinavian countries, the right of organisations to be regarded as representative has been fortified by the so-called "basic agreements", which are described in the section relating to the permanent machinery which employers' and workers' organisations have established by voluntary agreement.¹

**Determination by Law.**

In those countries in which the trade union movement is divided, jurisdictional disputes have often arisen between the rival unions, each claiming the right to represent the workers concerned, and the legislature has found it necessary to intervene in the majority of cases in order to ascertain which of the unions concerned were sufficiently representative to conduct collective bargaining. Such intervention generally takes one of the four following forms: first, it may be a kind of *ad hoc* intervention to bring about a decision in each particular case (as in U.S.A. and Canada); secondly, only one organisation may be recognised as being representative for the purpose of concluding collective agreements for a particular industry or region (as in Argentina, Australia, Mexico, New Zealand, the Union of South Africa); thirdly, only one single organisation may be recognised as representing all workers for all purposes (as in Czechoslovakia, Poland, Roumania, Yugoslavia), or may even have been established with that object as part of the economic system (as in U.S.S.R.); or fourthly, the law may lay down certain criteria or conditions and those organisations which fulfil these conditions are recognised as being representative (as in Belgium and France).

"*Ad hoc*" determination. In the United States, according to the National Labor Relations Act of 1935 ², as amended by the Labor-

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¹ See below, pp. 47-48.
Management Relations Act of 1947\(^1\), the National Labor Relations Board has power to make decisions concerning the representative character of a trade union. The representatives designated for the purpose of collective bargaining by a majority of employees in a unit appropriate for such purposes are certified as such by the Board. The Board must decide in the first instance whether the appropriate unit for the purposes of collective bargaining shall be the employer unit, the craft unit, the plant unit, or subdivision thereof. Professional employees may not be included in such units with other categories unless a majority of them vote for inclusion. No unit may be certified which includes plant guards together with other workers. Agricultural labourers are not included in the Act.

Under the procedure laid down by the Act, a petition may be filed by any employee or employees, or by a labour organisation acting for them, stating that a substantial number of employees wish to be represented for the purposes of collective bargaining and that the employer declines to recognise their representative; alternatively, the petition may assert that the individual or labour organisation which has been certified or is being currently recognised by their employer as the bargaining representative is no longer a representative as defined in the Act. An employer may file a petition alleging that one or more individuals or labour organisations have submitted a claim to be recognised as the representative within the meaning of the Act.

The Act provides that no such petition may be entertained (or investigation made by the Board) in respect of a labour organisation unless that organisation has filed copies of its constitution and by-laws with the Secretary of Labor, together with a report giving the name and address of the organisation, the names, titles, compensation and allowances of its principal officers, the manner in which such officers were elected, appointed or otherwise selected, the initiation fees for new members and the dues or fees paid by members, and a statement showing the procedure with respect to: (a) the qualifications for or restrictions on membership, (b) the election of officers and stewards, (c) the calling of regular and special meetings, (d) the levying of assessments, (e) the imposition of fines, (f) the authorisation for bargaining demands, (g) the ratification of contract terms, (h) the authorisation for

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strikes, \( (i) \) the authorisation for disbursement of union funds, 
\( (j) \) the audit of union financial transactions, \( (k) \) the participation in insurance or other benefit plans, and \( (l) \) the expulsion of members and the grounds therefor.

The organisation must also have filed a report showing its receipts, assets, liabilities and disbursements, in accordance with the Act, and have furnished copies thereof to the members. The organisation is required to have filed annual reports bringing up to date all the above information. Each officer of the organisation must also have filed an affidavit that he is not a member of the Communist party or affiliated with the party and that he does not believe in, and is not a member of, and does not support any organisation which believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods. Not only must the labour organisation in question have fulfilled all the above requirements, but so also must any national or international labour organisation of which it is an affiliate or constituent unit.

Assuming that the above requirements are satisfied, the Board must investigate the petition and, if it has reasonable cause to believe that a question of representation affecting commerce exists, must provide for an appropriate hearing through the regional office of the Board. If the record of the hearing shows that such a question of representation exists, the Board directs an election by secret ballot and certifies the results thereof.

Railway and aircraft employees do not come within the procedure outlined by this Act, but a very similar scheme of certification is provided for their organisations under the Railway Labor Act of 1926\(^1\), amended in 1934.\(^2\)

In Canada, under the regulations in force during the late war, the Wartime Labour Relations Board had the function of deciding whether the unit of employees appropriate for collective bargaining should be the employer unit, craft unit, plant unit, or subdivision thereof. Before certifying the bargaining representatives, the Board, instead of directing an election, merely satisfied itself that an appropriate election had been held.\(^3\) These Dominion regulations, since 31 March 1947, apply directly only to transport and communication agencies, and to other industries only where a

\(^2\) Idem, 1934, U.S.A. 1.
provincial legislature has declared them to apply. Before that date, effect had been given to the Dominion Regulations in Ontario, British Columbia, Manitoba, New Brunswick and Nova Scotia. The present position is that the Regulations have been incorporated with little change in the laws of Manitoba, New Brunswick and Ontario. Some of the provisions have been incorporated in the laws of Alberta, Nova Scotia and British Columbia. They no longer apply, therefore, as during the war, directly to "war industries".

Under the systems in force in the United States and Canada there is actually nothing to prevent an employer from voluntarily recognising the union and bargaining with it collectively without invoking the procedure of certification which is laid down. The question whether, in the case of the United States, this would avoid the need for the union to file a large number of details and a considerable amount of information concerning its constitution and activities, as specified in the Act, is one which may have to await a definite answer until the courts have given their interpretation on certain clauses of the Act. It is clear that only a certified union in the United States could negotiate a collective agreement containing a union shop clause and, in both countries, only a certified union can become entitled to the protection given by the clauses regarding unfair labour practices, which *inter alia* lay on the employer (and on a certified union) a duty to negotiate.

In most of the Latin-American countries, the size of the union is the most important factor taken into consideration when assessing its representative character. In Costa Rica, for instance, if more than one union exists in an undertaking, it is generally the union with the largest membership in the undertaking which concludes the agreement. Separate agreements may be demanded by different organisations in the same undertaking where they represent different occupations or trades. Similar regulations govern the position in Ecuador and Venezuela.

*Recognition of one organisation for a given industry or region.* In Argentina, by the Decree of 2 October 1945, only recognised trade unions are competent to protect the collective

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6 *Idem*, 1945, Arg. 3.
interests of the members and to negotiate collective agreements. Such trade unions are recognised only if they have operated for not less than six months and if their contributory membership is sufficiently substantial. In certain instances, recognition will be transferred to other unions which can claim larger memberships, although account may be taken of the energy displayed by a recognised trade union in defending occupational interests. In Brazil, as in Argentina, only officially recognised trade unions, which must also be the most representative, may make collective agreements for all the employees and workers whom they represent.¹

In several other countries, the law recognises only one organisation as being a representative organisation for the purpose of concluding collective agreements for a given industry, occupation, area or undertaking. This is true, for instance, of Australia, Mexico, New Zealand and the Union of South Africa.

According to the Australian and New Zealand Acts concerning conciliation and arbitration, a single organisation, chosen on the basis of the industry and the region, is registered, and thereby obtains the exclusive right of representation. The competent authority is bound to refuse registration to an association if there already exists an organisation to which the members of the new association might conveniently belong.

Very similar regulations govern the position in the Union of South Africa, where the employers, employers' associations and trade unions constitute the Industrial Councils. The Councils are agencies for negotiation and conciliation and are accorded recognition only if they are sufficiently representative.

In Mexico, the Labour Code² provides that, if two or more unions exist in the same undertaking, the collective agreement shall be concluded with the union to which the greatest number of the employees in the undertaking belong. Where an undertaking employs persons belonging to different occupations, the agreement shall be concluded with the whole body of unions representing each occupation, if they so agree, and, if they do not so agree, a separate collective agreement shall be concluded with the union representing each occupation.

Recognition of a single organisation for all purposes. Following the Liberation, the trade union movement in Czechoslovakia and

¹ I.L.O.: Legislative Series, 1943, Braz. 1.
² Idem, 1931, Mex. 1.
Poland was reconstituted on a single unified basis, experience before the war having demonstrated the weakness of a trade union movement divided into rival organisations.

Under the Czechoslovak Act of 16 May 1946, the workers are organised in a single trade union organisation which all wage-earners are free to join and which is exclusively competent to ensure the rights of the workers and to protect their social, economic and cultural interests.

In Poland, a Bill of 1947 concerning workers' trade unions recognises one unified Association of Workers' Trade Unions. All applications for registration by a new trade union are forwarded to the Ministry of Labour and Social Welfare through the Central Committee of the Association, which adds its observations regarding the appropriateness and usefulness of founding the intended union. If an appropriate union already exists, therefore, the intended union would be refused registration. Trade unions are entitled under the Bill to be exclusively representative of the economic needs and pursuits of all workers, both organised and not organised.

Under the legal system of the U.S.S.R., trade unions form an integral part of the planned economy both from an economic and a political point of view. Under the Central Council of Trade Unions, one trade union is organised for each branch of industry and is exclusively representative of the workers in the industry concerned.¹

Criteria for determining representative organisations. In Belgium, France and Luxembourg, the law has laid down criteria whereby the representative character of a trade union is assessed according to its membership, and on such representative character is based the right to participate in the joint machinery which is set up, inter alia, for the purposes of collective bargaining.

In Belgium, the industrial joint committees are composed of representatives appointed by the Government from lists of candidates nominated by the most representative organisations. Under the Order of 27 July 1946², representative organisations are defined as occupational organisations representing a proportion of workers attached to a national organisation having at least 30,000 members. Only such representative organisations may make collective agreements within the framework of the joint committees.

² Revue du travail (Belgium), No. 9-10, Sept.-Oct. 1946, p. 1014.
In France, several Ministerial Circulars (November 1935, August 1936, May 1945) defined the criteria of fact which should be taken into consideration when ascertaining what were the most representative organisations. Such criteria are, for instance, the number of members regularly paying contributions, the independence of the organisation in relation to the employers, the age and experience of the organisation, the patriotic attitude of the organisation during the Second World War, etc. By a decision of 13 March 1947, the Government laid down the conditions to be satisfied, in addition to the general conditions previously mentioned, in order that organisations may be considered to be representative for the purpose of negotiating collective agreements. These conditions are as follows:

(1) Organisations whose membership includes 10 per cent. of all the organised persons in one of the occupational categories concerned may participate in the drawing up of the provisions of a collective agreement which are of concern to all the wage-earning categories;

(2) Organisations may participate in the negotiation of the provisions of national collective agreements which concern a particular category of wage-earners provided their membership includes either (a) 10 per cent. of all organised persons in the whole branch of industry concerned and 25 per cent. of all the organised persons in the occupational category concerned, or (b) 33 per cent. of all the organised persons in the occupational category concerned. In the event of no organisation fulfilling these numerical requirements, the organisation with the largest percentage membership among the organised persons in the whole branch of activity concerned, and that with the largest percentage membership among the organised persons in the particular wage-earning category, will be deemed to be the representative organisations in respect of the wage-earning category concerned;

(3) Organisations which have not been called upon to take part in the discussion of the whole or part of a collective agreement may, on written request being made to the chairman of the competent joint committee, lay before him any suggestions regarding the clauses to be included in the drafts of collective agreements, and may be kept informed by him of the progress made in the joint committee and may give him their opinion regarding the texts in course of preparation;

(4) Employers' and workers' organisations must supply the competent services of the Ministry of Labour with all the necessary evidence to substantiate their representative character and, especially, with all documents relating to their membership, rates of contributions and regularity of payment.

2 Journal officiel de la République française, 15 March 1947.
In those countries in which strong organisations of employers and workers have assumed the responsibility for the regulation of collective bargaining without the intervention of the law, particularly where these organisations are united under strong central organisations, the parties have generally found it expedient to institute permanent machinery for the purpose of negotiating collective agreements. This has been true especially of the United Kingdom and the Scandinavian countries.

In the United Kingdom collective bargaining machinery, such as joint committees, conferences, neutral committees, etc., has been set up in several industries, and now forms an integrated network of local, regional, and sometimes even national agencies. These agencies are competent to undertake collective bargaining and to settle all disputes which may arise as to the conclusion, renewal and revision of collective agreements or as to their interpretation or application.

In the Scandinavian countries, the method adopted has been the conclusion of so-called "basic agreements" between the central organisations of employers and workers. One of the main purposes of these agreements is to lay down a uniform procedure for the settlement of disputes and rules to guide the different organisations when they are negotiating collective agreements.

In Sweden several basic agreements have been concluded, beginning with the "December compromise" of 1906, and concluding with the basic agreement of 1938. By these agreements the central associations have usually determined the principles to be followed in the operation of collective bargaining, and these principles have been effectively embodied in the agreements concluded in the different branches of industry. These principles include mutual recognition as between the organisations, agreement to determine wages and working conditions by way of collective agreement concluded under the auspices of the central organisations, an undertaking not to take direct action until

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2 Basic Agreement between the Federation of Swedish Employers and the Confederation of Swedish Trade Unions, Esselite Aktiebolag, Stockholm, 1939.
attempts at conciliation have been made, and the establishment of a permanent joint board of collaboration. This joint board, the Labour Market Board, was set up in 1936 and given official status by the basic agreement of 1938.

The Right of Association and Collective Bargaining Act of 1936\(^1\) provides another method of collective negotiation which may be invoked where there is not an alternative method established by mutual agreement.

In Denmark, the earliest basic agreement was the "Concordat" of September 1899\(^2\), which laid down the principle that collective agreements concluded between the two central organisations must be respected and applied by all affiliated associations. This agreement also recognised other privileges and obligations on the part of the employers and employed. It is still the basis of relations between employers and workers in Denmark, where, as is normally the case, these relations are regulated by collective agreement.

The authority of this basic agreement has since been confirmed by the Permanent Arbitration Court Act\(^3\), which stipulates that disputes concerning infringements of the basic agreement of September 1899 must be submitted to the Arbitration Court.

Similarly, in Norway, a national agreement was concluded between the central organisations of employers and workers in March 1935\(^4\), which lays down the procedure to be followed in the negotiation and conclusion of collective agreements.

**Machinery Recognised by Legislation or Created by Law**

In Belgium and France most collective agreements are concluded under the auspices of joint committees.

The Belgian joint committees, recognised by a formal agreement concluded in 1936 between the representatives of the central organisations of employers and workers, were suppressed in 1940 but, after the Liberation, they were reconstituted and given legal recognition by the Legislative Order of 9 June 1945\(^5\) These joint committees are occupational in structure and may be national

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1 I.L.O. : Legislative Series, 1936, Swe. 8.
3 I.L.O. : Legislative Series, 1929, Den. 2B.
5 Moniteur belge, No. 186, 5 July 1945, p. 4339.
or regional in scope, and they are set up in each branch of industry, commerce and agriculture by Royal Order, at the request of, and after consultation with, the occupational organisations concerned. The committees are usually national, but regional committees may be set up by the competent Minister at the request of a national committee or of a representative organisation. The committees include not less than four representatives of the employers and four of the workers, appointed by the Government from lists of candidates submitted by the occupational organisations qualified to represent the employers and workers in the branch of activity concerned. Reference has already been made to the manner in which the most representative organisations are determined.¹

The committees are empowered to discuss working conditions, to prevent or settle collective labour disputes, and to prescribe the general wage principles to be embodied in collective agreements, and the representative organisations may make collective agreements within the framework of the joint committees.

In France, the principles of collective bargaining were regulated after the First World War by the Collective Agreements Act of 1919, but not until the conclusion of the Matignon Agreement of June 1936 ² between the central organisations of employers and workers was general recognition given to the principle of collective bargaining. The principles of the Matignon Agreement were embodied in the Collective Agreements Act of 24 June 1936.³

The 1936 Act was recently replaced by the Collective Agreements Act of 23 December 1946.⁴ This Act provides for the establishment of joint committees on the level of the industry and of a Higher Commission for Collective Agreements on the national level. At the request of an employers' or workers' trade organisation, the Minister of Labour will convene a joint committee in order to conclude a collective agreement which, in principle, is to cover the whole of an industry throughout the territory. The Minister may refuse to give effect to this request unless it emanates from one of the most representative organisations, such representative nature being determined by the principles described earlier in this section in connection with the determination of

¹ See above, pp. 39 et seq.
³ I.L.O.: Legislative Series, 1936, Fr. 7.
⁴ Idem, 1946, Fr. 15.
representative bargaining agencies. If the joint committee is able to reach an understanding, a collective agreement will be signed, but, if no agreement can be reached, the Minister, at the request of the parties, will intervene to assist in the conclusion of a collective agreement. If no agreement has been reached after a period of one month, a Decree will be issued, after consultation with the employers' and workers' organisations, provisionally fixing conditions of employment in the branch of activity concerned.

The Higher Commission for Collective Agreements co-ordinates the work of the joint committees and formulates general rules concerning the drawing up of collective agreements. The Commission has to consider the probable effects of collective agreements on prices, production and cost of living and to advise the Minister of Labour regarding the conclusion, renewal and approval of collective agreements and also regarding the Decrees fixing wages and other conditions of employment in the absence of collective agreements. The Commission is tripartite, consisting of five representatives of the Government, five representatives of the employers and five of the workers, the latter appointed on the recommendation of the most representative central trade organisations, these being determined on the basis of the principles to which reference has already been made.

In the Netherlands, following the Liberation, the two sides in industry united in forming the Labour Foundation as the permanent machinery for the purpose of regulating their mutual relationships and negotiating collective agreements. However, collective agreements are valid at the present time only in so far as they do not conflict with the Decree of 5 October 1945. This Decree establishes a Board of Government Conciliators which, in spite of its title, is not only a conciliation board but also an agency for establishing binding rules in relation to wages and other conditions of employment. Modifications of existing collective agreements and the conclusion of new collective agreements require approval by the Board, which withholds such approval if the agreements do not conform to the rules which it has laid down.

In the Union of South Africa, the Industrial Conciliation and Arbitration Act of 1937 gave legal sanction to the industrial

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1 I.L.O.: *Legislative Series*, 1945, Neth. 1.
councils formed by groups or associations of employers and registered trade unions or groups of trade unions. The constitution of such permanent machinery must be approved by the competent Minister when, in his opinion, the council is sufficiently representative of the zone, industry or branch in respect of which it has been formed. The council is empowered and required to intervene in bringing about the conclusion of collective agreements, in preventing or settling disputes, and in aiding the settlement of any other question of mutual concern to employers and workers or their organisations. The industrial councils are composed of equal numbers of representatives of the employers' and workers' organisations concerned, and the principal collective agreements at present in force in most of the basic industries of South Africa were concluded under the auspices of the competent councils.

Reference may also be made to the method of determining wages by minimum wage-fixing machinery. Such machinery aids indirectly the conclusion of collective agreements and in certain cases is instituted with that purpose in view. It fortifies the normal machinery created by agreement between the different parties in industry.

Minimum wage-fixing machinery has, therefore, frequently been employed even in industrialised countries where trade unionism is highly developed but where certain industries are less organised than others and consequently, as a temporary measure, collective bargaining requires to be reinforced by such machinery. The industries for which such a type of minimum wage-fixing machinery is instituted are generally those in which it is exceedingly difficult fully to organise the workers, either because of the nature of the work (for example, handicrafts or work in rural areas) or because of the large numbers of women or young persons among the workers employed.

In the United Kingdom the Trade Boards, now renamed Wages Councils, were first instituted in those industries in which wages and conditions were comparatively low. The number of these Trade Boards has progressively diminished as an increasing number of the industries have become more highly organised and the representative organisations have proved themselves capable of regulating wages and other conditions of employment adequately without the assistance of the administrative authority. The example of the United Kingdom was followed in Palestine during the late war, and in certain colonies.

In the United States, the Federal Fair Labor Standards Act
of 1938 provides for the setting of minimum wages by progressive stages. This Act is of general application to industries affecting commerce. The Industrial Standards Acts of certain Canadian provinces have a similar application.

In countries where trade unionism is comparatively little advanced, the importance of wage-fixing machinery is greatest, since it may, to a certain extent, take the place of collective agreements, as for example, in Brazil, Colombia, Cuba, Ecuador, Haiti and Uruguay.

The minimum wage boards in Brazil, for instance, were established mainly for the purpose of fixing the minimum wages of workers in industries or occupations where wages are abnormally low.

Joint minimum wage boards in Chile draw up wage rates in a form similar to the wage scales of a collective agreement and also often govern other conditions of work.

In Uruguay, occupational organisations may apply for the setting up of wage boards for different industries. The workers' and employers' representatives on these boards are elected, from lists of candidates proposed by the occupational organisations, by all those connected with the industry in question. The boards have authority not only to fix wages, but also to conciliate in industrial disputes in the industries concerned.

2. Regulation of Collective Agreements

Collective agreements are subject to legal regulation under one form or another in nearly all countries (Australia, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Czecho-slovakia, Ecuador, Finland, France, Greece, Hungary, Iran, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, Turkey, Union of South Africa, United States, U.S.S.R., Venezuela, etc.).

Such regulation may have relation to many different aspects of the question. In some cases it may refer simply to the conditions of validity of the collective agreements, and in others to such matters as their contents or their effects once they are concluded.


2 Conciliation and arbitration bodies may be regarded to a certain extent as collective bargaining machinery, in that they facilitate or regulate the conclusion of collective agreements. Further reference to this aspect of conciliation and arbitration is made in Part III of this report.
In this section an analysis is given of the regulations relating to (1) the definition of collective agreements, (2) the conditions of validity of collective agreements, (3) the contents of collective agreements, and (4) the compulsory effects of collective agreements.

**Definition of the Collective Agreement**

In many countries the legal system leaves the associations entirely free to determine the contents of collective agreements, their form, their duration, and, generally, the rights and obligations which they involve (for example, United Kingdom, etc.).

In an increasing number of countries, the law is adopting the practice of defining those agreements which it will consider to be collective agreements.

Earlier legislation frequently defined a collective agreement as any agreement relating to conditions of employment concluded between an employer, or a group of employers, on the one hand, and any group of wage-earners, on the other. This was the case, for instance, in the French Act of 1919. Under this definition, any group of wage-earners would include both workers organised as trade unions and mere unorganised occupational groups. Experience has shown that where collective agreements are concluded by unorganised occupational groups their importance and durability are extremely limited and no longer fulfil the purposes of collective agreements in the modern sense. More recent legislation, therefore, has tended to define the collective agreement as an agreement relating to conditions of employment concluded between an employer, or a group of employers, on the one hand, and a workers' organisation, on the other hand. This is the definition accepted in Australia, Costa Rica, Ecuador, Finland, France (Act of 1946), Mexico, New Zealand, Nicaragua, Sweden, Switzerland, the Union of South Africa, etc.

This final definition is the one accorded in practice, if not in law, to collective agreements concluded in those countries first mentioned, in which collective bargaining was left entirely to employers' and workers' organisations.

**Conditions of Validity of Collective Agreements**

All legislation concerning collective agreements requires certain conditions to be fulfilled before the agreements are valid.

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For example, the agreement must be drawn up in writing, the duration must be specified and the rights and obligations of the contracting parties should be clearly stated. Conditions of this kind are the normal basic necessities for the validity of any individual or legal contract.

A somewhat less general condition is that collective agreements must be lodged or registered with some authority. In Belgium, Denmark, Sweden and the United Kingdom, the law does not require this formal condition. Collective agreements must be lodged, and generally registered, in Costa Rica, with the General Labour Office; in Cuba, with the Ministry of Labour; in Ecuador, with the Director of Labour; in Mexico and Norway, with the conciliation and arbitration authorities; in Chile and in Venezuela, with the factory inspectors; and in Australia, with the Industrial Registrar. In Ireland, filing and registration are not compulsory, but registration by the labour court affords great advantages to the parties in respect of the enforcement and extension of agreements. Although registration is mainly intended as a publicity measure, it is provided in certain countries that registration may be refused and the agreement become non-applicable if statutory conditions are not fulfilled. Under the present legislation in France, collective agreements require the approval of the Minister of Labour.

Legislation in many countries requires the publication of collective agreements. This is especially true with regard to agreements which may apply to employers and workers other than members of the contracting organisations. All collective agreements in Portugal and collective agreements that are declared binding on third parties in Brazil, Canada, France, United Kingdom (cotton industry), Mexico, etc., as well as arbitration awards in Australia, etc., must be published in official publications.

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2 Idem, 1934, Cuba 7.
3 Idem, 1938, Ec. 1.
5 Idem, 1927, Nor. 1.
6 Idem, 1931, Chil. 1.
7 Idem, 1928, Austral. 2.
CONTENTS OF COLLECTIVE AGREEMENTS

The contents of collective agreements may be settled purely by voluntary negotiation or, in those countries where legislation does not leave the regulation of collective agreements entirely to the contracting parties, the law may prescribe that certain conditions of employment or certain aspects of labour-management relations shall in all cases be provided for in the collective agreements, while leaving it to the parties to include such other terms and conditions as they may wish.

Contents of Agreements Settled by Voluntary Negotiation

In those countries, such as the United Kingdom, Sweden, United States, etc., where collective bargaining is left entirely to the free will of the respective parties in industry, it is for those parties alone to decide as to the contents of any collective agreement. The agreements are subject only to the conditions to which reference has already been made and to the general reservation that the conditions prescribed by collective agreements shall not be contrary to those prescribed by legislation.

Collective agreements contain clauses of two kinds: those governing conditions of employment which are suitable for inclusion in individual contracts to be concluded subsequently, and those dealing with the relations between the contracting parties which are not suitable for incorporation in individual contracts.

Instances of the first kind are clauses defining the employer’s obligations under individual contracts, for example, wages, allowances, rights, overtime, holidays with pay, etc.; clauses defining the worker’s obligations under individual contracts, for example, undertaking to perform work at specified hours; clauses concerning the termination of the contract of employment, for example, period of notice, method and reasons for dismissal; clauses concerning individual relationships, for example, disciplinary rules, settlement of individual disputes, breaks for meals, etc.

As will be seen when considering the question of non-derogation from collective agreements, these clauses are binding on the parties to individual contracts where the parties are persons to whom the collective agreement applies, departures therefrom being permissible only when they are to the worker’s advantage.

The clauses dealing with the rights and obligations of the
parties to collective agreements generally concern such matters as the enforcement of collective agreements, the organisation of collective relations and the establishment of joint bodies.

Contents of Agreements Prescribed by Law

In some countries, the law prescribes that certain conditions must be regulated in all collective agreements, while normally leaving it to the parties to add such other terms as they may agree to insert.

This is the method which has been adopted in many Latin-American countries. A typical example is afforded by the regulations contained in the Labour Code of Costa Rica \(^1\), which has prescribed that collective agreements shall in any event contain clauses determining the quantity and quality of the work to be done, daily hours, rest periods and holidays, wages, the occupations, trades and places covered, duration of the agreement and statutory condition for its extension, as well as any other lawful conditions to which the parties may agree. Very similar conditions are prescribed, for example, in Colombia \(^2\), Brazil \(^3\), and Ecuador.\(^4\)

In France, the contents of such agreements were partially regulated even before the war by the Act of 1936, but during the period of post-war reconstruction these regulations have been enforced by the Collective Agreements Act of 1946.\(^5\) This Act provides that every national collective agreement shall contain provisions regarding freedom of association and freedom of opinion for the employees, rights of remuneration applicable to various categories (these must comply with the statutory and administrative provisions in force) \(^6\), conditions of engagement and dismissal of employees without prejudice to the employees' free choice of trade union, term of notice, organisation of apprenticeship and vocational training, while national collective agreements may also contain, inter alia, provisions concerning employees' delegates and works committees, and conditions for financing social welfare schemes, general conditions applying to payment by results, the system of bonuses for seniority and regular atten-

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\(^1\) I.L.O. : Legislative Series, 1943, C.R. 1.  
\(^2\) Idem, 1943, Col. 1.  
\(^3\) Idem, 1943, Braz. 1.  
\(^4\) Idem, 1938, Ec. 1.  
\(^5\) Idem, 1946, Fr. 15.  
\(^6\) For the time being the Act of 1946 excludes wage questions entirely from the scope of collective agreements — see below, p. 58.
dance and for dangerous and unhealthy work, repayment of travelling expenses and holidays with pay.

The contents of arbitration awards which replace collective agreements are prescribed as part of a general system of regulation in certain countries, for example, in Australia, New Zealand, etc. Under the Commonwealth Conciliation and Arbitration Act of 1928, as amended by the Act of 1947, the Court may deal with all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms and conditions of employment, or non-employment, etc.

Finally, with the express intention of avoiding future disputes, the law sometimes prescribes that all collective agreements shall contain clauses regarding the settlement of disputes, as is the case in Canada, under the Wartime Labour Relations Regulations. Under Brazilian legislation such a clause is not compulsory, but it is encouraged.

In the U.S.S.R. the contents of the collective agreement are related to the status of such agreements under the Soviet economy. The underlying principle is that the collective agreement is no longer considered as a means of settling points at issue between two opposed classes, employers and labour, but is an agreement to determine the mutual obligations of workers and management where the two contracting parties have the same interests in common. Collective agreements in the U.S.S.R., therefore, are made primarily with a view to fulfilling production plans and improving the organisation of work and the standards of living and culture of the workers, all with the object of promoting the realisation of the national economic plan. Thus, the agreements include clauses regarding the undertakings given by the trade union committee as well as management in respect of the production plan, wage rates in conformity with prescribed standards, technical instruction of workers, engineers, etc., maintenance of labour discipline, provisions concerning safety, cultural and other services. They require to be registered with the competent Minister and central trade union council and copies must be sent to the factory committees and managements of the undertakings concerned.

1 I.L.O. : Legislative Series, 1928, Austral. 2.
2 Idem, 1944, Can. 1.
3 Idem, 1943, Braz. 1.
In Poland and Czechoslovakia, the pre-war legislation governing collective agreements has not been repealed, but at the present time collective agreements are regulated under the State and their contents must be in conformity with, and indeed in furtherance of, the plans for production geared to the over-all economic plan of recovery and reconstruction.

Normally, the law does not prohibit the inclusion in a collective agreement of any particular kind of clause, provided that the contents of the agreement do not derogate from social and other legislation. During periods of emergency or post-war reconstruction, restrictions have been placed on some of the contents of collective agreements in certain countries, generally with regard to wages, where the authorities are endeavouring to control wages in relation to price control. Thus, in Canada, during the war, no collective agreement containing wage provisions was allowed to be executed, in so far as it involved any change in existing wage rates or other wage provisions, until the appropriate War Labour Board had approved any such change. Under the French Collective Agreements Act of 1946, collective agreements, as a temporary measure, are not permitted to contain provisions regarding rates of wages or allowances in addition to wages or salaries. In the Netherlands also, for the time being, any provisions regarding wages contained in collective agreements must be in conformity with the binding rules laid down by the Board of Government Conciliators. In Belgium also, at the present time, the scope of the joint committees is partially restricted, as the broad lines of wages policy are laid down by the Government, which, however, takes into account the resolutions of the National Labour Conference.

During the emergency in the United Kingdom, legislation did not in fact prohibit collective agreements from continuing to settle wage questions, but the Conditions of Employment Order, 1940, which gave power to the representative employers' and workers' organisations to define "recognised" conditions for a given occupation or industry in a particular area, did in practice achieve a relation of wages to price control, although such relationship depended on the voluntary co-operation of the parties. The provisions of the Order are maintained under the Wages Councils Act of 1945.²

¹ The question of union security clauses in collective agreements has already been examined earlier in this report. See above, Part I, Section 4, p. 18.
COMPULSORY EFFECTS OF COLLECTIVE AGREEMENTS

The compulsory effects of collective agreements will be considered in relation to individual contracts entered into by parties covered by the collective agreements. The question of the responsibilities of the parties under collective agreements will be dealt with when considering the methods of enforcing collective agreements.

Non-Derogation from Collective Agreements

The object of collective agreements is to establish working conditions for the benefit of workers who are members of the contracting trade union and are employed by the contracting employer. Where the collective agreement is not legally recognised, there may be nothing beyond the economic strength of the unions or the good will of employers to prevent workers and employers from entering into individual contracts of employment which may conflict with the terms of the collective agreement.

For this reason, the regulations concerning collective agreements generally provide that if employers and workers bound by such agreements adopt conflicting provisions in individual contracts, such provisions are null and void and are automatically replaced by the corresponding clauses in the collective agreement (this is the case in Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Finland, France, Greece, Iran, Mexico, Netherlands, Nicaragua, Norway, Sweden, Switzerland, Venezuela, etc.). Similarly, where collective agreements are replaced by arbitration awards, individual contracts of employment are prohibited from containing provisions that are not in conformity with the awards. The invalidity does not attach to the whole of the individual contract concerned, but only to those clauses which conflict with the collective agreement.

As a consequence, the regulations in force in certain countries reinforce this provision by declaring illegal any voluntary waiver of the stipulations of an arbitration award (for example, in Australia) or of a collective agreement. The only exceptions to the general principle which are permitted are that departures from the terms of the award or agreement are valid if they are more favourable to the worker, while any departures, favourable or otherwise, are valid if expressly provided for by the collective agreement itself.
Since the collective agreement is basically intended to fix minimum conditions, it is natural that individual contracts should be declared to be valid where they afford additional benefits to the worker. Departures on this ground are permissible in the same way as were departures from protective labour legislation. The advantages offered by individual contracts must however not be used to undermine the system of collective regulation or to introduce discrimination between organised and non-organised workers, and the courts are generally responsible for distinguishing between real benefits granted in good faith and clauses which are in reality not to the benefit of the occupational group as a whole. Attention has been called to the importance of this latter consideration by the Supreme Court of the United States.  

3. Extension of Collective Agreements

As a rule, the parties to collective agreements determine the categories of persons covered by such agreements as well as the undertakings or areas to which they shall apply. In certain cases the law lays down rules or conditions which necessarily pre-determine the scope of collective agreements.

Many legal systems provide that collective agreements shall become applicable to third parties in certain specified circumstances.

Voluntary Determination of the Scope of Collective Agreements

The occupational and territorial scope of a collective agreement is generally determined by the parties to the agreement.

If a single employer is party to a collective agreement it will apply, according to the intentions of those concerned, to his undertaking or undertakings or to a part of his undertaking. If several employers are parties to a collective agreement, their respective undertakings or certain sections of them are covered. If an agreement is concluded by an employers’ association, all the undertakings of the employers who are members of the association will be included within the scope of the agreement.

The latter is generally the case in Europe, and especially in the United Kingdom, the Scandinavian countries, Poland, Czecho­lovakia, Belgium, France, Luxembourg and Switzerland. In Australia, New Zealand and the Union of South Africa, agreements concluded under the auspices of the Industrial Councils, Arbitration Boards or Tribunals and the arbitral awards which are handed down normally enumerate the employers who are covered. In the United States, on the other hand, it is frequently the individual employer who concludes a collective agreement, so that in such cases the scope of the agreement is limited to the establish­ments under the control of the contracting employer. But the practice in the United States regarding the scope of collective agreements varies with different industries.

On the workers' side, the collective agreement is concluded by a trade union and will generally cover all the categories of wage-earners represented by the contracting trade union. In the case of an industrial union, all the workers who are organised and working in the industry will be covered by the agreement, but, if the union is a craft union or is limited to certain occupations, the agreement will cover only the particular occupational cate­gories represented by the trade union. In this case, there may be as many agreements in one undertaking as there are trade unions represented. This latter point is well illustrated by many of the Latin-American Labour Codes, which specify that where there is one main trade union covering the categories employed in a particular undertaking, the collective agreement is to be made with this most representative trade union, although, unless the unions agree to the contrary, where one undertaking embraces many occupational categories organised in different trade unions, each of those trade unions may conclude a separate agreement.

The industrial trade union will not always include every category of worker in an undertaking, although it may, for instance, include all the manual trades, the technicians and salaried em­ployees being grouped apart, and making separate agreements (as in Sweden).

If agreements are concluded between employers' and workers' federations, the parties need to specify whether the agreement shall cover all the undertakings in a given area (the usual method in the United Kingdom) or all the undertakings throughout the national territory (as in Sweden). In the United Kingdom, the practice of nation-wide bargaining has gradually increased over a long period. National agreements with national wage scales
are now negotiated in the pottery, boot and shoe, and flour-milling industries, while national agreements with local wage differentials have been concluded in shipbuilding, railways, the building trades and machinery manufacturing industries. In the cotton, textile, iron and steel and certain other industries, district agreements are used in conjunction with national agreements. In the mining industry, the unions are demanding standardisation now that the mines have been nationalised.

In Sweden, textiles, printing, paper and pulp, sawmills, flour mills, railways and several other industries are the subject of industry-wide collective bargaining, and in Norway and Denmark the situation is very similar.

In Belgium, also, the Legislative Order of 9 June 1945, giving legal sanction to joint committees, has greatly intensified the practice of nation-wide bargaining, already followed before the war in the iron and steel and coal mining industries. A similar tendency is now resulting from the encouragement given to collective bargaining on a nation-wide basis by post-war legislation in the Netherlands.

**LEGAL DETERMINATION OF THE SCOPE OF COLLECTIVE AGREEMENTS**

In certain countries the law may determine the occupational and territorial scope of collective agreements. In the United States, the National Labor Relations Board, under the Labor-Management Relations Act of 1947, has to determine the appropriate unit for the purpose of collective bargaining, and in effect the Board determines the occupational scope of the prospective collective agreement when it certifies the organisation which is to be the representative bargaining agency. When certifying the representative organisation, the Board is guided by the principle that only workers whose interests in connection with wages and other conditions are essentially the same should be grouped together in one unit. In contrast to the practice followed by the Board under the 1935 Act, the new Act provides that, in determining what is the appropriate unit, the extent to which the employees are organised shall not be a controlling factor.

The provisions of the Labor-Management Relations Act of 1947 tend to further the recognition of the craft unit as a bar-

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1 Cf. Moniteur belge, No. 186, 5 July 1945, p. 4339.
gaining unit. Under s. 9 (b), the Labor Relations Board shall not "decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation". Moreover, under the same section, the Board may not "decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees, unless a majority of such professional employees vote for inclusion in such unit".

It is only rarely that the law excludes any particular categories within the undertaking from the scope of collective agreements. In Venezuela, for instance, the administrative and supervisory and confidential staff are excluded. Under the Labor-Management Relations Act in the United States, foremen and supervisory staff are not legally excluded, but their associations are not certified and cannot claim the benefit of the Act.

LEGAL EXTENSION OF THE APPLICATION OF COLLECTIVE AGREEMENTS

The scope of collective agreements may be extended, in the first place, to persons who are non-members of the contracting organisations, but who work in the undertaking or undertakings covered by an agreement. Secondly, collective agreements may be extended so as to become generally binding on employers and employees in a given industry or trade covered by collective agreements.

Application of Collective Agreements to All the Workpeople in an Undertaking

Collective agreements seek to fix wages and conditions of employment for employers and employed included in the occupational and territorial scope of the agreements. Within these limits, the collective stipulations are compulsory, as is expressly prescribed by law in certain countries, for example, Brazil, Luxembourg, Mexico, Sweden, etc. This is also the view taken by the courts of the United Kingdom.

1 I.L.O.: Legislative Series, 1945, Ven. 1.
Without the intervention of the law, the provisions of a collective agreement will not apply to persons employed by employers who are bound by the agreement where those persons are not members of the contracting trade union. However, most legal systems provide that the employer must observe the terms of the agreement both with regard to his organised employees and with regard to those who are not members of the contracting trade union (for example, Costa Rica, Colombia, Cuba, Finland, Mexico, Sweden, etc.).

In Costa Rica and Colombia, a collective agreement will cover all the persons employed in the undertaking covered by the agreement, whether they are members or not of the contracting trade union, provided that one-third of them are members. If less than one-third of the persons employed in the undertaking are members of the contracting trade union, the application of the collective agreement is limited to the members.

In the United States and Canada, the extension of an agreement to cover all the workpeople in an undertaking may be accomplished as the result of the representative bargaining union being certified as competent to conclude a collective agreement on behalf of the workers employed in the appropriate unit whether they are organised or not.

It is important to observe that, in the United States, the agreement can only be extended beyond the unit in respect of which the contracting organisation was certified as the bargaining agency if the Labor Relations Board itself should enlarge the bargaining unit as the result of recertification.

In this connection it is appropriate to make further reference to the Labor-Management Relations Act, 1947, which declares it to be an unfair labour practice for a labour organisation or its agents "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is forcing or requiring any employer or self-employed person to join any labor or employer organisation..." or "forcing or requiring any other employer to recognise or bargain with a labor organisation as the representative of his employees unless such labor

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2 Idem, 1945, Col. 1.
organisation has been certified as the representative of such employees...” or “forcing or requiring any employer to recognise or bargain with a particular labor organisation as the representative of his employees if another labor organisation has been certified as the representative...”

**Extension of Collective Agreements to Third Parties**

A collective agreement can only be extended to cover third parties by law, as it is a matter entirely beyond the contractual authority of the parties. Until the law intervenes, an employer who has not signed the collective agreement and who does not belong to the contracting employers' association may be in a position to employ his workers on conditions less advantageous than those laid down by collective agreement, and so may jeopardise collective bargaining by adopting this method of competing with employers who are parties to a collective agreement.

In order to avoid a situation of this kind, an increasing number of countries are making legal provision for the extension of collective agreements to third parties who are not already directly bound by them, but who carry on their occupations or business within the territorial and occupational scope of the collective agreement.

This may be achieved by two methods: either by legislation providing for the extension of the collective agreement to third parties, or by legislation providing *ab initio* that any agreement which is concluded shall be generally binding.

The first method is the one most generally adopted (for example, in Australia, Belgium, Brazil, Canada — Provinces of Quebec, Alberta, etc. — Colombia, Costa Rica, Ecuador, Greece, Hungary, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Switzerland, Union of South Africa, United Kingdom, etc.).

In most countries the extension of collective agreements is made subject to a number of conditions which are intended to safeguard the legitimate interests of third parties. An agreement cannot be extended to third parties unless it has acquired outstanding importance in the industry by reason of the fact that it was concluded by the majority of the employers and workers engaged in that industry. Thus, in the United Kingdom, Part III of the Conditions of Employment and National Arbitration Order, 1940 ¹, which remains in force by virtue of the Wages Councils Act,

¹ I.L.O.: *Legislative Series*, 1941, G.B. 3B; 1944, G.B. 3B.
1945\textsuperscript{1}, provides that organisations representing respectively an important proportion of the employers and workers engaged in a trade or industry in a particular district may settle, by the procedure of negotiation or arbitration, conditions of employment which are "recognised", i.e., conditions which are generally binding. In Canada (Alberta), under the Alberta Labour Act, the Government may declare a collective agreement binding throughout the industry and area concerned, after a conference of representatives of a substantial number of employers and workers in the industry.\textsuperscript{2}

Similarly, in Luxembourg, under the Grand Ducal Order of 6 October 1945, a collective agreement applicable to a particular occupational group may be extended by Cabinet Order to cover all the persons engaged in the occupation in question if it has been approved by two-thirds of those persons.

In Latin-American countries it is generally provided that a collective agreement requires to be concluded by two-thirds of the employers and two-thirds of the employees in a particular branch of industry in a specified area. It can then be made generally binding on all employers and employees in that branch of industry and in that area, by administrative Decree, issued on the application of either party (for example, Costa Rica, Ecuador). In Brazil, the law gives authority to the Minister of Labour to extend the application of a collective agreement without specifying the conditions under which he may take such a decision.

Legislation sometimes specifies not only that collective agreements which may be extended to third parties must cover the majority of the workers and the majority of the employers, but that the employers must themselves employ the majority of the workers (for example, Colombia, Mexico, Switzerland\textsuperscript{3}, etc.).

In Switzerland, provisions regarding the extension of collective agreements have been embodied in the Federal Constitution, as amended in 1947. Article 34 ter provides that the Confederation has the right to legislate regarding the general binding force of collective agreements or other agreements between associations of employers and employees or workers in order to promote industrial peace. Enactments decreeing such extension may only be made with regard to matters connected with labour relations between employers and employees or workers, on condition, how-

\textsuperscript{1} I.L.O.: Legislative Series, 1945, G.B. 1.  
\textsuperscript{2} Labour Gazette (Canada), Vol. XLVII, No. 6, June 1947, p. 836.  
\textsuperscript{3} I.L.O.: Legislative Series, 1943, Switz. 2.
ever, that the provisions concerned take sufficiently into account varying local circumstances and the legitimate interests of minorities, and respect the principles of equality before the law as well as of freedom of association. ¹

The decision decreeing the extension of a collective agreement is generally taken only after investigation. Accordingly, the agreement is published, and all those concerned, including those to whom it might become applicable by any such decision, are asked to submit observations and formulate objections (for example, Australia, Belgium, Canada — Quebec — Colombia, Costa Rica, Luxembourg, Mexico, New Zealand, Switzerland, Union of South Africa, etc.). If the objections are accepted, the competent authority may refuse to extend the application of the collective agreement. If the objections are not well founded, the authority may declare the collective agreement generally binding, and its decision is published.

Under the French law concerning collective agreements (December 1946) ², these agreements are concluded between the most representative organisations of employers and workers, and apply ab initio to a whole industry or trade throughout the national territory, as soon as they have been approved by the Minister of Labour and Social Security, who is advised by the Higher Commission for Collective Agreements. After being approved, the provisions of a collective agreement become compulsory for all the workers in the occupations and areas included within its scope. Regional or local agreements, or agreements limited to a single undertaking, may be made only within the framework of an existing national agreement.

4. Methods of Enforcing Collective Agreements

Before examining the actual procedure of enforcement of collective agreements, it is necessary to consider what are the precise responsibilities or obligations of the parties under collective agreements. In this section, therefore, the analysis will cover: (1) the responsibilities of the parties under collective agreements; and (2) the enforcement of collective agreements (a) without court procedure, (b) through the ordinary courts, and (c) through special labour courts.

² I.L.O. : Legislative Series, 1946, Fr. 15.
Responsibilities of the Parties under Collective Agreements

The essence of collective bargaining is that the parties in full autonomy regulate conditions of employment by concluding collective agreements. This implies, in other words, that they have the power to determine their mutual rights and obligations.

The collective agreement, therefore, establishes a contractual relationship, but any attempt to apply to it the normal legal principles governing individual contracts would give rise to serious technical and practical difficulties. In effect, the main object of the collective agreement is to establish certain general rules governing the relationships of individual employers and workers bound by the agreement.

Whereas the mutual responsibilities of such individuals are generally governed, as in the case of other kinds of individual agreements, by the ordinary common law of contract, the collective agreement requires the application of principles which shall take into account the economic as well as the other factors involved.

As this complex question cannot be considered in this report in all its far-reaching aspects, the Office has limited itself to a brief analysis of the more usual methods which the law has adopted in order to deal with the problem in various countries.

A distinction is generally made between the responsibilities of individual members of an organisation in respect to a collective agreement concluded by that organisation and the responsibility of the contracting organisation itself. In most cases, the individual is not made directly responsible for the observance of the collective agreement as a matter of civil law, a point which is made particularly clear in those countries in which occupational organisations are endowed with legal personality (e.g. the Netherlands). However, to the extent that its provisions have been embodied expressly or impliedly in his own contract of service, he becomes responsible for observing such provisions by the fact that he is liable for any breach of his own individual contract as he is for a breach of any other contract which he may conclude. In some cases, on the other hand, e.g. where there is express legal provision to that effect (as in Sweden), and especially where a collective agreement has been made generally binding (e.g. France), he may be made answerable, to a varying degree, for his own acts, as distinct from those of other members or of the organisation itself, in contra-
vention of the agreement. This, in effect, imposes an obligation
to observe the law in force rather than a contractual responsibility.

The contracting organisations themselves, although they lay
down the provisions concerning the rights and obligations which
shall govern the labour relations of their members, cannot always
ensure their effective application. Generally, therefore, respon-
sibility will not attach to an organisation as such, except where
it has deliberately inspired the breach of a collective agreement.
This excludes any responsibility for disputes which arise of which
the organisation is unaware or disputes which occur for reasons
other than the application of the collective agreement. Moreover,
under the rules of ordinary law, the organisation is not made respon-
sible if its officials act in excess of or contrary to their powers as
laid down by the constitution and rules of the organisation.

Because of these practical difficulties, many legislatures have re-
frained from passing any express enactments regarding the respon-
sibilities of contracting organisations (e.g. Belgium, etc.). Some, even
(e.g. the United Kingdom), have formally freed occupational organi-
sations of liability to be sued in respect of the breach of a collective
agreement. Others have limited the application of the common law
rules governing contracts to the contractual relationships of orga-
nisations by freeing their assets or part of them from liability to
execution or distraint. Yet other countries have imposed fines
or penalties merely as a matter of principle.

However, in certain cases, collective bargaining legislation has
placed no special limits on the responsibility of contracting orga-
nisations (e.g. the United States), although the full application
of common law rules (e.g. the liability to make good the whole
of the damage or loss caused directly or indirectly by an unlawful
strike) might in many cases involve the economic and financial
ruin of the organisations.

In the following pages, a short summary is given showing
how certain countries have given legal effect to some of the general
considerations outlined above.

Legislation in France, Mexico¹, Netherlands, Sweden, Canada
(Quebec), the United States, etc., provides for the payment of
damages in respect of a breach of a collective agreement.

In France, the Collective Agreements Act of 1946² provides
that persons or groups bound by a collective agreement may brins

¹ I.L.O.: Legislative Series, 1931, Mex. 1.
² Idem, 1946, Fr. 15.
actions for damages for breach of the contractual obligations by any other persons or groups bound by the agreement.

Under the Swedish Collective Agreements Act of 1928\(^1\), an employer, employee or association may be liable for damage incurred as the result of the breach of a collective agreement.

In the United States the Labor-Management Relations Act of 1947\(^2\) provides that any labour organisation representing employees in an industry affecting commerce and any employer whose activities affect commerce shall be bound by the acts of its agents, that is to say, where any suit for violation of a contract between an employer and a labour organisation is brought.

In the United Kingdom, the Trade Disputes Act of 1906 provides that an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable only on the ground that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills. But even where a tortious act is committed by or on behalf of a trade union in contemplation or furtherance of a trade dispute, the trustees of the union cannot be sued so as to recover damages out of the union’s property. Moreover, under section 4(5) of the Trade Unions Act of 1871, the direct enforcement of, or recovery of, damages for the breach of “any agreement made between one trade union and another” — that is, another trade union or employer or association of employers party to the collective agreement — is not possible.

The extent of the liability in damages is limited in Canada (Québec), France, Netherlands, Sweden, etc., but not in the United States.

The Swedish Collective Agreements Act of 1928\(^3\) provides that in assessing damages the interest of the person concerned in the maintenance of the agreement and other circumstances other than those of a purely economic nature must be taken into consideration. The amount of the damages may be reduced if it appears reasonable in view of the slight degree of culpability of the person who has caused the loss, the situation of the person who has suffered loss in respect of the dispute, the extent of the loss and other circumstances; complete exemption from liability

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\(^1\) I.L.O.: *Legislative Series*, 1928, Swe. 2.
\(^3\) *Idem*, 1928, Swe. 2.
may be granted. The liability of an employee is in any event limited to 200 Kr.

In Canada the Quebec Act of 1934 limits liability to 20 per cent. of the wages in dispute.

In France the method is adopted of protecting certain assets from distraint. The provisions of the 1946 Act must be read in conjunction with the earlier enactment declaring that the premises and furniture necessary for the meetings of an industrial association, libraries and courses of technical instruction shall not be liable to distraint.

The Netherlands has mitigated liability by providing that associations are not answerable for acts committed by their members unless guarantees to that effect have been given. They are called upon merely to do all that they reasonably can to ensure that their members observe collective agreements.

The United States Labor-Management Relations Act of 1947 provides that any money judgment against a labour organisation shall be enforceable against the organisation as an entity and against its assets, but not against an individual member or his assets.

Fines are prescribed in Australia for breaches of collective agreements, while Brazilian law provides that collective agreements shall contain clauses regarding the penalties for breach of agreement. In the United Kingdom, the Cotton Manufacturing Industry Act of 1934 and, in Canada, the Quebec Act of 1934 provide for penalties in respect of the breach of collective provisions the application of which has been extended to third parties.

In these cases the fixing of a specific or maximum figure for the fine or penalty automatically mitigates the liability of a contracting party in respect of the breach of an agreement. In Brazil, for instance, the amount of the penalty is lower for workers and their organisations than for employers or employers' associations and, in the case of Australia, where the fines are not stipulated in collective agreements, the amounts mentioned in the Act of 1928 apply.

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1 I.L.O.: Legislative Series, 1934, Can. 5.
2 Idem, 1927, Fr. 3.
3 Idem, 1928, Austral. 3.
5 Idem, 1934, G.B. 7.
Enforcement of Collective Agreements

There are many different methods of enforcing collective agreements, that is to say, of settling disputes as to their interpretation or application. In certain countries the enforcement of the agreement depends largely on the good faith of the parties where no method of enforcement through the courts is provided. In other countries the parties are entitled to enforce the agreements either through the regular courts or through specially constituted labour courts. Indirect methods of enforcing an agreement are the inclusion therein of clauses defining the procedure to be followed in the event of disputes as to interpretation of the agreement, or the provision of a system of supervision of the application of agreements adequate to secure their observance.

In many countries possessing legislation governing collective agreements, it has been deemed desirable to ensure that the occupational organisation shall have the right to appear as a party in legal proceedings on behalf of its individual members, as well as on its own behalf as an organisation (e.g., in France, Sweden, etc.). This is an exception to the principle of ordinary law, whereby legal procedure must be based on personal interest, and enables the organisation to exercise all the rights of a party to proceedings with regard to circumstances which may directly or indirectly injure the collective interests of the occupation which it represents.

Enforcement without Court Procedure

In the United Kingdom, as indicated above, it is a consequence of the evolution of trade union law that actions for damages for breach of collective agreement may not be maintained against contracting organisations. Consequently, the observance of the agreements rests mainly upon the good faith of the parties and on the economic power of the organisations concerned to secure their observance. It is therefore lawful, in the United Kingdom, for instance, to resort to direct action to enforce a collective agreement, subject to the strike provisions temporarily in force under the Conditions of Employment and National Arbitration Order, 1940. ¹ It is, however, always possible to sue on the individual agreement in which the terms of the collective agreement are incorporated.

¹ I.L.O.: Legislative Series, 1941, G.B. 3B; 1944, G.B. 3B. The provisions have been re-enacted by the Wages Councils Act, 1945 (L.S. 1945, G.B. 1).
The Courts in the United Kingdom have now held that agreements are legally enforceable against the members of the actual contracting parties.\(^1\) Moreover, refusal to observe the "recognised" terms and conditions under the war-time emergency legislation may constitute violation of a Government regulation and be punishable accordingly.

In Mexico\(^2\) and certain other Latin-American countries, strikes may lawfully be called for the purpose of obtaining compliance with a collective agreement.

It is usual, in the United Kingdom, the United States, Canada, etc., for the parties to include arbitration clauses in their agreements. These arbitration clauses may provide for a permanent procedure or for an \textit{ad hoc} procedure.

For an example of such clauses providing for a permanent procedure, reference may be made to the collective agreement concluded by the employees of the French banks, which was officially approved on 20 August 1947.\(^3\) This agreement provides for the establishment of regional joint committees under a national joint committee. One of the functions of the regional committees is to conciliate in disputes arising as to the application in the regions concerned of the provisions of the collective agreement. If the efforts of the regional committees are unsuccessful, the dispute is to be submitted, at the request of either party, to the labour inspector for his opinion. If still no agreement is reached, particulars concerning the dispute are to be forwarded to the national joint committee. If this committee cannot agree, the parties may, at the request of either of them, bring the dispute before the competent Minister or his representative. None of these provisions, however, are to prevent the employers or staff concerned from bringing the case directly before the appropriate tribunal or official conciliation agencies, or to prevent the trade unions concerned from taking the matter up directly with the management of the establishment.

Under Canadian war-time legislation, which is still in force, collective agreements were required to include a clause prescribing special conciliation and arbitration procedure in the event of disputes regarding the interpretation and enforcement of an agreement. Such procedure was to take the place of direct action.

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\(^{1}\) Holland v. William Saunders and Son, 1944, 2 All E.R. 568.


\(^{3}\) Textes officiels, Ministère du Travail et de la Sécurité sociale, 1947, Fascicule n° 38, Texte n° 2426.
In the event of such a clause being omitted from an agreement, the Labour Relations Board was made responsible for setting up a procedure, on the request of either party to the agreement.

**Enforcement through the Ordinary Courts**

In the Netherlands and France, collective agreements may be enforced by an action for damages instituted by the contracting associations in the regular courts in cases of breach of an agreement. Such actions may be brought by an association, in the event of violation by the other organisation party to the agreement or by one of its members, to secure damages either for itself or for one of its own members.

Many countries, however, have considered it inappropriate to give jurisdiction to the ordinary courts in matters of this kind. The procedure is comparatively lengthy and expensive, whereas delay is an element to be avoided at all costs if the far-reaching effects of a considerable labour dispute are to be prevented. Moreover, a judiciary which is largely concerned with common law matters may not be fully acquainted with those particular problems relating to collective agreements of which account is taken in a specialised labour court.

**Enforcement through Labour Courts**

In order to ensure the expeditious settlement of disputes regarding the enforcement or application of collective agreements, many countries have provided by legislation special procedure for dealing with such disputes where the parties have not already specified the procedure to be followed in the collective agreement itself.

This is the method adopted in Norway, Sweden, Denmark and Ireland.

In Denmark, organisations, not individuals, may bring before the central labour court legal actions arising out of the breach or interpretation of collective agreements. The basic agreement of 1899 between the central organisations of employers and workers provided for the creation of a permanent arbitration court, but the present court is actually based on an Act of April 1910\(^1\), amended in 1919\(^2\), and by subsequent enactments.

The position in Norway is very similar, except that the juris-

\(^1\) *Annuaire de la législation du travail*, Brussels, 1910, p. 138.
\(^2\) I.L.O.: *Legislative Series*, 1929, Den. 2B.
diction of the labour court is limited to national questions, and actions involving local questions are first brought to the regular courts, with a right of appeal to the labour court.

The labour court in Sweden may hear actions arising out of a collective agreement only after the failure of such negotiations as may be provided for in the agreement itself. If the agreement provides for other methods of arbitration, the labour court has jurisdiction only if the arbitration breaks down. Only organisations themselves may sue in the Swedish labour court, with the exception that an individual may bring an action if his organisation has refused to do so.

The Irish Industrial Relations Act of 1946\(^1\) provides that an action may be instituted in connection with any collective agreement which has been registered with the labour court. The agreement is only enforceable in this way if it contains a provision for conciliation in the event of disputes before resort to direct action. A trade union may complain to the court that an employer has failed to comply with a collective agreement, or the employer may complain that a trade union is using its funds for a strike contrary to the agreement. The court may order the offending persons or organisations to comply with the terms of the agreement and may impose sanctions in the event of non-compliance.

5. Supervision of Application of Collective Agreements

As in the case of any other contract, it is incumbent on the parties to a collective agreement to be active in ensuring that its provisions are observed by the other party. To this end, where the law itself does not take responsibility for prescribing methods of supervision, agreements frequently provide for the appointment of representatives authorised to supervise the operation of the agreement, or of joint committees including such supervision among their functions (as in the United Kingdom and Sweden).

Legislation in a number of countries provides for the supervision of the application of collective agreements by authorised persons or bodies, such as labour inspectorates. Measures of this kind are prescribed especially in those cases in which the

\(^1\) I.L.O.: Legislative Series, 1946, Ire. 1.
collective agreement has been declared generally binding, because, since it is the administrative authority which has taken the responsibility of applying the agreement to persons other than the contracting parties, only that authority can intervene in the case of employers and workers who are not affiliated to the contracting parties but to whom the application of the agreement has been extended.

In France, where the application of collective agreements is supervised by the labour inspectorates, the Act of 16 April 1946 provides that they shall be assisted by the staff delegates. In several other countries the staff representatives have the right to supervise the application of collective agreements in the undertakings and to inform the labour inspectorates of any cases involving breaches of the agreements. In Poland and Czechoslovakia this function is discharged by the works councils, and in the U.S.S.R. by the factory committees.

In Australia and the Union of South Africa, the Conciliation and Arbitration Boards and Tribunals and Industrial Councils control the application of agreements and arbitral awards through their own inspectorates or with the co-operation of the labour inspectorates. Agreements and awards in Australia generally provide that a trade union delegate may intervene and discuss with the workers and with the employer all questions arising out of the application of collective agreements.

Conclusions

In deciding to place the question of collective agreements on the agenda of its 1948 Session, the International Labour Conference intended to stress the close interdependence of the problems of freedom of association, protection of the right to organise, and collective agreements. Indeed, the importance of this last problem is nowhere denied, and its regulation at the international level appeared to the Conference as the necessary complement to a similar regulation of the first two questions.

From the statement of law and practice, a number of principles emerge which appear to lend themselves more particularly to international regulation and which are covered by the question-

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1 I.L.O.: *Legislative Series*, 1946, Fr. 7.
naire appended to this part of the report. It may be of value to give the following brief explanation of the points included in the questionnaire.

I. DESIRABILITY AND FORM OF THE REGULATIONS

In questions 1 and 2 Governments are consulted on the form of possible international regulations, and the points are indicated which might be dealt with either in a future Convention or in a future Recommendation. It appeared indeed that not all the questions involved were appropriate for international regulation by means of a Convention. The statement of law and practice shows that although most countries now have legislation of one sort or another regarding collective agreements, the provisions in question nevertheless vary considerably between country and country.

For instance, some legislative schemes merely place collective bargaining machinery at the disposal of the parties and define the conditions under which agreements shall be regarded as valid, but leave the parties entirely free to determine as they please the contents, scope and duration of the agreements. Other schemes go further and deal also with the interpretation of the agreements, the responsibility of the parties, and supervision of application. Others again prescribe, in whole or in part, the contents of the agreements. Lastly, in certain countries the essential function of collective agreements is to serve as a channel, in the field of conditions of work, for enforcement of a general economic plan.

With such variations between the different national legislative schemes, it would no doubt be unwise to attempt to establish an international instrument covering all the problems which the regulation of collective agreements may in practice raise in the different countries.

Further, by its very nature, the determination of conditions of work by means of collective agreements should provide a maximum of flexibility and, therefore, leave wide scope for the initiative of the parties. This means that international regulations are likely to be effective only to the extent to which they are calculated to reinforce the action of the parties themselves.

Question 2 (a) therefore mentions, as subject matter for possible international regulations, only the problems which are
treated in a more or less uniform manner in the legislation of most countries; whereas question 2 (b) enumerates the points which are too important to be passed over in silence, but which it would appear possible to regulate only by the more flexible method of a Recommendation.

II. COLLECTIVE BARGAINING MACHINERY

Question 3 relates to the advisability of establishing appropriate machinery, the function of which would be to help the parties during the conclusion, revision or renewal of collective agreements.

It will have been noted, in the statement of law and practice, that in certain countries where organisation on the part of employers and workers has reached a particularly advanced stage, and most of the employers and workers of the relevant groups are in fact covered by it, the occupational organisations have themselves established extremely sound procedures of collective bargaining without any legislative intervention. In a fairly large number of countries, however, collective agreements are concluded under the auspices of joint boards — national or regional — established by law and composed of delegates of the most representative organisations of employers and workers. In other countries, again, particularly the United States and Canada, labour relations boards have been set up; these have the important function of certifying what unions represent, for collective bargaining purposes, the majority of workers falling within the scope of the agreement, and if necessary of holding an election by secret ballot to determine the union which shall represent all the workers concerned for this same purpose. Elsewhere, the conciliation and arbitration authorities perform a similar task.

Experience shows that such machinery has made a powerful contribution to the progress of the movement towards collective agreements, without encroaching on the independence of the contracting parties. But the very fact that it is impossible to bring these various methods together under a common denominator makes it appear preferable to provide for regulation of this matter by Recommendation rather than by Convention.
III. Definition, Legal Effect and Extension of Collective Agreements

The various questions which may be grouped under this title relate to matters covered by the legislation of most countries and consequently appropriate for international regulation in the form of a Convention. These matters are the definition of collective agreements, the legal effect of collective agreements and, perhaps, the extension of collective agreements.

A. Definition of Collective Agreements

When regulating collective agreements, legislators are naturally induced to define the term. The definitions of collective agreements to be found in most national schemes describe them as agreements regulating conditions of work and concluded between an employer, a group of employers or an employers' organisation on the one hand, and one or several organisations of workers on the other.

Thus although, on the employers' side, legislators accept one or several employers or an employers' organisation as an appropriate party to collective agreements, they have nevertheless considered that on the workers' side the organisations only are in a position to assume the responsibility of concluding and applying such agreements.

B. Legal Effect of Collective Agreements

Question 5 provides that stipulations of individual contracts of employment, or group contracts, concluded between employers and workers bound by a collective agreement, should be valid only to the extent to which they are more favourable to the workers. This is a standard clause, either expressly included or understood in all national legislation on collective agreements, and intended to establish the precedence of collective agreements over individual contracts of employment.

However, since collective agreements, like all social legislation, merely fix general conditions of work, it is important to leave the parties free to arrange, by means of individual or group contracts, for terms more favourable to the workers.
Question 6 provides that it should be possible to apply the stipulations of a collective agreement to all the workers in the service of the employer or employers bound thereby, even if such workers are not themselves members of the contracting labour organisation.

The importance of this clause lies in the fact that the application of the agreement is extended to certain third parties (unorganised workers) and thus involves a departure from the principles of common law with regard to contracts. This departure is now accepted by most national legislation, because it has been impossible in practice to distinguish, as regards remuneration or conditions of work, between organised and unorganised workers employed in the same establishment.

C. Extension of Collective Agreements

Question 7 relates to cases in which the application of a collective agreement concluded between an organisation of employers and one or more organisations of workers may be extended to a minority of employers and workers who, though not members of the contracting organisations, nevertheless operate within the industrial and territorial scope of the agreement.

From a legal point of view this clause cannot be distinguished from that contemplated in the preceding question, for in each case third parties who had no share in establishing the agreement are made subject to its terms by legislative action. But in fact question 7 relates to a much more important matter, because it contemplates the application of a collective agreement not only to workers in the service of an employer already bound by that agreement, but also to employers and to workers not belonging to any of the contracting organisations.

As this is the most important problem raised by the regulation of collective agreements, the principal solutions found for it are summarised below.

It should first be noted that the question does not arise in countries where collective agreements are normally concluded, on the employers' side, by one or a few employers only; in this case the situation is identical with that contemplated by question 6. Nor does the problem arise in countries where collective agreements in fact apply to practically all the employers and workers engaged in a given industry. But these are two extreme hypotheses, and in most countries there has been legislation of one sort or another
enabling the application of a collective agreement to be extended to other employers and workers engaged in the industry and region covered by it.

It should be remembered first of all that, under the law of some countries, collective agreements are from the outset concluded for a whole industry and apply to all the employers and all the workers engaged in that industry. A similar result is obtained in the countries where collective agreements are concluded under the auspices of joint boards, national or regional, which are established for the various branches of industry and which, by their composition, genuinely represent the employers and the workers as a whole.

In most countries, however, legislation has been restricted to providing that those collective agreements which are of predominant importance in the industry and region to which they apply may be rendered applicable also to a minority of the employers and workers not belonging to the contracting organisations.

It is to this intermediate solution that question 7 refers, but it does not, of course, exclude a more advanced system.

It should be pointed out in this connection that such a scheme does not aim at extending the territorial or industrial scope of an agreement as freely determined by the parties, but simply to include in that scope a minority of persons — employers or workers — not members of the contracting bodies.

Furthermore, in order to safeguard the interests of the persons thus made subject to the agreement, question 7 (b) suggests that the employers and workers to which the provisions of a collective agreement might be rendered applicable should be authorised to submit their observations and objections in advance.

IV. APPLICATION OF COLLECTIVE AGREEMENTS

The questions which may be grouped under this title relate to matters which are not as a rule governed by legislation in the different countries, and which consequently do not appear to lend themselves to international regulation by means of a Convention. Nevertheless, in view of their importance, it may appear desirable to deal with them in a Recommendation. These matters are the interpretation of collective agreements, the responsibility of parties to collective agreements, and supervision of the application of collective agreements.
A. Interpretation of Collective Agreements

Question 8 provides that disputes arising out of the interpretation and application of collective agreements should be submitted to a procedure for settlement agreed to by the parties and, if this breaks down, should be referred to compulsory arbitration or an appropriate judicial procedure.

In many countries the occupational organisations of workers and employers now admit that disputes regarding the interpretation of collective agreements are appropriate for settlement by negotiation, and with this object make provision in the collective agreements themselves for a settlement procedure, often going as far as compulsory arbitration. But as such procedure relies in the last resort on the good will of the parties concerned, the legislation of some countries requires that, if the contractual procedure should break down, disputes regarding the interpretation of collective agreements shall be referred to a judicial procedure. However — and this fact deserves emphasis — all the countries in question have taken care to establish a special judicial system for this purpose (labour courts or the like) composed of judges expert in labour matters, who are recruited in the occupational circles concerned or appointed on the basis of proposals by the occupational organisations; and all disputes regarding the interpretation of collective agreements are referred to them, instead of to the ordinary courts. The establishment of special labour courts or judges, acting on a simplified procedure — often free of charge — and providing the parties also with the fullest guarantees of competence and independence, has indeed been regarded as a necessary complement to the introduction of compulsory settlement for interpretational disputes.

But the statement of law and practice shows that such special labour courts or judges exist in a limited number of countries only, and it is no secret that the workers' organisations are, rightly or wrongly, apprehensive of the intervention of the ordinary courts, both because of their slow procedure and also because of the lack of experience of an unspecialised judiciary as regards labour law. In these circumstances it would appear premature to suggest the inclusion of this question in a possible Convention, but it may usefully be regulated by means of a Recommendation.
B. Responsibility of the Parties to Collective Agreements

Question 9 raises the problem of the responsibility of the parties to collective agreements, which is indeed closely related to the problem raised by the preceding question, for if the law provides for the compulsory settlement of disputes arising out of interpretation of collective agreements, it will also provide for sanctions — either civil liability (damages) or penal liability (fines).

In practice, however, the question of responsibility gives rise to problems of an extremely complicated nature.

First of all, it is impossible to place on the same footing the responsibility of the contracting unions on the one hand, and of the individuals bound by the agreement on the other. The employers and workers bound by the agreement are of course required to fulfil the obligations which they have assumed. The same cannot, however, apply to the contracting organisations; these determine the rights and obligations which shall characterise the employment relations of their members, but they cannot themselves undertake actually to put them into application. Legally speaking, an occupational organisation is neither a "contractor" nor a "sub-contractor". The responsibility of the organisation as such can only be involved if it is possible to prove that it has deliberately provoked the violation of a collective agreement. This excludes from the outset any liability on the union's part for disputes which occur without its knowledge and for those due to any cause other than application of the agreement. Further, the organisation cannot be held responsible if its officers have exceeded their powers as defined in the constitution or rules of the organisation. Lastly, in many countries, proceedings can only be taken against an organisation if it is incorporated — that is to say, if it has legal capacity to assume obligations.

For all these reasons, legislators in most countries have preferred not to decide explicitly the question of the responsibility of the contracting unions. Some countries (the United Kingdom, for instance) have even formally exempted the unions from all civil or penal responsibility in case of industrial conflicts. Others have restricted the application of common law principles regarding contractual responsibility by declaring the principal items of trade union property to be immune from execution or distraint. Still other countries limit the sanctions which may be imposed to fines of a token character.
Indeed, very few countries fail to restrict in some way the responsibility of the unions, for the pure and simple application of common law principles regarding contractual liability (the obligation to make good in full all loss caused directly or indirectly by an illicit strike, for instance) would lead in most cases to the material ruin of the organisations.

In these circumstances the Office has thought it best to consult Governments on the question — No. 9 (a) — whether a provision regarding the responsibility of parties to collective agreements should be included in a possible Recommendation. In case of an affirmative reply to this, it is first of all suggested — in question 9 (b) — that the matter should be settled by agreement between the parties, for this is the method which is most frequently used and which appears to provide the parties with the highest degree both of guarantee and of flexibility. The parties may determine, by mutual agreement, the cases in which they will be liable; they may limit the amount of damages payable; and they may also, as is the case in a number of countries, establish a fund to guarantee fulfilment of their obligations.

According to the provision contemplated in question 9 (c), there would be legislative action only if the parties failed to arrive at an agreed procedure. In this same question Governments are also consulted as to the advisability, in the latter case, of limiting the liability of the parties.

C. Supervision of Application of Collective Agreements

Question 10 provides that labour inspectors should be empowered to secure application of collective agreements.

At present, supervision of application of agreements is undertaken in most countries either by the organisations of employers and workers themselves or by representatives of the personnel acting in the establishments.

However, union supervision can usefully relate only to members of the relevant organisations, and not to third parties to whom the collective agreement may have been made applicable by the extension process. In the latter case legislators have taken the view that application of collective agreements should be ensured in the same way as that of social legislation. It will be for Governments to say whether all collective agreements should receive guarantees of this kind.
QUESTIONNAIRE

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations regarding collective agreements in the form of a Convention and one or several Recommendations?

2. If the reply to question 1 is in the affirmative, do you consider that the Conference should adopt:
   (a) a Convention relating to the points covered by questions 4, 5, 6 and 7?
   (b) a Recommendation relating to the points covered by questions 3, 8, 9 and 10?

II. Collective Bargaining Machinery

3. Do you consider that it should be provided, in a Recommendation, that Governments should establish appropriate machinery which would be available to assist the parties in the conclusion, revision and renewal of collective agreements?

III. Definition, Legal Effect and Extension of Collective Agreements

A. Definition of Collective Agreements

4. Do you consider that collective agreements might be defined as agreements regarding conditions of work concluded between an employer, a group of employers or an employers' organisation on the one hand, and one or several organisations of workers on the other?

B. Legal Effect of Collective Agreements

5. Do you consider that the international regulations should provide that the stipulations of individual or group contracts of
employment concluded between employers and workers bound by a collective agreement should be valid only to the extent to which they are more favourable to the workers than the corresponding stipulations of the collective agreement?

6. Do you consider that the international regulations should provide that the stipulations of a collective agreement should apply to all the workers in the service of the employer or employers bound thereby, even if these workers are not members of the organisation which concluded the agreement?

C. Extension of Collective Agreements

7. (a) Do you consider that it should be provided, in the international regulations, that 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 rendered applicable to all employers and workers engaged within the industrial and territorial scope of the agreement as defined by the contracting parties?

(b) Do you consider that any employers and workers to whom the stipulations of a collective agreement are to be rendered applicable should be authorised to submit their observations and objections in advance?

(c) Do you consider that the international regulations regarding the extension of collective agreements should take the form of a Convention or that of a Recommendation?

IV. Application of Collective Agreements

A. Interpretation of Collective Agreements

8. (a) Do you consider that it should be provided in a Recommendation that disputes arising out of the interpretation and application of collective agreements should be submitted to a procedure for settlement agreed to by the parties and, if this breaks down, should be referred to an appropriate judicial procedure?

(b) If so, do you consider that it should be provided in a Recommendation that the parties should receive appropriate guarantees regarding the gratuitous character of the judicial procedure, its rapidity, the technical competence of the judges, etc.?
B. RESPONSIBILITY OF THE PARTIES TO COLLECTIVE AGREEMENTS

9. (a) Do you consider that there should be included in a Recommendation stipulations regarding the responsibility of the parties to collective agreements?

(b) If so, do you consider that it should be provided that the parties to collective agreements should undertake to determine their respective responsibility by agreement?

(c) Do you consider that, failing an appropriate determination by agreement, the responsibility of the parties to collective agreements should be determined by legislation?

(d) If so, do you consider that, in such legislation, limits to the liability of the parties should be prescribed?

C. SUPERVISION OF APPLICATION OF COLLECTIVE AGREEMENTS

10. Do you consider that it should be provided in a Recommendation that the labour inspectors should be empowered to supervise the application of collective agreements in all the establishments covered thereby?

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11. Have you any proposal or suggestion to put forward on any point regarding the question of collective agreements which has not been mentioned in the present questionnaire?
PART III

CONCILIATION AND ARBITRATION
Disputes arising in industry may be individual or collective. It is only with the collective dispute that this report is concerned, as the individual dispute is a question of ordinary civil contract to be settled, if negotiation fails, by court procedure. The individual dispute, however, if not settled, may easily develop into a collective dispute.

A collective dispute may arise in connection with the interpretation or application of a collective agreement — in which case it is a "legal dispute"; in connection with questions of union recognition or jurisdiction, or in connection with the conclusion, renewal or revision of a collective agreement — in which case it is a "dispute about interests". The legal dispute has already been considered under Part II of this report, concerning collective agreements, and reference has also been made to the systems evolved in many countries for the prevention or settlement of disputes concerned with questions of union recognition by an employer or of the conflicting claims to recognition advanced by rival workers' organisations.

The most usual kind of dispute about interests — often termed "economic disputes" — arises out of fundamental differences regarding wages and working conditions, that is to say, matters normally regulated by collective agreements. If the parties cannot reach agreement, either by direct negotiation or with the help of such permanent joint machinery as they may have established for this purpose, some other means has to be found to settle their differences, if industrial strife is to be avoided.

It should be observed that the above classification of disputes is not followed in all countries, but it is one most generally adopted. For the purposes of this part of the report, therefore, conciliation and arbitration is considered only in so far as it affords a means of settling and, if possible, preventing economic disputes.

1 See above, p. 40.
2 See above, pp. 39 et seq.
Practically all countries have established some form of conciliation or arbitration for dealing with collective disputes — Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Finland, France, Greece, Hungary, India, Iran, Iraq, Lebanon, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, Syria, Turkey, Union of South Africa, United Kingdom, United States, Uruguay, U.S.S.R., Venezuela, etc.

The systems adopted in the different countries range from purely voluntary to general compulsory conciliation and arbitration, depending to some degree on the nature of the national economy. Where a free economy prevails, voluntary systems of conciliation and arbitration are the rule, while in countries having a controlled economy, or in which special conditions may exist, the State, through the intermediary of arbitrators or arbitration courts, tends to determine wages and other conditions of employment in relation to the whole economy. Strikes and lockouts, being incompatible with the latter methods, are forbidden, and the State assumes the responsibility of establishing a certain standard of living in compensation for the surrender by the trade associations of their freedom to resort to direct economic pressure in connection with disputes.

In view of the fundamental differences between the voluntary and compulsory systems of conciliation and arbitration, they will be considered separately.

1. Voluntary Conciliation and Arbitration

In the first place, it should be noted that Governments usually prefer a system of conciliation and arbitration established by the parties to a general agreement which has been negotiated by the central organisations of employers and workers, or one provided by special clauses included in collective agreements.

In a recent statement concerning the principles controlling the development of policy in the United States Federal Mediation and Conciliation Service, the Director of the Service stated: "The Service exists to facilitate and promote the settlement of labour disputes through collective bargaining. Employers and unions, therefore, will be encouraged to resolve industrial differences by
themselves and with the assistance of such voluntary organisations and agencies as they may establish without the aid of the Service."\(^1\)

Special clauses concerning conciliation and arbitration are often included in agreements negotiated by trade associations in the United Kingdom, for example, where the agreements may establish a succession of stages for conciliation, and finally, as a last resort, may provide for voluntary arbitration. By this procedure the parties seek the prompt settlement of the dispute as near the point of origin as possible.

Where the conciliation procedure is supplemented by provisions for voluntary arbitration, the agreement as a rule establishes the procedure to be followed and provides that the arbitral award shall be binding. For example, in the building industry in Great Britain, the agreement provides four stages in which the dispute is to be dealt with by representatives of the organisations concerned. If at the last stage, the National Joint Council, agreement is not reached, the Council may refer the matter to the Industrial Court or to an independent arbitrator or arbitrators, provided a majority on each side of the Council agrees. When a dispute is referred to arbitration under these conditions, the award is final and binding.\(^2\)

In the absence of, or to supplement, any such contractual system, however, Governments intervene to provide either voluntary conciliation facilities, through which the parties are assisted in reaching agreement, or voluntary arbitration facilities, by means of which the parties may resolve their dispute through an award given by an independent person, which has the same effect as an agreement. In both instances Governments have sought to make available machinery which, by reason of its composition and procedure, and by the general facilities which it offers, will inspire the full confidence of the parties to the dispute.

Much progress has been made in this direction by consulting freely with the organisations and enlisting their co-operation in establishing representative boards or other bodies, by increasing the efficiency of such bodies by means of regulations requiring the parties to formulate their demands in precise terms at a very early stage in the dispute, and by imposing time-limits within which the procedure must be initiated, action taken as indicated, or the procedure deemed to have lapsed.

\(^1\) U.S. DEPARTMENT OF LABOR: Labor Press Service (Week of 6 October 1947),
In certain countries, the authorities lend their good offices to conciliate disputes without imposing any restrictions on the freedom of the parties to resort to direct action if they choose. In other countries, the view has been taken that such efforts to aid in the settlement of disputes are more likely to succeed if the party's right to resort to strike or lockout is temporarily suspended. As a balancing factor, Governments frequently provide means of restoring and maintaining the status quo of the conditions giving rise to the dispute until the parties have resumed their full freedom of action upon the failure of such procedure. These various methods are considered in the following paragraphs.

Voluntary Conciliation

By means of voluntary conciliation machinery the parties to a dispute are assisted in resolving their differences and reaching an agreement without infringement of their ultimate freedom of decision. Even though the parties may be required to attend and otherwise participate in the conciliation attempt, the effectiveness and validity of the recommendations of the voluntary conciliation agencies depend entirely upon their free acceptance by the parties. The chance of conciliation procedure being successful will evidently be increased if the parties, once a dispute has been submitted to conciliation with their mutual consent, do not aggravate the position by resorting to strike or lockout until the procedure has been exhausted. A duty to refrain from direct action in these circumstances does not infringe the free will of the parties, as the procedure is only initiated by their mutual consent.

Voluntary conciliation is, therefore, only a form of collective bargaining at a higher level, to which the parties to a dispute may turn when direct negotiations have failed, and, with the assistance of a mediator, may endeavour to find a mutual ground for agreement.

Moreover, the principle of voluntary conciliation, as a first stage in the attempted settlement of disputes, is very generally accepted, even in those countries which make general provisions for recourse to compulsory arbitration in the settlement of disputes. For example, by recently enacted amendments, the Australian Commonwealth Conciliation and Arbitration Act, while main-

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taining the basic procedure of compulsory conciliation and arbitration, emphasises the importance of conciliation. Under these amendments it is the duty of Conciliation Commissioners to make every effort to prevent or settle a threatened or actual dispute by conciliation methods, and only upon the failure of such efforts may the Commissioner issue an award in settlement of a controversy.

**Conciliation Machinery made Available by Governments**

In the majority of countries the Minister of Labour, or some other specialised authority competent with regard to labour relations, has the power to intervene directly in labour disputes, either by offering his own services, or by delegating his powers in this connection to certain persons particularly well qualified to conciliate the dispute (as, for example, in the Dominican Republic\(^1\), France, India, United Kingdom, etc.) or to labour inspectors (as in Belgium).

In the United Kingdom, under the Conciliation Act of 1896, it is within the discretion of the Minister of Labour to take such steps as he deems expedient to bring together disputing parties. Under the Industrial Courts Act of 1919, he may likewise intervene in any trade dispute for the purpose of promoting a settlement. Although he may, under either Act, intervene on his own motion in such disputes, he does not normally do so unless the ordinary negotiating machinery of the parties has failed. In major disputes the Minister may investigate the matter through a court of enquiry (under the Industrial Courts Act) or a committee of investigation (under the Conciliation Act), and make recommendations for a settlement.

Moreover, under the Conditions of Employment and National Arbitration Order of 1940\(^2\), the Minister, before referring a dispute to arbitration, must first afford the parties an opportunity to settle it by means of any collective joint machinery which exists in the trade concerned, or by means of some agency or voluntary conciliation procedure.

In the United States, under the Labor-Management Relations Act of 1947, emphasis is laid on the impartial character of the Federal Mediation and Conciliation Service. The Secretary of Labor no

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1 I.L.O.: *Legislative Series*, 1944, Dom. 1; 1946, Dom. 1.
longer possesses mediation and conciliation functions, and the new agency is entirely independent of the Department of Labor.\footnote{1} In some countries ad hoc bodies are set up, composed of representatives of the parties, whenever an industrial dispute threatens or breaks out. Under the chairmanship of an independant person, usually a representative of the Government, who has no voting powers, an effort is made to conciliate the parties. Ad hoc bodies of this kind are constituted in the Argentine Republic, Bolivia\footnote{2}, Colombia\footnote{3}, Costa Rica\footnote{4}, Cuba\footnote{5}, Ecuador\footnote{6}, Guatemala\footnote{7}, India\footnote{8}, Peru, Salvador\footnote{9}, Venezuela\footnote{10}, etc.

Preference is more often given to permanent institutions, which have the advantage of being able to undertake their duties immediately a dispute arises or threatens to arise, and are also particularly well qualified to give an objective opinion, as their members are persons who are familiar with industrial problems and independent of the parties directly involved in the dispute.

Legislation establishing permanent agencies may provide for the appointment either of individual conciliators or mediators, or of joint agencies including equal numbers of representatives of employers and workers respectively, appointed, as a rule, on the proposal of the most representative organisations.

The system of individual conciliators or mediators is currently employed, among other countries, in the United States, Canada\footnote{11}, the Scandinavian countries, the Netherlands\footnote{12}, and to some degree in Ireland.\footnote{13}

In the United States, the Director of the Federal Mediation and Conciliation Service, or any authorised subordinate official, may intervene, by proffering his services, in any labour dispute which threatens to cause a substantial interruption of commerce, and may bring the parties together to seek a settlement of the


\textsuperscript{2} I.L.O. : \textit{Legislative Series}, 1947, Bol. 1.

\textsuperscript{3} Idem, 1945, Col. 1.

\textsuperscript{4} Idem, 1943, C.R. 1.

\textsuperscript{5} Idem, 1943, Cuba 1 ; 1944, Cuba 2.

\textsuperscript{6} Idem, 1938, Ec. 1.

\textsuperscript{7} Idem, 1926, Guat. 1 ; 1945, Guat. 2.


\textsuperscript{9} I.L.O. : \textit{Legislative Series}, 1946, Sal. 2.

\textsuperscript{10} Idem, 1945, Vene. 1.

\textsuperscript{11} Idem, 1944, Can. 1.

\textsuperscript{12} Idem, 1923, Neth. 1 ; 1944, Neth. 2 ; cf. I.L.O. : \textit{International Labour Review}, Vol. LXI, No. 4, April 1945, p. 403.

\textsuperscript{13} I.L.O. : \textit{Legislative Series}, 1946, Ire. 1.}
dispute. The parties are free to accept or reject any procedure suggested by the Director. If the attempt at conciliation is unsuccessful, he must seek to persuade the parties voluntarily to find other means of settling the dispute without resort to a strike or lockout.

Under the Swedish Act of 1920, permanent conciliators are appointed to serve in the event of disputes which threaten a strike or lockout. These conciliators have to investigate the causes of the dispute, bring the parties together, and seek a settlement by direct negotiation. However, the provisions of this Act are inapplicable when the parties have recourse to the provisions contained in Chapter 3 of the Act of 1936 on the right of association and negotiation.

Chapter 3 of the 1936 Act comes into operation when a central organisation of employees applies to the Department of Social Affairs for registration. The Act thereupon applies not only to the central organisation, but to the associations affiliated to it and also to the employers of members of any such association (provided that the employers are made aware that the association is covered by the Act) in their relations with such association and its members. The relevant sections of the Act provide that, if direct negotiation between the parties has failed, the Department of Social Affairs, at the request of a central organisation of either party or of an unorganised employers’ party, shall appoint an independent chairman, or, in particularly important cases, a committee of three persons, to preside over the negotiations. The chairman or committee has power to compel attendance and to obtain the necessary information. If this conciliation procedure fails, the chairman or committee may recommend the parties to appoint arbitrators and to agree to submit to any award which may be made. If the parties do not accept this recommendation, the chairman or committee may, at the request of either party, make representations to the Department of Social Affairs concerning the appointment of an arbitration board.

In Denmark, under the Conciliation Act of 1934, provision is made for the appointment of three conciliators to assist in the settlement of disputes in the manner prescribed by the Act. If there is reason to fear stoppage of work, or if a stoppage of work has

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1 I.L.O.: Legislative Series, 1920, Swe. 6.
2 Idem, 1936, Swe. 8.
3 See below, p. 107.
occurred and the conciliator concerned deems the scope and effects of the dispute to be of considerable public importance, he may, on his own initiative or at the request of either of the parties, convene the parties for negotiation in any case in which negotiations have already been carried on by the parties without arrival at a settlement. If the conciliator forms the view that any of the questions at issue have not been the subject of actual negotiation between the parties, he may require such negotiation to be opened, and refuse to continue his intervention until the negotiations have taken place.

The second system, employing joint agencies, has been adopted, frequently in conjunction with the employment of individual conciliators, in Chile, Luxembourg\(^1\), Mexico, Nicaragua\(^2\), Switzerland, Union of South Africa, United Kingdom\(^3\), etc.

Such agencies may be bipartite, as in the case of the Union of South Africa, where the Industrial Conciliation Act of 1937\(^4\) provides for the formation by registered organisations of permanent industrial councils composed of equal numbers of employers' and workers' representatives. The councils have the duty of endeavouring, by the negotiation of agreements or otherwise, to prevent disputes from arising or to settle disputes that have arisen within the area served by the council. A council is competent to conciliate in any dispute which may arise between the parties and, where no industrial council exists, a conciliation board may be set up composed of an equal number of representatives of employers and workers. These bipartite bodies merely assist the parties to negotiate an agreement, and must report to the competent authorities if their efforts meet with no success. To support their efforts, the Minister of Labour may also appoint a conciliator to attend the meetings of the council or board, make his own investigation and report to the Minister.

Alternatively, the conciliation agencies may be tripartite, as provided by the legal systems of Chile\(^5\), Mexico\(^6\), and other of the Latin-American countries. Normally, tripartite agencies operate under the chairmanship of a government or other public official, the theory being that in this way the chairman, being neutral, will be able more easily to maintain a conciliatory

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1 Grand-Ducal Order of 6 October 1945.
5 *Idem*, 1931, Chile 1.
atmosphere during the negotiations, and thereby increase the prospects of reaching agreement.

Under the Labour Code of Chile, disputes must be submitted to a permanent conciliation board composed of three representatives each of the employers' and workers' organisations, under the chairmanship of a government official.

In Mexico, under the Labour Code of 1931, conciliation and arbitration boards are established as tripartite bodies. These boards are municipal conciliation boards, central conciliation and arbitration boards, federal conciliation boards and the Federal Conciliation and Arbitration Board. The municipal boards take cognisance for conciliation purposes of disputes arising out of contracts of employment, where the matter is not within the competence of the federal boards. They refer to the competent central board all disputes which fall within its exclusive competence and any disputes in which the parties have failed to reach agreement.

The central conciliation and arbitration boards, which sit permanently in the capitals of the various States, take cognisance of disputes occurring within their jurisdiction which do not fall within the competence of the federal boards, and disputes arising out of a contract of employment and concerning all the industries of the State represented on the board.

The Federal Conciliation and Arbitration Board takes cognisance of disputes arising out of contracts of employment in undertakings or industries operated under federal concessions or carried on wholly or in part in the federal zones, for example, transport, extraction of minerals, electricity undertakings, etc. They also have jurisdiction in respect of collective disputes affecting employers and employees in two or more federal States, and also in respect of collective agreements which have been declared binding in more than one federal State.

The workers' and employers' members are elected by the persons concerned from lists of candidates drawn up by the respective trade associations, and the board operates under the chairmanship of a government representative.

In Brazil, labour courts form an integral part of the judicial machinery which was established under the Constitution promulgated on 18 September 1946.1 The Constitution provides for

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the following institutions: a superior labour court, established at
the federal capital; regional labour courts; and conciliation and
arbitration boards to be established by legislative decision (their
functions may be exercised by ordinary judges in regions where
no such boards have been established). Employers and workers
will be equally represented on all these labour courts and boards.

The functions of the above institutions are to conciliate and
arbitrate in individual and collective disputes occurring between
employers and workers and in all other disputes arising out of
industrial relations governed by special legislation.

Conciliation Procedure

As voluntary conciliation is in effect a continuation of the
collective bargaining process, efforts are made to provide an
expedient and informal procedure by means of which the parties
may continue or resume negotiations under the guidance of an
independent agency and, by an objective consideration of the
demands, facilitate the conclusion of an agreement. The procedure
must, therefore, be such that the crux of the dispute may be
reached in the shortest possible time, as the longer a dispute
continues the more difficult it becomes to reconcile the views of
the parties, and the opportunities for open conflict increase.

It is usually the employers, employers’ associations, or trade
unions who, through their representatives, initiate the conciliation
procedure, make themselves parties to it, and undertake discus­
sions. It is not always expressly provided that only trade unions
may represent the workers involved in disputes, as the purpose
is not to exclude unorganised workers from the application of
conciliation procedure. However, as trade unions have most
frequently, in practice, been the parties to the negotiations which
have preceded conciliation, it is only natural that they should
be associated in this way with the conciliation procedure.

Moreover, as the recommendations of a voluntary conciliation
agency can only be effective to the extent that they are freely
accepted by the parties, the direct participation in the procedure
of trade associations, where the parties are organised, is indis­
penensible if the disputing parties are to have full confidence in
the procedure.

Thus, in those countries where the trade association is recog­
nised as the qualified representative of the workers or of the
employers, as the case may be, it will always have the right to
intervene — a right which has been extended under several legal systems to individual disputes (for example, in France).

While conciliation procedure cannot entirely disregard certain formalities, these are often reduced to the bare minimum consistent with the prevention of arbitrary action. Thus, many national enactments expressly provide that the formal rules of procedure or evidence, applicable under ordinary law, are not binding on conciliation agencies (for example, in Canada and Australia); or that the conciliation agency shall proceed "in such manner as it thinks fit" (as in India); or, by failing to make any provision on the subject, leave the conciliation agencies free to follow such procedure as is deemed desirable in the circumstances (as in the United Kingdom and the United States, for instance). To preserve still further the informality of proceedings, and to encourage the direct participation of the parties, some systems prohibit the employment of legal counsel in the presentation of disputes before the conciliation authorities (for instance, Australia, India, Mexico).

The first object of the legislation establishing the machinery is to provide a means for inducing the parties to a dispute to resume or continue their negotiations as rapidly as possible. Under several systems, therefore, the conciliator is empowered to intervene on his own initiative to convene the parties to a dispute for negotiation (as in the Scandinavian countries) or to intervene by a proffer of his services (as in the United States).

In some countries, however, the procedure must be initiated by one or both of the parties. Under the systems of several of the Latin-American countries (for instance, Chile, Nicaragua, Venezuela) the parties, and in particular the workers, are under the obligation to submit their statement of demands to the conciliating authority, as well as to the other party, within a brief period specified by the law, indicating precisely the reasons and factors giving rise to the dispute. The submission of this statement imposes on the other party an obligation to reply. The position of the parties as thus stated is used by the conciliation agency as the starting-point for its investigation, thereby limiting the scope of the ensuing negotiations to the essential elements of the dispute.

Under other systems, such as those in China and India, for example, the procedure must be initiated at the request of the parties, or *ex officio* by the competent authority, where such action is deemed necessary.

However, neither the most elaborate nor the simplest con-
ciliation procedure can function efficiently if delaying tactics may be used by the parties to their own advantage, thereby defeating the purpose of the procedure. To prevent such delays and ensure prompt utilisation of the procedure, legislators sometimes prescribe time-limits within which the procedure must be initiated, action taken as indicated, or the procedure be deemed to have lapsed. By prescribing in advance the periods for various stages of the procedure, conciliation agencies are enabled to proceed expeditiously to the crux of the dispute and at the same time are protected from possible charges of arbitrary action, which tend to destroy the confidence of the parties in the machinery.

For example, in the Venezuela Act of 1945, the statement of demands, which is filed with the competent authority, must be transmitted to the other party within twenty-four hours after receipt. Within forty-eight hours the parties must nominate their representatives for conciliation purposes, and the persons thus nominated must meet within seventy-two hours and must continue to sit either until a settlement has been reached or until one is clearly seen to be impossible. Under the Labour Code of Chile, the conciliation procedure must be completed within fifteen days. In the United States, if the conciliation attempt is not successful "within a reasonable time" the Director of the Conciliation and Mediation Service must seek to induce the parties to find some other means of settlement for the dispute.

For the same reasons, the law sometimes prescribes definite periods within which the parties must be summoned, the witnesses heard, proofs produced, etc. (as in Ireland, for example).

In order that the conciliation agency may form an objective opinion as to the dispute, it is authorised by law to summon witnesses, to make investigations on the spot, and to call for the production of the employers' records and of any other documents necessary for the consideration of the facts (as in Canada, China, Sweden, for example). According to many legal systems — that of Canada, for instance — the investigation constitutes the essential part of the conciliation procedure.

Under the Canadian wartime regulations governing industrial relations, which are still in force for certain industries, pending the enactment of permanent legislation¹, the trade union recognised as being representative, or the employer, may require the other

party to enter into negotiations within a period of ten days with a view to the conclusion of a collective agreement. The parties are compelled to negotiate and to endeavour, as far as possible, to reach an agreement.

If the negotiations are not successful within a period of thirty days, the Minister of Labour, at the request of either party, may instruct a conciliator to endeavour to effect a settlement of the dispute. If within a two-week period the conciliator is not successful, he must report to the Minister on the position of the dispute, and must state whether, in his opinion, a conciliation board might effect a settlement.

When the report recommends the appointment of a conciliation board, the Minister is required to appoint the board and, in so doing, must consider the nominations put forward by the parties to the dispute. The board endeavours to effect an agreement between the parties and, failing this, investigates within a fixed period the matters giving rise to the dispute, and reports to the Minister its recommendations for the settlement of the dispute. Upon receipt of this report, the Minister communicates copies of it to the trade organisations involved, and may publish it in such manner as he deems fit.

In addition to the normal conciliation procedure described above, several systems provide for the reference of various matters connected with disputes to a court or board of inquiry, in order that the Government may obtain an unbiased and independent judgment of the facts involved (for instance, India, Mexico, United Kingdom, United States). While such a procedure has no direct relationship to conciliation and arbitration, the impartial public examination of factors giving rise to a dispute may provide a basis for further negotiations leading to a settlement. However, bodies of this character are only used, as a rule, for matters of major importance affecting wider interests than those of the immediate parties to the dispute.

In the United Kingdom, under Part II of the Industrial Courts Act of 1919, the Minister of Labour may constitute a court of inquiry to investigate the causes and circumstances of any trade dispute. The court may consist of one or more persons appointed by the Minister, and may include representatives of employers and workers not directly concerned in the particular dispute. The consent of the parties is not required for the appointment of a court.

The primary purpose of such a court is to inform Parliament and
public opinion of the facts and underlying causes of the dispute. At the same time it may make recommendations for the settlement of the dispute, but neither party is bound to accept such recommendations. The Act requires that any report of a court shall be laid as soon as possible before both Houses of Parliament.¹

Under the Indian Act, the Government may refer to a court of inquiry, for investigation and report, any matter which appears to be connected with or relevant to an industrial dispute. The court, which consists of one or more independent persons appointed by the Government, is required to complete its investigations and report to the Government within such period as may be specified, ordinarily not more than six months from the beginning of its investigations.

In the United States, the President may appoint a board of inquiry whenever, in his opinion, a threatened or actual strike or lockout affecting a substantial part of an industry engaged in trade, commerce, transportation, transmission or communication between the States or with foreign countries, or engaged in the production of goods for commerce, will, if allowed to continue or occur, imperil the national health or safety. The board, consisting of such members as the President shall determine, must inquire into the causes of the dispute and report to the President. The report must contain a statement of the facts and each party's statement of its position, but it may not include recommendations for the settlement of the dispute.

In order to perform its functions, the board may hold hearings anywhere it deems proper, and may require the attendance of witnesses as well as the production of relevant documents and papers. When the report of the board has been submitted to the President, the parties may be temporarily restrained by judicial process from continuing or engaging in direct action. If such judicial restraint is placed upon the parties, it becomes their duty to make every effort to settle the dispute with the assistance of the Conciliation Service. At the same time, the board of inquiry must be reconvened, and at the end of sixty days, if the dispute has not been settled, it must report to the President the current position of the dispute and of the parties to it, and the efforts made to settle the dispute, including the employers' last offer of settlement. The President is obliged to make the report public, and within the next fifteen days the National Labor Relations Board is required

to conduct a secret ballot among the employees concerned to find out whether they wish to accept the employers' last offer. The result of the ballot must be certified by the board within five days of its being held. As soon as it has been certified, the temporary restraint must be dissolved and the parties resume their full freedom of action. Thereupon the President is required to submit a full report of the dispute to Congress, with such recommendations for its settlement as he may wish to make.  

Termination of Conciliation Procedure

The parties may arrive at an understanding, either as a result of accepting the recommendations arising out of the conciliation procedure, or by means of independent negotiation during the procedure. In either case, this understanding or agreement, in so far as it relates to wages or other conditions of employment, is considered to have the status and effect of a collective agreement. Under certain legal systems, this has been expressly provided (for example, in India and Mexico).

If conciliation fails, and the parties are unable to agree on any further procedure for the settlement of the dispute, they resume their full freedom of action. However, it is frequently provided that the conciliation agency shall publish a report on the history of the dispute, indicating the proposals and objections put forward by the parties, the result of the investigation, and the recommendations made for the settlement of the dispute.

By the publishing of such information the law seeks to keep the public objectively informed, in order that the parties may, under the pressure of an informed public opinion, be persuaded to settle the dispute amicably in spite of the failure of conciliation.

Voluntary Arbitration

Nearly all countries which have a conciliation procedure also make available a voluntary arbitration procedure, to be used either in lieu of or after the failure of conciliation, in order to assist the parties to disputes in reaching an amicable adjustment of their differences. Voluntary arbitration provides a method whereby the parties, though unable to resolve their dispute by

agreement, may nevertheless agree on a method of resolving the dispute, that is, by reference to one or more independent persons, or arbitrators, authorised by the parties to compose the differences by an award. In view of the possible finality of the procedure, it is even more essential in voluntary arbitration than in voluntary conciliation that the parties should have full confidence in the machinery provided.

The effectiveness of voluntary arbitration procedure is greatly increased if the parties, having by mutual consent submitted their dispute to such procedure, thereby assume a duty to accept the award.

*Arbitration Machinery made Available by Governments*

While the agreement to arbitrate may also determine the method of procedure, and may include the appointment of the arbitrator\(^1\), a number of countries have found it desirable to provide *ad hoc* or permanent voluntary arbitration facilities.

In Venezuela, for instance, when a conciliation board (which is composed of two representatives of each party) unanimously recommends the submission of a dispute to voluntary arbitration, it proceeds to constitute an arbitration board composed of a chairman, who is an independent person, and three persons representing each party, selected from lists of nominations submitted by the trade associations. Persons directly connected with the industry or occupation in which the dispute arose are not eligible for appointment as arbitrators. The decisions of the board must be adopted by a majority vote, and they are binding on the parties for a specified period.

In Sweden, reference has already been made\(^2\) to the conciliation procedure afforded by the 1936 Act as an alternative to the provisions of the Act of 1920. If the conciliation procedure outlined under the 1936 Act fails to achieve success, provision is made for *ad hoc* arbitration. The arbitrators may be appointed by the parties as the result of recommendations made during the concilia-

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\(^1\) In the United States, for example, there are the facilities of the American Arbitration Association. This Association is a non-official administrator of voluntary arbitration organised on a national basis maintaining tribunal facilities in over 1,500 cities in the United States and Canada. While it is concerned primarily with disputes arising out of collective agreements, its facilities are nevertheless available for the settlement of any dispute in which the adjudication by an arbitrator is desired by the parties (cf. *A Guide to Labor Arbitration Clauses*, American Arbitration Association, 9 Rockefeller Plaza, New York 20, N.Y.).

\(^2\) See above, p. 97.
tion procedure, as already stated, or, if the parties do not agree to appoint arbitrators, the chairman or committee presiding over the conciliation procedure may, at the request of either party, make representations to the Department of Social Affairs to appoint an arbitration board. The Department then appoints a board of at least three persons, which makes proposals for settlement. If either party refuses to accept the proposals, the board may, at the request of either party, decide whether the proposals shall be published.

In the Union of South Africa, the industrial council (or, where no council exists and a conciliation board has been set up, the conciliation board), in addition to being competent to conciliate in any dispute which may arise between the parties, may, upon the failure of conciliation, refer the dispute to a single arbitrator, or to an arbitration board sitting under an umpire. Any decision of this kind taken by an industrial council or a conciliation board requires a two-thirds majority to be effective, so that in practice it is the parties themselves who invoke the voluntary arbitration procedure.

The arbitrator, or the arbitration board and umpire, are selected by representatives of the employers and employees, and their award is legally binding on both parties. The board decides by a majority vote, but if a majority of the members of the board fail to reach agreement on any point, the umpire gives the decision on that point.

Permanent facilities for voluntary arbitration, as in the case of voluntary conciliation, have the advantage of being immediately available in the event of a dispute, and the arbitral agency, by reason of its composition, is qualified to give an objective opinion on the questions at issue.

Legal systems establishing permanent machinery for voluntary arbitration may make permanent arbitrators available to the parties, as in the United States, Sweden and the United Kingdom, for example, or may provide for the appointment of permanent arbitration commissions or tribunals, including employers' and workers' representatives appointed on the proposal of the most representative organisations (e.g., the Industrial Court in the United Kingdom, the conciliation and arbitration boards in Mexico and other Latin-American countries, the conciliation and arbitration offices in Switzerland, etc.).

In the United States, for instance, the only function of the legislation, in this connection, is to establish the agency (the
Federal Mediation and Conciliation Service) which makes permanent arbitrators available to the parties. As a part of the facilities offered by the Service, a list is kept of arbitrators whose qualifications and abilities have been previously established, and whose services are available, on request, to the parties to disputes.

On the other hand, the permanent Industrial Court of the United Kingdom consists of persons appointed by the Ministry of Labour, of whom some are independent persons, some represent employers, and some represent workers. For the purpose of dealing with any matter which may have been referred to it, the Court is constituted of such persons as the president may direct. The usual procedure is for each case to be heard by a divisional court, consisting of a president or chairman selected from among the independent persons, and other members representing the employers and workers respectively. The general practice is for the Court to sit as a panel of three. It is within the discretion of the president to use the services of assessors.

Cases are referred to the Industrial Court by the Minister of Labour, but only if the three following conditions have been observed:

1. a report must have been made to the Minister by one or other of the parties concerned showing that a dispute exists;
2. it must have been shown to the satisfaction of the Minister that no agreement exists by which the dispute can or may be settled by conciliation or arbitration, or that such means have been tried without success;
3. the consent of both parties must have been obtained.

In France, arbitration facilities are afforded in certain cases by the Economic Council, which, however, includes arbitration as only one of its many functions. This Council, on which employers' and workers' organisations are represented, and the duties of which are set forth in the Constitution and Act of 27 October 1946, is the advisory body of Parliament and of the Government, but may also be called upon to arbitrate in industrial disputes, provided that the parties to such disputes so request and the Ministers concerned agree.

Under the Mexican Labour Code, as noted earlier in this report, central and federal conciliation and arbitration boards are per-

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CONCILIATION AND ARBITRATION

manent tripartite agencies. Upon taking cognisance of a dispute, the chairman of the board refers it to the competent special group within the board, which, as an initial step, must endeavour to resolve the dispute by conciliation. If this fails, the board must declare the conciliation procedure to have ended, and must forthwith inform the parties to the dispute that it is to be referred to arbitration.

If the parties are agreed on the facts, the board may decide the issues forthwith; if the parties are agreed that the issue may be resolved without the production of evidence, the board may issue its award. But if the parties are not agreed, the board must proceed to hear the parties, take evidence, etc.

Within 72 hours of the drawing up of the record of proceedings of the case, including the arguments of counsel, etc., the assistant chairman of the board must prepare an opinion, and submit it to the representatives of employers and employees. If all are in agreement, the opinion is signed; if not, the dissenting opinions must be prepared within three days.

The final decision in each case must be made by the board, which meets at specified intervals to consider and vote upon the opinions of the special groups dealing with particular disputes. Any decision of the board requires a majority of the votes cast in order to be valid.

In this connection, it is pertinent to note Title VI, Section XXI, of the Mexican Constitution, which provides, inter alia, for the termination of the labour contract where an employer refuses to submit his differences to arbitration or where the workers reject the arbitral award.

Arbitration Procedure

In view of the nature of voluntary arbitration, national legislation usually allows arbitration agencies, particularly the ad hoc agencies, the greatest possible freedom to make their own decisions regarding procedure (for example, in the United Kingdom). But in certain countries, especially some of the Latin-American Republics, the law prescribes rules of procedure of a type similar to those governing normal judicial procedure. In most instances the arbitrator first endeavours to reconcile the conflicting views of the parties, and it is only after this new attempt at conciliation has failed that he proceeds to hear the parties, discover the facts, and issue an award. The award terminates the proceedings.
Nature and Effect of Award

The effect of the award varies somewhat with the nature of the proceedings, in that it may be a binding award, having the same force as that of a freely concluded collective agreement, or it may merely take the form of a recommendation.

In certain cases (for example, awards of the permanent Industrial Court of the United Kingdom, and certain awards of the Labour Court in Ireland), the award may merely take the form of a recommendation with no legally binding force, even though both parties have agreed to the procedure. In practice, however, awards of this character are, with rare exceptions, accepted by the parties.

Reference has already been made to the procedure in Sweden, under the 1936 Act, whereby arbitration boards make proposals for the settlement of disputes. These proposals are similar in form to awards. They do not bind the parties, but, if a party refuses to accept them, the board is entitled to decide, at the request of either party, whether the proposals shall be published and, if the party so requesting has approved the proposals, the board may not refuse publication without special reasons. In this way the force of public opinion may be enlisted as a factor to persuade the parties to accept the proposals made.

In those cases where the parties by mutual agreement have accepted recourse to voluntary arbitration, the award is normally binding on both parties by virtue of the agreement to arbitrate, or by virtue of express provisions in the legislation establishing the procedure (for example, in the Union of South Africa and Luxembourg). However, under certain systems (for instance, those in Brazil, China, India, Peru), the award is compulsorily binding under specified conditions, even though the arbitration procedure has been invoked by one party only.

Under Indian legislation, for instance, the industrial tribunal submits its award to the appropriate Government. On receipt of the award the appropriate Government “shall by order in writing declare the award to be binding”. Where the Government is a party to the proceeding, the award must, as a rule, be approved by the appropriate legislative assembly before it is declared binding.

1 See above, p. 107.
2. Temporary Legal Restrictions of Strikes and Lockouts

**STRIKES AND LOCKOUTS AFFECTING INDUSTRY IN GENERAL**

The procedure of conciliation and arbitration is intended as a means of aiding parties to reach amicable adjustments of disputes without recourse to strikes and lockouts.

In certain countries the legislation imposes no restrictions on the right of the parties to engage in strikes and lockouts during the procedure (for example, in the United Kingdom). However, the trade associations often provide in their constitutions and rules that there shall be no recourse to direct action so long as the procedure is being followed.

**Conditions under which Strikes and Lockouts are Lawful**

In some countries where the right to engage in strikes and lockouts is guaranteed by law, strikes and lockouts are subject to legal provisions in the sense that they are not lawful unless they are called for specified legitimate purposes, are supported by the majority of the persons concerned, and have been notified to the other party beforehand.

This is the case under the Mexican Labour Code, and under several Latin-American systems which are modelled on it.

In Mexico, the right of workers and employers to strike and to lockout is guaranteed in the Constitution. The Labour Code prescribes the conditions under which strikes and lockouts may be considered lawful, adopting in substance the constitutional provisions. Conciliation and arbitration boards adjudicate as to the legality of a strike or lockout and, if it has been declared legal, the parties are free to resort to it.

**Notice of Intention to Resort to Strike or Lockout**

However, under the legislation establishing the conciliation and arbitration facilities in a number of countries the legislation tempo-
rarily restricts the right of the parties to resort to direct action, either for a specified period or during the entire procedure.

The restriction may only require that the conciliation authorities and the other party be notified of the contemplated action a specified period in advance, as in Denmark, Ecuador, Mexico, Sweden.

In the case of the United States, temporary restrictions of this kind are imposed on the parties only if a collective agreement is already in force in respect of an industry affecting commerce.

Under the Labor-Management Relations Act of 1947, the parties to such agreements must give 60 days’ notice of intention to seek a modification or termination of the agreement. During the 60-day period the contract provisions must be continued in force without strike or lockout. At the expiration of 30 days, if an understanding has not been reached, the parties must notify the Federal Mediation and Conciliation Service, as well as any State or territorial agency established to mediate or conciliate disputes within the area, and, in co-operation with the Conciliation Service, must make every reasonable effort to reach an agreement.

The failure of either party to comply with the “notice” provisions of the statute renders it liable to “unfair practice” charges before the National Labor Relations Board, and any employee striking during the 60-day period thereby forfeits his status as an employee under the Act.

*Restrictions during Conciliation and Arbitration Procedure*

In certain other countries, however, temporary restrictions are imposed as a general rule during conciliation and arbitration procedure, irrespective of the existence or absence of collective agreements.

Under the prevailing system in Canada, strikes and lockouts are prohibited before attempts to conclude a collective agreement have been made and until the expiration of fourteen days following the submission to the Minister of the report of the Board of Conciliation.

In the Union of South Africa, strikes and lockouts are prohibited: (1) during the validity of a collective agreement or of an arbitral award; (2) during the period of conciliation procedure, if that period does not exceed 30 days or some longer period prescribed by the industrial council or conciliation board; and (3) during the period of arbitration procedure.
Under the Labour Code of Venezuela, strikes and lockouts are prohibited until the end of the conciliation proceedings prescribed by the Code.

Under the systems prevailing in some countries, the effect of such general restrictions is increased by provisions in the national legislation enabling one party, or the competent governmental official, to institute arbitration procedure (e.g., China, India, Iran, Syria, etc.).

Under the 1947 Industrial Disputes Act in India, conciliators may intervene in a dispute, or a dispute may be referred by the competent authority to a board of conciliation or industrial tribunal at the request of either party, or *ex officio*.

Where a conciliation officer is unable to effect a settlement, he must submit a report of the case to the appropriate Government, showing all the steps taken to conciliate the dispute and the reasons, in his opinion, why conciliation failed. After considering this report, the appropriate Government may refer the dispute to a board of conciliation. If the board is unable to effect a settlement, a similar report must be filed with the appropriate Government, together with the board’s recommendations for the determination of the dispute. The appropriate Government may thereupon refer the dispute to an industrial tribunal for adjudication, or may refer any matter appearing to be connected with or relevant to the dispute to a court of inquiry.

Strikes and lockouts are prohibited during the period of conciliation or arbitration proceedings, and for fixed periods thereafter, or during any period in which a settlement or award is in operation.

In China, the law on labour disputes was modified during the war so as to prevent, as far as possible, any recourse to strikes or lockouts. In the event of a dispute, the authorities have to appoint a conciliation committee at the request of either party, or *ex officio*, if such action is deemed necessary. The committee includes representatives of the parties concerned and of the public authority.

If the committee fails to conciliate the parties concerned, the dispute may be submitted to an arbitration committee at the request of either party, or *ex officio* by the authorities if the serious nature of the dispute is thought to make such action necessary. The arbitration committee consists of three representatives of the Government, one of the employers and one of the workers. The two latter members must be chosen from among persons who are not directly interested in the dispute.
During the conciliation and arbitration procedure both strikes and lockouts are illegal.

In Iran, the Labour Code provisionally adopted by the Council of Ministers in May 1946 provides for the setting up in each factory or undertaking of factory councils composed of one representative of the employer, one of the workers, and one of the Department-General of Labour. Collective disputes, if not settled in the factory council, are referred to a tripartite arbitration board. If the board fails to settle the dispute within 20 days, or refuses to give an award, or if its award is contrary to law, reference is made to the Board for the Settlement of Disputes. This Board is composed of certain Government and provincial officials and two representatives each of workers and employers. An award must be given within 20 days, and is final and binding. Strikes and lockouts are permitted only if the machinery provided by the procedure breaks down.¹

In Syria, under the Labour Code of 11 June 1946² strikes are prohibited until the prescribed procedure has been complied with. The workers' complaint is addressed to the employer, who must reply within 48 hours. If no reply is made, or if the reply is not acceptable, the dispute must be referred to the joint committee established by the Code for the province. An award must be made by the committee within one week, and this award is final if it is supported by a majority of at least four. If the award is not so supported, appeal may be made to the Superior Arbitration Board within five days. This Board must issue its award within two weeks. Alternatively, in the first place both parties may agree on an arbitrator or arbitrators of their own choice. An appeal against the arbitral award may be made to the Superior Arbitration Board.

Strikes are lawful if

1. no reply is made within 48 hours;
2. the joint committee or the Superior Arbitration Board fails to make an award within the prescribed time;
3. the arbitrator appointed by agreement between the parties does not make an award within the time fixed by the parties when agreeing to submit the matter to arbitration; and
4. the employer fails to carry out the terms of an award within one week of its announcement.

² Journal officiel, No. 25 of 13 June 1946.
In most of those countries where strikes and lockouts are regulated or subjected to temporary restrictions during conciliation or arbitration procedure, the law seeks to compensate the parties in some measure for the loss of this freedom to resort to direct action by safeguarding their legitimate interests, e.g., by laying down rules regarding the reinstatement or protection of workers, or by preventing the alteration of existing conditions pending a settlement, etc. One or more safeguards of this kind have been provided, for instance, in Canada, China, Ecuador, India, Mexico, Union of South Africa, United States, etc., while in Syria, as already noted, the law expressly reserves to the parties the right to resort to direct action at any stage if the procedure is not strictly followed or the award not observed.

In Mexico, if the strike has been declared lawful, the authorities are bound to ensure that the rights of the strikers are respected, to protect them, and to support them in their efforts to make the strike effective. Moreover, the strike only suspends the labour contract, so that when work is resumed the workers are reinstated in their former employment and retain all the rights and privileges which they had acquired before the strike began.

The Labour Code of Ecuador expressly stipulates that workers who have been on strike cannot be dismissed in the year following the strike, except for certain enumerated reasons and after authorisation by the labour inspectorate.

In the United States, the contract provisions must be maintained in force during the period in which strikes and lockouts are prohibited.

Under the Canadian system, if a dispute is due to proposed changes in the existing conditions of employment, such changes may not be effected without the consent of the employees for a period of two months from the date on which the employees were notified of the proposed changes.

In the Union of South Africa, the employer must maintain or restore the status quo of conditions which have given rise to a dispute which is under consideration by the conciliation or arbitration agency.

Under the Indian system, during the period in which strikes and lockouts are prohibited, the conditions of employment of workers concerned in the dispute may not be altered to their prejudice.

In China an employer may not dismiss employees during the period in which direct action is prohibited.
Whereas in a number of countries no special legislation has been enacted regarding the question of strikes or lockouts affecting workers employed in the public service or in public utility undertakings, in certain countries (Colombia, Costa Rica, Ecuador, India, Mexico, Nicaragua, Salvador, Union of South Africa, United States, Venezuela, etc.) special provisions have been enacted in order to prevent or lessen the effects of strikes and lockouts in the public services and in public utility undertakings, which might inflict particular hardship on the community and endanger health and safety.

While the services included under these heads may vary somewhat in different countries, they generally include services furnishing power, light, heat, water, gas, electricity, sanitation, public transport and the like. In some countries certain industries which are not quite the same as public services are treated on the same basis because they are deemed to be essential industries (e.g., in Colombia, Costa Rica, India, Nicaragua, Salvador).

The nature of the restrictions may be of a conditional character, e.g., that a strike or lockout shall not be called without a specified period of notice being given, or of a temporary nature, for instance, a prohibition of strikes and lockouts during conciliation and arbitration procedure. Thirdly, the restrictions may amount to a permanent prohibition of strikes or lockouts in the industries or trades concerned.

Strikes and lockouts in the public services are lawful in Mexico and Ecuador only if a specified period of notice is given.

Under the Labour Code of Ecuador, persons engaged in hospitals, curative establishments, homes and health and welfare services in general, may not cease work "without proper cause", and must notify the inspector or sub-inspector ten days in advance of their intention to declare a strike.

Similarly, in Mexico, intending strikers in the public services must give ten days’ notice of their intention instead of the usual six days.

Under the Indian Industrial Disputes Act of 1947, strikes in breach of contract by employees, or lockouts by employers, in public utility services are illegal if engaged in without 14 days'
notice, given during the six weeks preceding the strike or lockout. Such services include railway, postal, telegraph or telephone services, industries supplying power, light or water to the public, systems of public conservancy or sanitation, and such sections of industrial establishments on the working of which the safety of the establishment or of the workmen employed therein depends. Moreover, if public emergency or interest is deemed to require it, the Government may declare certain industries to be public utility services for a specified period; for example, coal, cotton textiles, foodstuffs, iron and steel, and transport for the carriage of passengers or goods.

In the United States, strikes and lockouts may be prohibited during conciliation and arbitration procedure or for a specified period in consequence of the granting of an injunction.

Under the Labor-Management Relations Act of 1947, where a strike or lockout is threatened or in existence and affects a substantial part of an industry engaged in trade, commerce, transportation, transmission of communications between the States or with foreign countries, or in the production of goods for commerce, and the President is of the opinion that the dispute may imperil national health or safety, he may appoint a board of inquiry. Under the ensuing procedure it is possible for an injunction to be granted to restrain the strike or lockout until such time as is prescribed.¹

In Venezuela, in the event of a strike or lockout occurring in an undertaking or service the stoppage of which would directly imperil public health or the economic and social life of the population, the Government may take such steps for the resumption of work as the public interest requires. This is quite apart from the general rule that strikes in all industries are lawful only if the temporary restrictions before and during conciliation and arbitration procedures are complied with.

In the Union of South Africa, whenever a dispute between a local authority and the employees engaged in the performance of work connected with the supply of light, power and water or with sanitation or passenger transport, or the extinguishing of fires, has been referred to an industrial council or a conciliation board, and no settlement has been reached after 30 days, it must be submitted to arbitration. Strikes and lockouts are prohibited during the procedure.

¹ See pp. 104-105.
In Colombia the competent labour judge or court may declare a strike unlawful if it affects a public service, including (a) undertakings for transport by land, water or air, water supply and electric power and telecommunication undertakings, provided that they perform services for the public on account of the State or under a concession from the State, or subject to tariffs, conditions and regulations prescribed by the State; (b) public hygiene services, street-cleaning services, and public assistance and charitable institutions, such as hospitals, clinics, asylums and homes; (c) dairies, markets and slaughter-houses belonging to public bodies.

The Collective Labour Disputes Act, 1946, in Salvador, prohibits all strikes and lockouts in the public services, which is interpreted widely to include services performed by employees of the State, by employees of private transport undertakings, and by workers who "are absolutely indispensable for the functioning of private undertakings which cannot suspend their services without causing serious and immediate detriment to health or public economy".

Very similar measures are in force in Costa Rica and Nicaragua, where public services are deemed to include those mentioned in the case of Salvador, and, in addition, work performed by employees engaged in the sowing, cultivation, care or harvesting of agricultural or sylvicultural products, or in stock-raising, and likewise in the processing of the products if they are perishable. Moreover, in accordance with constitutional provisions, the Executive of the Republic may, at any time, declare any particular work to be a public service if it is deemed necessary.

3. Compulsory Conciliation and Arbitration

Under the legal systems just examined, the right to engage in strikes or lockouts is generally only temporarily restrained during the course of procedures designed to facilitate the conclusion of agreements where direct negotiations have broken down. Under the system of compulsory conciliation and arbitration, strikes and lockouts are absolutely prohibited.

Compulsory systems are sometimes employed as a general method of dealing with labour disputes; in other instances they are employed where, owing to the nature of the national economy, it has been considered that the determination of wages and other
conditions of employment cannot be left to free collective bar-
gaining without endangering the whole economic structure of the
particular country. In still other instances, such systems are
sometimes employed during periods of emergency.

In both Australia and New Zealand, systems of compulsory
conciliation and arbitration were introduced during the early years
of the present century. As previously noted, such systems are
based essentially on the idea that, in return for the abandoning of
methods of direct action, by their associations, the workers shall
enjoy a certain standard of living to be guaranteed by law.

Under such systems, the competent authorities fix a minimum
wage calculated to guarantee a proper standard of living. This
minimum varies according to the cost-of-living index. Above the
level of the indispensable minimum, rates of wages are established
by means of collective agreements, or, in the absence of agreement,
by arbitral awards which take into account not only the interests
of the parties concerned but also the general conditions prevailing
in the national economy.

Registered trade associations have both the duty and the exclu-
sive right of appearing in negotiations before the conciliation and
arbitration authorities, in connection with the wage rates and
conditions of employment to be observed in the various industries.

If the parties are unable to conclude a collective agreement, the
competent authority determines the wages and conditions of
employment by an arbitral award binding on both parties. The
authority may declare that the award shall constitute a common
rule for the industry, in other words that it is binding on the
whole industry. It may also give the force of an award to the
provisions of a collective agreement, and so make them generally
binding. Strikes and lockouts are prohibited, and the observ-
ance of awards and collective agreements is ensured by penal
provisions.

In New Zealand the system is provided by the Industrial Con-
ciliation and Arbitration Act of 1925, as amended in 1936 and
1943. While in certain cases voluntary agreements have been
concluded outside the Act, in general the system conforms to the
above pattern.

The New Zealand Court of Arbitration consists of three members,
a judge of the Court and two "nominated members" appointed by

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the Governor-General. The judge of the Court must have qualifications equivalent to those of a judge of the Supreme Court. The two nominated members are appointed on the recommendation of the employers' and workers' organisations respectively. The terms of office for the judge of the Court are the same as those for a judge of the Supreme Court. The nominated members are appointed for three-year terms and are eligible for reappointment.

In Australia, the Commonwealth Conciliation and Arbitration Act, 1904-1946, has been substantially amended by an Act, assented to on 20 May 1947, to provide more expeditious and informal machinery for the conciliation and arbitration of labour disputes. The new procedure, while maintaining the compulsory principle, emphasises the importance of individual conciliation commissioners, and limits the jurisdiction of the Federal Arbitration Court to cases which require the use of judicial techniques or which demand uniform treatment because of their paramount importance to all Australian industries. Under these amendments the authorities are enabled to intervene in disputes before the differences between the parties become irrevocably defined.

The Commonwealth Court of Conciliation and Arbitration is composed of a chief judge and such other judges as may be appointed pursuant to the amended Act. The chief judge and the other judges are appointed by the Governor-General, and are not subject to removal except at the request of both Houses of Parliament, made on the grounds of proven misbehaviour or incapacity. Each member of the Court must be a barrister or solicitor of a High Court or of the Supreme Court of a State, and must be of not less than five years' standing.

Orders and awards of conciliation commissioners and of the Court are final and conclusive. An order or award issued by a commissioner may not be made the subject of an appeal to the Court, and an order or award issued by the Court may not be reviewed by any other authority.

In certain countries the circumstances in which the general system of compulsory conciliation and arbitration was established differed fundamentally from those which prevailed in Australia and New Zealand. In the former countries trade associations were not developed, and collective bargaining was not used as a normal method of regulating wages and other conditions of employment.

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1 L.L.O.: Legislative Series, 1928, Austral. 2; 1930, Austral. 11; 1934, Austral. 15; each amended by Acts Nos. 14 and 30 of 1946.
In Turkey, for instance, as the country entered an era of industrialisation the Government deemed it desirable to provide a compulsory method of settling labour disputes, but, at the same time, trade associations are not prevented from carrying on voluntary collective bargaining as they become sufficiently developed to do so.

The compulsory system in Lebanon has been evolved under somewhat similar circumstances.

In the case of a country with a planned economy, where the relations of management and workers have to be stabilised and regulated in accordance with the general industrial system, which is subordinated to the achievement of the national economic plan, the problem of the settlement of labour disputes which may arise in connection with the conclusion of a collective agreement has aspects which are different from its aspects in a country possessing a free economy. In the U.S.S.R., the collective agreement, as has been observed earlier in this report, is intended to determine the respective obligations of the managements of undertakings and of the workers in relation to the realisation of the national economic plan. It relates to the allocation of the national wage funds among the different industries and undertakings.

Consequently, disputes which may arise during the course of negotiations between managements and the organisations concerned are not, according to the conception of the Soviet system, disputes about interests, but differences of opinion with regard to the best method of carrying out the plan. The settlement of these differences falls within the competence of local agencies — trade union councils and higher administrative agencies — which have to render a decision within three days on the point or points in dispute. In the event of disagreement, the dispute is settled by the authorities who register collective agreements, i.e., the Central Trade Union Council and the competent Ministers.

In Poland and Czechoslovakia, the general system of conciliation and arbitration applies to all industries and the right to strike has not been legally restricted.

In Czechoslovakia, for example, under the Act of 13 February 1947, which provides penalties against acts tending to jeopardise

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1 I.L.O.: Legislative Series, 1936, Turk. 2. The basic procedure established under this Act is not altered by the provisions of Turkish Law No. 5018 of 22 February 1947.
2 See above, Part II, Section 2, p. 57.
the achievement of the economic plan, strikes are expressly excluded\(^1\) from the definition of such acts.

However, during the transition period from war to peace, the solution of the problems of economic reconstruction inevitably entails a certain amount of economic control, and free collective bargaining cannot be maintained. In effect, in countries which were devastated by the war the difficulties of economic reconstruction make it indispensable to exercise a certain amount of control over the national economy as a whole, and in particular over prices and wages. This is the case for the time being in Belgium, China, Czechoslovakia, Finland, France, Greece, Netherlands, Norway, Poland, etc. None of these countries are able at present to return to a system of free collective bargaining without endangering the unstable equilibrium of their economies.

Under wartime legislation, which was designed to adjust wages and prices in order to ensure the smooth running of wartime economy, compulsory conciliation and arbitration under one form or another was imposed in Canada, the United Kingdom and the United States. While both Canada and the United States have returned to the system of free collective bargaining, compulsory arbitration has been temporarily retained in the United Kingdom.

Under the Conditions of Employment and National Arbitration Order of 1940\(^2\), trade disputes in the United Kingdom which are not settled by negotiation or by existing bargaining machinery may be submitted to the Minister of Labour, and, if no agreement is reached, to the National Arbitration Tribunal set up by the Order. The decisions of this tribunal are compulsorily binding. But, in fact, it is the employers' and workers' organisations which themselves assume the responsibility for fixing wages and other conditions of employment by means of freely concluded agreements.

It will be observed, therefore, that in return for their abandonment of the methods of direct action the employers' and workers' organisations have become associated very closely, in a great many countries, in the administration and control of their national economies.

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\(^1\) Sbírka Zákonů a Nařízení, No. 13, 4 March 1947.

\(^2\) I.L.O. : Legislative Series, 1941, G.B. 3B; 1944, G.B. 3B.
Conclusions

It follows from the statement of law and practice that the official systems for the settlement of collective industrial disputes may be roughly divided, with many variations it is true, into two fundamental types; these are: (1) voluntary systems, which merely make official machinery for settlement available to the parties when collective bargaining has broken down; and (2) compulsory systems, under which a settlement may be imposed on the parties and takes the place of an agreement.

Clearly, these two systems correspond to the effective needs, arising out of the economic structures, of the different countries concerned. In a country with a free economy, the determination of wages and other conditions of work depends in the last resort on the law of supply and demand, or more specifically on free collective bargaining, backed in case of need by such means of economic pressure as the strike and the lockout. In countries where economy is wholly or partly planned, on the other hand, the determination of wages and conditions of work cannot remain entirely outside the control of the authorities, a control which extends to all other factors in the national economy.

At present, most national systems oscillate between these two extremes, and there are very few indeed which, though remaining faithful to the principle of voluntary conciliation and arbitration, do not include some restriction, with at least a temporary effect, on the freedom of action of the parties.

This being the situation of fact, it will no doubt be very difficult for the Conference to agree upon uniform regulations capable of application in all countries. As regards voluntary conciliation and arbitration, however, it does appear possible to achieve the necessary minimum of agreement, since this method is accepted, at least as a first stage, even by the countries which require recourse to compulsory arbitration as the final stage.

What form could be given, at this time, to international regulations on this matter? The method of a Convention appears excluded, for fundamental as well as practical reasons. The fundamental reason is that adoption of a Convention on the problem of voluntary conciliation and arbitration alone would in fact imply the making of a choice between the two possible systems, and this would bind the Governments in the future. The practical reason is that the provisions of any national legislation regarding either the
establishing, or the operation and procedure, of a conciliation and arbitration system are naturally based on the peculiar needs of the country, and therefore vary profoundly from one country to another; it would consequently be difficult to put together rules of sufficiently uniform and precise a character to be appropriate for a Convention.

On the other hand, it is possible to extract from national regulations a number of general principles, good for all countries, which might usefully figure in a Recommendation.

The Office has attempted to formulate these principles in the following questionnaire. The questions are sufficiently explicit in themselves not to require a commentary.
QUESTIONNAIRE

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning voluntary conciliation and arbitration in the form of a Recommendation?

II. Voluntary Conciliation

2. Do you consider that it should be provided that regional and national conciliation authorities should be established to aid the parties in the prevention and settlement of collective industrial disputes?

3. Do you consider that it should be provided that the organisations of the employers and workers concerned in the disputes should be associated in all stages of the procedure?

4. Do you consider that it should be provided that the conciliation procedure should be free of charge and expeditious, and that the periods prescribed for appearance of the parties, hearing of witnesses and submission of other evidence should therefore be fixed in advance and kept to a minimum?

5. Do you consider that it should be provided that, once a dispute has been submitted to a conciliation authority with the consent of all the parties concerned, the latter should be required to abstain from strikes and lockouts while the conciliation is in process?

6. Do you consider that it should be provided that if the recommendation of a conciliation authority has been voluntarily accepted by the parties, it should be binding upon them?

7. Do you consider that it should be provided that agreements which the parties may reach during the procedure, and recommendations of the conciliation authorities freely accepted by the parties, should have the same legal force as collective agreements concluded in conformity with national legislation?
III. Voluntary Arbitration

8. Do you consider that it should be provided that a system of voluntary arbitration should be established, to which the parties might have recourse either at the outset or after breakdown of the conciliation procedure?

9. Do you consider that it should be provided that, once a dispute has been submitted to arbitration with the consent of all the parties concerned, the latter should be required to accept the arbitration award?

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10. Have you any proposal or suggestion to put forward on any point regarding the question of voluntary conciliation and arbitration which has not been mentioned in the present questionnaire?
PART IV

CO-OPERATION BETWEEN
PUBLIC AUTHORITIES AND EMPLOYERS'
AND WORKERS' ORGANISATIONS
INTRODUCTION

The problem of a rational organisation of co-operation between the public authorities and organisations of employers and workers is no new one. It arose simultaneously with the development of workers' and employers' industrial organisations at the time when these organisations were first being recognised by the State and by each other.

During the war the problem assumed an added importance owing to the fact that most of the countries involved in the struggle were obliged to bring workers' and employers' organisations into close association with the war economy.

At the present moment, the Governments of many countries are faced by a compelling need to increase production and labour efficiency by every possible means. Realising that such an increase in productivity depends on close co-operation between the three factors most directly concerned, that is to say, the State, management and workers, these Governments are endeavouring to obtain the active co-operation of the organised forces of production and labour. The methods used to this end show many differences, and co-operation between the public authorities and employers' and workers' organisations has not been achieved to the same extent in all countries of the world.

It is in fact less extensive in the countries of America — which were spared the ravages of war, and were therefore able to return, as soon as hostilities ended, to very nearly complete economic freedom — than in the European countries, which are faced with an immense task of social and economic reconstruction, and have had to set up, at least temporarily, a more or less general control of the whole national economy. Owing to the serious shortage of foodstuffs, raw materials, industrial equipment and means of payment, the European countries have been compelled to make some kind of survey of their resources and needs, and to establish
a reconstruction and development plan for the economy of their respective countries on the basis of the information thus obtained. Some of them have also nationalised their basic industries. In carrying out these tasks, Governments and Parliaments have had to call on the assistance of employers’ and workers’ organisations since, in the last analysis, the success of the recovery programme depended to a great extent on their co-operation.

The influence of the State and the trade unions on the economic life of the country is considerably stronger in Central and Eastern Europe than in Western and Northern Europe. But though the basis of co-operation is directly dependent on the degree of responsibility which the State undertakes in relation to the management and control of the national economy, and though methods of co-operation vary according to the nature of the problems and the character of the social system, it is none the less true that in one form or another the public authorities of most countries are today having continual recourse to the technical experience of the employers’ and workers’ organisations as an aid to the solution of reconstruction, reconversion and industrialisation problems of the day.

In order to be fully effective, co-operation between the public authorities and employers’ and workers’ organisations must be organised at several levels — the level of the undertaking, since the undertaking is a primary cell of the economic organism; the level of the industry, since it is only at this level that steps can be taken to increase production and efficiency in any particular industry and to raise the standard of living of the workers employed in it; and at the national level, in order that the Government may benefit from the advice of employers’ and workers’ organisations and so be in a position to achieve the necessary co-ordination and establish a long-term policy.

In view of the close economic dependence of the various countries of the world on each other, a factor which has been clearly brought out by the several reconstruction plans in Europe, it is becoming increasingly evident day by day that, in order to be really successful, each national effort must be regarded as part of a wider framework and that the problems now facing the world call more and more for solutions of an international character. For this reason, in a Resolution concerning European and world reconstruction, adopted unanimously at its 30th Session, the International Labour Conference re-emphasised the need for international economic co-operation and particularly stressed the “primordial
importance” of “questions relating to labour”. The Resolution further affirms the readiness of the International Labour Organisation, within the scope of its functions, to make its full contribution, and that of the forces which it represents, to the great work of world reconstruction.

The establishment of the International Labour Organisation in 1919 was in itself a formal tribute to the principle of tripartite co-operation in the social field at an international level. Since the end of the recent war, the setting up of industrial committees as part of the International Labour Organisation has established a new application of this principle, and the association with the work of the Economic and Social Council of international employers’ and workers’ organisations, such as the World Federation of Trade Unions, the American Federation of Labor and the International Chamber of Commerce, is inspired by the same idea. It is, therefore, perfectly natural that in view of its importance the question of co-operation in all its aspects should receive full attention from the International Labour Organisation.

In view of such developments, at the national as well as at the international level, it is not surprising that the Conference should have decided to place the question of co-operation on the agenda of its next general session for first discussion. This is a vast problem which will, no doubt, occupy the attention of the International Labour Organisation for several years. The full consideration of such an extensive and complex question can be effectively ensured only on the basis of a comprehensive enquiry such as the Governing Body, at its 101st session, instructed the Office to undertake.

This report is not intended to replace this enquiry. Its purpose is to bring out the chief problems involved in the question of co-operation, and to give a survey of recent experience at the level of the undertaking, at the industrial level, and at the national level, in an attempt to discover whether, among the principles which are serving as the basis for national regulation in this field, there may not be some which appear capable of sufficiently general application, and sufficiently uniform, to be incorporated into international regulations.

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CHAPTER I

CO-OPERATION AT THE LEVEL OF THE UNDERTAKING

It has already been observed, in the report entitled "Freedom of Association and Industrial Relations", which was presented to the 30th Session of the International Labour Conference\(^1\), that the principle of associating the wage-earners with production and of democratising the undertaking by the establishment of agencies representing the staff is as old as social policy itself. But for a long time its realisation met with powerful opposition both from the employer, who feared encroachment by his staff on his powers of management and, thereby, a limitation of his authority, and from the trade unions, which feared encroachment by the employer on the independence of the agencies representing the staff, with a consequential weakening of the unions. Hence, it required the atmosphere of a war to give concrete form to the conception of labour-management co-operation.

During the First World War (1914-1918), the experiment of co-operation in the undertakings was tried for the first time on a comprehensive scale. Works committees were established in Germany, and staff delegations were appointed in munitions factories in France. In the United Kingdom, the Whitley Council recommended the establishment of joint production committees, both on the level of the undertaking and on that of the industry.

In the inter-war period, the recommendations of the Whitley Council were put into force in the United Kingdom only to a very limited degree (for instance, in the pottery industry, electrical supply industry, municipal transport, the railways, and the public services), chiefly because of the attitude of the trade unions, which feared that employers might gain control of the joint works committees.

Following the termination of the first war, laws concerning works committees were enacted in Austria, Czechoslovakia, Ger-

many, Luxembourg, Norway. Elected by the staff, these agencies were intended to represent the workers in the undertaking in their relations with the employer and to intervene with regard to any questions of a social nature concerning the staff, with the exception, however, of questions regarding the fixing of wages and other conditions of employment, matters which were reserved to the trade unions. These institutions played an important part so long as the trade unions were in a position to support them, but their importance declined under the influence of the economic crisis of 1930, and they were finally suppressed or diverted from their real objects in the countries with totalitarian régimes (Germany, Austria).

The Second World War gave new impetus to their development. The importance acquired by the joint production committees set up in the United States and in the British Commonwealth is well known. Supported by the trade unions, which themselves were associated closely with the administration of the war economy, the committees were intended to supplement the efforts of the trade unions by making the staff directly interested in increased efficiency and improvement of output in the undertakings.

It was the same motives of necessity which, after the war, led to the establishment of machinery for co-operation in those countries which desired to mobilise every effort for the purpose of increasing production.

Agencies representing the staff now exist, in one form or another, in Austria, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, India, Iran, Italy, Norway, Poland, Rumania, Spain, Sweden, U.S.S.R., United Kingdom, Yugoslavia, and in several industries in the Netherlands, Switzerland and the Union of South Africa. Mention should also be made of the works committees provided for in the labour codes of Chile and Ecuador. In Belgium, a Bill concerning works committees is before Parliament; furthermore, the last national labour conference held in that country (in June 1947) closed with an agreement regarding the introduction of trade union delegations to represent the organised personnel of the establishment in dealings with the employer.

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2 *British Joint Production Machinery*, I.L.O. Studies and Reports, Series A (Industrial Relations), No. 43 (Montreal, 1944).
Although, after the war, a large number of the production committees established in the United States, the United Kingdom and other Commonwealth countries lost much of their importance, or were even abolished, it appears that they are now again the object of increased interest. In the United States, where the greatest importance is attached to increasing industrial productivity, it is widely held that the re-establishment of production committees — with due regard to the lessons learnt from the war — would prove one of the best means of furthering co-operation between labour and management with the object mentioned. In the United Kingdom, the Government and the trade unions agree in stressing the part which such committees can play in increasing production, and Sir Stafford Cripps, while President of the Board of Trade, spoke as follows in a speech to representatives of occupational organisations: "The fullest consultation between management and workers through joint production committees is essential. The desired result can best be achieved by co-operation and mutual understanding, but if the setting up of such committees lags, the Government will be obliged to take steps to enforce their constitution."¹ In Canada, the Industrial Production Co-operation Board recently reported that new production committees were being organised at a rate comparable to that of the war years.²

These agencies assume very different forms — joint production committees, works councils or committees, staff delegations, etc.; and they vary widely as regards composition, functions, methods of organisation and operation. Thus, they are sometimes composed of representatives of the personnel only, whereas in other cases the management is represented. Some of their titles also emphasise their different aims — increase in production and productivity of labour (for instance, the production committees of the United Kingdom and Norway); the co-operation to be established in the undertaking (as in the Danish and Swedish committees); the transmission of complaints to the management (the grievances committees in the United States and the staff delegates in France); and in some cases a clearly defined and limited purpose (safety committees, vocational training committees, etc.). The functions allotted to a single committee in some countries are divided among several agencies in others; thus in Italy both management councils

and internal committees are found in undertakings, and in France staff delegates exist side by side with works committees. But naturally there are as a rule close links between these various organs; for instance, in France, the staff delegates may also be elected members of the works committees; in Denmark, they are even ex officio members of these committees; and in France again the safety committees in undertakings have now been attached to the works committees and act as special subcommittees of these.

As it is impossible to examine each different method of organising the representation of the staff, the agencies in question will be examined as a whole from the international point of view. For reasons of convenience they will be grouped under the general title of "agencies representing the personnel" or "works committees", and an effort will be made, in the following section, to bring out the common features and essential differences which they reveal.

With this object, the following points will be considered in turn: the methods of establishing the agencies in question; the scope of the relevant regulations or agreements under which they are set up; the structure of the committees; their operation; their functions; the obligations which the employer must fulfil in their regard; the special protection which their members enjoy in the performance of their functions; and the corresponding obligations of the members.

METHODS OF ESTABLISHING WORKS COMMITTEES

Two different methods have been employed for the establishment of agencies representing the personnel.

In many countries the machinery for co-operation has been established as the result of collective agreement. The joint production committees set up in the United Kingdom and the committees created during the war in the British Commonwealth and the United States all owe their existence to agreements concluded between the parties concerned.

In Italy, the management committees set up in 1944 were also the result of agreements between employers and trade unions, and a national agreement providing for the establishment of internal committees in undertakings was concluded in August 1947.¹

In the Netherlands, the Board of Government Conciliators, established under the Decree of 5 October 1945\(^1\), has decided that clauses relating to the establishment of joint committees shall be included in a number of collective agreements and shall have binding force. In Switzerland and several other countries some collective agreements contain similar provisions.

In Denmark, Norway and Sweden, the system is also based upon agreements, but these are national agreements between the central organisations of employers and workers; the Norwegian agreement dates from December 1945\(^2\), the Swedish from August 1946\(^3\), and the Danish from June 1947; these provide that the affiliated associations shall establish, by means of collective agreements, joint works committees in the different branches of economic activity.

In another group of countries, the view has been taken that only the law could be sufficiently authoritative to ensure continuous and effective co-operation between the employer and the personnel. This is the case in Austria (Act of 28 March 1947)\(^4\); Czechoslovakia (Decree of 24 October 1945)\(^5\); Finland (Act of 21 June 1946)\(^6\); France (Ordinance of 22 February 1945, amended by Acts of 16 May 1946 and 7 July 1947)\(^7\); Germany (Law of the Control Council dated 10 April 1946)\(^8\); Hungary (Ordinance of 5 June 1945)\(^9\); Netherlands (mining industry)\(^10\); and Poland (Decree of 6 February 1945)\(^11\).

Each of these two methods of establishment has its advantages and drawbacks. The establishment of the agencies by agreement offers the parties concerned greater freedom in choosing the type of organisation which is most appropriate to the particular conditions in the industry. Moreover, the scope, structure and functions of these agencies may be adapted to the particular requirements of each undertaking. Thus, considerable differences may be observed, not only as between one country and another, but as

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\(^1\) I.L.O.: Legislative Series, 1945, Neth. 1.
\(^4\) Bundesgesetzblatt, 12 June 1947.
\(^5\) I.L.O.: Legislative Series, 1945, Cz. 1.
\(^6\) Idem, 1946, Fin. 1.
\(^7\) Idem, 1945, Fr. 8; 1946, Fr. 8; Journal officiel, 8 July 1947.
\(^8\) Official Gazette of the Control Council for Germany, No. 6, 30 April 1946.
\(^10\) Royal Order of 20 June 1945, entitled "Mines Statute".
between one industry and another, and even between different undertakings.

Furthermore, where the establishment of staff representation is decided by voluntary agreement between the employers and workers, it may be supposed that each of the parties has recognised the need for such machinery, and that both intend to do all in their power to enable it to operate and to make it a success. An atmosphere of confidence thus exists from the start. This explains the statement made by the United Kingdom Minister of Production when speaking on joint production committees in the House of Commons in March 1942: "I should be the first to hope", he said, "that they will become universal, and to see that a healthy competition is promoted between them... I feel in doubt whether we should attempt to make these committees statutory... it is clear that a great deal more depends on the spirit which animates the members of the committees than upon the mere fact of their existence."\(^1\)

Establishment by law, on the other hand, has the advantage of providing a uniform system; all the parties concerned are pledged to apply the scheme fully and simultaneously, and the undertakings covered by the legislation are thus placed on an equal footing. If, on the contrary, the appropriate agencies are not established in all undertakings of a similar size and character, some employers will be given an advantage over others, since they will not have to bear the expense which the introduction of a new social scheme inevitably causes. This inequality will militate against the employees, who will or will not benefit from the guarantees offered them by the institution of an agency of cooperation according to the undertaking to which they belong.

Again, establishment by law gives the staff representative machinery the quality of permanence which is necessary if cooperation between the employer and the employees in the undertaking is to be really effective. A collective agreement remains in force for a limited period only, and is subject to denunciation even during that period.

These differences in methods of establishment are not as fundamental as they may appear at first sight. First of all, the legislation in question relies for implementation, as its very object indicates, on the good will of the two parties rather than on com-

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pulsion; therefore in many cases it leaves the function of completing the statutory scheme to collective agreements, or expressly provides that one or other of its provisions shall not apply in cases where an agreement to that effect is reached by the parties. In France, for instance, section 23 of the Ordinance concerning works committees does not controvert the provisions concerning the functioning and powers of works committees which result from current collective agreements.

Furthermore, when — as is the case for instance in Norway and Sweden — the agreements are concluded on a national scale by central labour and management organisations really representative of all the employers and workers concerned, the resulting situation is similar in its effect to that set up by legislation; and even where no national agreement has been concluded, at least the various agreements in force, though not identical, will tend towards some degree of uniformity, if model collective agreements are concluded between large employers’ and workers’ organisations and cover a whole branch of industry (as for instance the collective agreements concluded in the engineering industry of the United Kingdom in 1922).

Sometimes the legislation is not of a compulsory character. In Germany, for instance, the law introduced by the Control Council does not make the establishment of works councils obligatory, but simply "permits" the organisation and activities of works councils throughout Germany. It is for the majority of the employees of an undertaking to determine, possibly with the participation of trade unions, whether a works council shall be set up.

Scope of the Regulations or Agreements

The system of regulation will evidently be more extensive if the cases in which staff representation must or may be established are determined by legislation than if this is done by collective agreement. In the latter case, the proportion of workers in a given undertaking who belong to the contracting organisation is often the factor which decides whether the undertaking shall be covered. Thus, the Swedish agreement applies only to undertakings in which half the personnel belong to the federations which were signatories to it. Where the establishment of agencies representing the personnel is determined by legislation or by a
national agreement, the scope of the system generally depends on the character of the undertaking and the number of persons employed in it.

*Number of Employed Persons in the Undertaking*

The regulations or agreements usually lay down the minimum number of persons habitually employed in an undertaking, which makes the establishment of a works committee obligatory for the undertaking in question. This minimum is, for instance, at least 20 employees in Austria, Czechoslovakia, Hungary, Iran, Norway and Poland; 25 employees in Denmark, Italy, Netherlands and Sweden (although in Denmark and Sweden a works committee is established only on application by either the employer or the workers' organisation or the majority of the workers); and 50 employees in Finland and France.

Home workers are often considered as belonging to the personnel of the undertaking. This is the case in Czechoslovakia, France and Poland (provided they do not themselves employ other persons for payment), whereas the Austrian legislation excludes them. The legislation of some countries does not consider as employed persons those employees of an undertaking who have the authority to sign documents on behalf of the management (Finland) or senior employees having a decisive influence on the conduct of the undertaking (Austria).

When the above-mentioned minimum is not reached, the following provisions apply: in some cases the local workers' organisation is empowered to appoint works delegates to represent the personnel (in Sweden, for factories employing between 4 and 25 persons); in other cases, one or several elected delegates represent the personnel (in Hungary; in Czechoslovakia for undertakings employing between 3 and 20 persons; in Austria and Poland for undertakings employing between 5 and 20 persons; in Italy for those employing between 5 and 25 persons); in other cases again, a committee must be established at the request of one of the parties (Norway) or by agreement between the parties (Denmark, Finland); and in still others, ministerial orders are to determine the undertakings, groups of undertakings, or occupations in which works committees must be established (France, Iran).
Character of the Undertaking

The scope of the regulations or agreements depends also on the character of the undertaking. The French scheme applies to all industrial and commercial undertakings, Government offices and departments, the professions, public companies, trade unions and associations of every sort; it does not apply to public services of an industrial or commercial character, for which special provisions are at present being examined.¹ In Finland the scheme applies to industrial undertakings; in Austria, to undertakings of all kinds except agriculture and forestry, public services and public transport undertakings; in Denmark to industrial and commercial undertakings; in Italy to industrial undertakings only; in Norway to industrial and handicrafts undertakings; in Hungary to all public or private industrial undertakings; and in Poland to all establishments, whether belonging to individuals or to associations or companies, except military establishments. Polish legislation also provides that undertakings producing mainly for the army may be excluded from the scheme by ministerial decision.

STRUCTURE OF WORKS COMMITTEES

In examining the structure of the agencies representing personnel, the following points will be considered in turn: composition of the committees; methods of appointment of members representing the employees; relations between the committees and the trade unions; and the term of office of the employees’ representatives.

Composition of the Committees

The agencies created by the laws or collective agreements adopted during recent years are, for the most part, joint committees, including, on the one hand, the employer or his representative or representatives and, on the other hand, representatives of the workers, the number of whom is determined in proportion to the number of wage-earners employed in the under-

¹ Statement by the Minister of Labour and Social Security; cf. L'Usine nouvelle, No. 35, 28 August 1947.
taking. The committee is deemed to be an agency for co-operation, which should enable the representatives of the personnel to meet regularly with the employer and discuss with him all questions of mutual concern.

It is sometimes laid down — as in Norway — that the management and personnel must have an equal number of representatives; sometimes — as in Finland and France — the representatives of the personnel are in a majority; in no case is the number of management members greater than that of representatives of the personnel. The number of the latter varies with the size of the undertaking; it must lie between 3 and 5 in Norway, 5 and 10 in Sweden, 4 and 7 in Finland, 2 and 8 in France. There is usually a provision that some of the delegates must represent the salaried employees and higher staff (engineers, heads of sections, superintendents, etc.) — this is the case in Sweden, Norway, Finland, France — and also that substitutes shall be appointed under the same conditions as titular members.

In Austria, Bulgaria, Czechoslovakia, Germany, Hungary, Italy and Poland, on the other hand, the works councils include representatives of the personnel only. The number of members varies. It must lie between 4 and 30 in Hungary (one to 5 of these having to represent salaried employees), between 3 and 15 in Italy and between 3 and 30 in Poland. In Austria and Czechoslovakia it rises from 3 in small factories to 13 and 10 respectively for factories with a personnel exceeding 1,000, with an additional member for each additional 500 employees in Austria and for each additional 1,000 employees in Czechoslovakia.

Appointment of Members of the Committees

The method of appointing the representatives of the personnel varies according to the method by which the agencies themselves are established. If the committee is set up as a result of a collective agreement, the parties determine freely the method of appointment. It is left to the organisations concerned to select as representatives of the personnel those of their members who are employed in the undertakings covered by the agreement or, in consultation with the employer, to organise an election in the undertaking. On the other hand, legal enactments, like national agreements, contain specific provisions regarding the choice of representatives; they are to be elected by secret and direct ballot under prescribed conditions (in Sweden the possi-
bility of indirect election is provided for in undertakings employing over 200 persons).

As a rule there are several electoral colleges (in France for instance, manual workers and office employees form one group, and senior technical employees, heads of services and supervisory staff another; in Hungary and Italy manual workers and salaried employees form separate groups). In France the distribution of seats between the different grades and the allocation of personnel to the electoral colleges are the subject of agreements between the employers and the workers’ organisations concerned or, failing such agreement, are decided by the divisional labour inspector. In cases where there is only a single electoral college, arrangements are often made so that the different occupational groups and the different departments of the undertaking shall be fairly represented in the works committee. In Austria, in undertakings with more than 50 employees, separate works councils must be elected for manual workers and for other employees respectively, provided either of these groups includes at least 20 persons permanently employed, but the law provides that the two councils may perform their functions jointly and hold combined meetings.

Sometimes all persons employed in the undertaking, without exception, are entitled to take part in the elections (as in Poland, Norway, Sweden). In other cases special conditions are laid down; a minimum age (16 years in Italy, 18 years in Austria, France and Hungary); a minimum period of service in the undertaking (three months in Finland, six months in France). In France again, electors must be of French nationality or, if aliens, must have worked in the country for at least five years; they must not have been sentenced to lose the right to vote in public elections, and, if they have been sentenced to loss of civic rights owing to their actions during the war, the sentence must have expired. In Austria electors must have all their civil rights.

The conditions attached to eligibility for membership of works committees are of course more restrictive than those relating to the right to vote. First of all, no-one is eligible who is not an elector. The additional qualifications usually concern the following points: age of candidates (24 years in Austria, 21 in Finland, France and Norway, 20 in Sweden, 18 in Italy and Poland); period of service in the undertaking (one year in Sweden, Finland and France, six months — or one year in a similar undertaking — in Hungary, six months in Austria and Italy, three months in Poland); but this condition is not always obligatory (Italy,
Norway). Sometimes the candidates must show that they have a certain level of education (in France they must be able to read and write); and it is often prescribed that they must have given proof of good character or occupational skill (Norway, Sweden, Finland). Other conditions are also attached in certain cases: in Austria, candidates must be of Austrian nationality; in France they may not be the employers' parents, brothers, sisters, or other near collateral relatives (a still more restrictive provision on this point is contained in the Austrian legislation), nor may they have been sentenced to loss of civic rights owing to their actions during the war, or deprived of their trade union functions; in Germany they may not have been officials of the Labour Front or members of the National Socialist Party. Some schemes provide that exemption from some of the above conditions may be granted in certain cases — for instance, by the Ministry of Labour in Poland, and by the labour inspector in France.

**Relations between the Committees and the Trade Unions**

It is characteristic of most of the schemes that they tend to give the trade unions a dominating influence in the formation of the committees. Experience has indeed shown that works committees are not able to perform their functions if they cannot count on the support of the workers' organisations.

Therefore, although in certain cases the personnel is free to elect whomever it wishes (as in Finland and Italy), provision is generally made that all or some of the candidates must be members of unions (as in Poland and Norway, and in the collective agreements concluded in 1922 for the whole of the British engineering trades), or that the candidates shall be appointed by the trade union delegate in agreement with a committee representing the personnel of the undertaking (as in Hungary), or that the trade unions are entitled to submit lists of candidates (as in Germany), or again that only the trade unions have the right to submit such lists. Thus in France the most representative workers' organisations draw up a list for each category of the personnel, and it is only if the number of persons voting at the first ballot is less than half the number of electors that presentation of candidates for a second ballot is free to all. In Czechoslovakia a list of candidates is submitted by the unified labour organisation, and this list is adopted if four-fifths of the electors vote for it. In the U.S.S.R.
the factory committees constitute the foundation of the trade union structure.

It should be noted that several schemes provide expressly for elections conducted according to the principle of proportional representation (as, for instance, in Austria, France, Italy and Poland). In some cases the representatives of the personnel of small undertakings are even appointed directly by the trade union (in Sweden, for instance).

As a general rule, all the members of the works committee must belong to the personnel of the undertaking; in some laws this is expressly provided for (in Germany, for instance); in others, the principle is understood from the rule that a member ceases to act as such immediately he leaves the undertaking (Denmark, Sweden) and similar provisions. Nevertheless, in Austria, if the works committee consists of more than four persons, only three-quarters of its members need be employed in the undertaking concerned; the others may be trade union delegates who, though not belonging to the personnel, are nevertheless eligible for membership on the committee, but may not be members of more than one works committee, and may not be chosen to represent a committee on the board of management of the undertaking.

**Term of Office of Members of the Committees**

Most of the schemes regulate in some manner the term of office of members of committees. The period is two years in France (except during the first three years of application of the Order of 22 February 1945, when it is restricted to one year), as well as in Norway and Sweden; it is one year in Czechoslovakia, Finland, Germany, Italy and Poland. There is often a provision that members of committees are re-eligible (as in France and Sweden). The usual grounds for termination of office are expiry of the prescribed period, death, resignation, expiry or cancellation of contract of employment, loss of qualification for election, together with — in some cases — expulsion or removal either by the committee itself (as in Poland), or by the electoral college to which he belongs (as in France), or again by an arbitration board on the proposal of the union (as in Czechoslovakia).

Disputes regarding elections are sometimes handled by the general judicial authorities (as in France), sometimes by the trade

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1 Act of 7 July 1947; _Journal officiel_, 8 July 1947.
union council (as in Hungary and Poland). In the last two cases it is provided that, if the protest has been made by the workers, a certain number of them must sign it (one-fifth of the electors in Poland, one-tenth in Hungary).

**Operation of Works Committees**

Whereas collective agreements leave it to the parties to ensure the functioning of the works committees, regulations on a national scale generally contain certain compulsory provisions intended to ensure effective operation. The minimum normal frequency of meetings is, in most cases, once a month or once a quarter (once a week in Poland), but the majority of the schemes also provide for the possibility of holding extraordinary meetings in certain cases (if a specified number of members so request, on convocation by the employer, etc.).

In some countries the chair at meetings is taken by the employer or his representative (in Denmark and France, for instance), in others by a member elected by the committee, who is often chosen alternately, each year, from among the representatives of the management and of the personnel respectively (in Finland, for instance). The committee may also elect a secretary, who is usually chosen from the group which has not provided the chairman.

Various other provisions relate to the committee's discussions, the compulsory keeping of minutes, the circulation of the committee's decisions among the personnel of the undertaking, the transmission of minutes and decisions to the authorities, the possibility of having persons in the service of the undertaking — or, in some cases, persons not in its service — participate in the committee's work as experts when questions for which they are specially competent come up for discussion, and other matters.

Several of the schemes also include provisions defining quite narrowly the relations between the works committee and the personnel as a whole. They provide, in some cases, that the committee shall call a general meeting of the personnel to report on its administrative and other activities (when necessary, in Czechoslovakia, once every three months in Germany and Poland); this general meeting of the personnel may, in certain circumstances, suspend the works committee (as in Austria). In the latter country, also, the general meeting constitutes a truly represen-
tative organ of the personnel; it is composed of all the employees and must be constituted in any undertaking which employs five persons over eighteen years of age. In Poland, since the enactment of a Decree of 19 December 1946, the workers in any undertaking employing more than one hundred persons elect, in addition to the works committee, persons of trust, in the proportion of one to every 25 workers. These persons of trust are responsible for ensuring liaison between the workers and the works committee. Although they are not empowered to represent the workers outside the undertaking, they are nevertheless responsible for seeing that the works committee gives effect to proposals tending to defend the workers' interests.

Where several establishments belong to the same undertaking, it is usually provided that each establishment shall be considered as independent for the purpose of instituting a works committee; but a central committee may be set up in certain cases (for example, Czechoslovakia and Hungary), or must be set up in others (for example, Austria and France).

The works committee may be divided into a number of sections or panels which share the various functions which have to be exercised. In the same way, the safety committees which existed in some countries before the establishment of works committees have now been attached to the latter and act as special subcommittees of them (in France, for instance). Even the administration of welfare schemes may, in some cases, be placed in the hands of persons designated by the committee or of bodies set up by it and to which it has delegated the necessary powers.

Most of the schemes associate the trade unions to some extent in the operation of the committees. Some (for example, Hungary) provide that the representatives of the unions to which the members of the works committee belong may take part in meetings in an advisory capacity. In Poland, the Decree of 19 December 1946 gives the trade unions the right to take part in all the activities of the works committees, which are now considered to be an instrument of trade union organisation; incidentally, Polish legislation also provides that the employer may require the presence in the works committee, in an advisory capacity, of a representative of the employers' organisation to which he belongs. In France, each representative workers' organisation which is recognised in the undertaking may appoint a delegate to attend meetings.

1 Decree of 1 August, 1947: Journal officiel, 2 August 1947.
in an advisory capacity, but a Ministry of Labour circular dated 31 July 1946 states that, as a rule, these persons should belong to the undertaking. In some countries (Czechoslovakia, for instance), the union intervenes to a considerable extent in the operation of the committee; its approval of the standing orders and of the budget is required, it supervises the implementation of the budget and, in general, it directs and co-ordinates the work of the committee within the regulations governing the latter's powers. In the United Kingdom, the trade union district production committees, established during the war, were intended to advise the workers' members of the joint production committees.

In many countries provision is made, at the national level, for a joint or tripartite board intended to supervise the general functioning of the works committees and to advise them in planning their activities (as in Denmark, Finland, France, Norway, Sweden). In France, for instance, the Higher Commission of Works Committees is responsible for supervising the implementing of the Order under which the committees are set up, for giving advice on any difficulties which may arise and, in general, for examining any measures which may ensure the satisfactory working of the committees.

Some of these boards have certain powers of arbitration. In Norway, for instance, the board in question may give a ruling on any dispute concerning the interpretation of the national agreement; its awards have binding force, and if it cannot reach a decision it must co-opt the President of the Labour Court as umpire. Similar rules are to be found in Denmark. In Sweden, the Labour Market Board deals with disputes regarding the validity of the stipulations of the national agreement, alleged breaches of these stipulations, and the imposition of penalties if such breaches are found to have occurred (provided such disputes do not relate to action constituting an infringement of freedom of association); it may also deal, with this same proviso, with disputes regarding dismissals or re-engage-ments.

In other countries there are special arbitration boards. In Hungary a national arbitration board, the members of which are appointed on a joint basis with an independent chairman and vice-chairman, is responsible for the settlement of disputes between the employer and the works committee, if for instance the members of the committee exceed their powers or fail to perform their

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1 See above, Part II, Section 1, p. 48.
duties, or if the employer hampers the work of the committee, or again if there is a divergence of opinion between the parties regarding the committee's methods of action. In Poland disputes between the employer and the committee are settled by a conciliation and arbitration board attached to the regional labour inspector's office, with the possibility of appeal to an extraordinary arbitration board if the undertaking employs over 500 persons. In Czechoslovakia the arbitration boards responsible for the settlement of such disputes are also empowered to dissolve a works committee.

In Germany, the Military Government authorities may dissolve a works council if its activities are directed against the aims of the occupation or are contrary to the law.

**FUNCTIONS OF WORKS COMMITTEES**

The functions of works committees may be classified as social on the one hand, and technical and economic on the other.

*Social Functions*

The committees are generally required to represent the interests of the personnel of the undertaking. They must therefore deal with all questions concerning the work and welfare of the personnel, with the exception, however, of matters normally within the competence of the trade unions, such as wages and other conditions of employment. It is recognised that trade unions have hesitated to give their full support to the establishment of works committees because they feared that, at the level of the undertaking, agencies representing the staff might be called upon to deal with wages questions, which can be settled effectively only by means of collective agreements at the industrial level. In order to prevent any such competition, which might cause harm to the wage-earners, the regulations prohibit the works committees from interfering in collective bargaining. Where any exception to this rule is permitted, it is understood that the committee may intervene only within the limits laid down by the collective agreements themselves (as, for instance, in Czechoslovakia, France, Poland); on the other hand, the committees often have the duty of supervising the application of collective agreements, adapting wage rates to local conditions, participating in the determination of piece-rates in the undertaking and in the drafting of works rules, etc.
Certain questions such as safety and health, vocational training and apprenticeship, the establishment, administration or supervision of social services in the undertaking (canteens, recreational facilities, libraries, day nurseries, sick rooms, etc.) are considered in all countries as falling within the competence of the production or works committees.

Under several legal systems, the committees are not authorised to intervene in labour disputes (for instance, in Canada, Czechoslovakia, France, Norway and Sweden). It is deemed that, being organs for co-operation, their work should not have a contentious character. In France, under the Act of 16 April 1946\(^1\), elected staff delegates, co-existent with the works committees, have the duty of submitting individual and collective complaints to the employers, and are competent to lay before the labour inspectorate any complaint relating to the application of laws and regulations.

In the United States, the "grievances committees", set up by collective agreement in many undertakings, are exclusively competent to settle any disputes which may arise as to the interpretation of collective agreements.

In some countries, on the other hand, the view has been taken that committees appointed to promote good understanding between the employer and the staff should also have the function of co-operating in the settlement of labour disputes (for instance, German, Italian and Polish legislation, and the Danish collective agreement). In Finland, India and Iran the works committees are actually the first stage in the conciliation procedure.

Questions of engagement and dismissal are of close concern to every wage-earner, and it is therefore natural that the committee should expect to be consulted upon them. In a large number of countries, these questions are governed by the laws concerning labour contracts; in others, they are dealt with by collective agreement.

Several systems provide that the works committees shall be consulted with reference to the engagement, allocation and dismissal of wage-earners (in Austria, Czechoslovakia, Hungary, Italy, Poland and Sweden, for instance). In Austria, should the management decide to dismiss a certain worker, despite a contrary opinion on the part of the works committee, the latter may apply to the Conciliation Office if the dismissed worker so requests and if it appears to the committee that the reason for dismissal is

\(^1\) I.L.O.: *Legislative Series*, 1946, Fr. 7.
connected with the trade union activity of the worker or the existence of the works committee, or that the dismissal would involve particular hardship, having regard to the personal situation of the worker.

In Hungary, an employer who wishes to make a large reduction in his personnel must apply for the authorisation of the competent Ministry, appending to his application the opinion of the works committee. If the reduction is authorised, the committee also participates in the selection of the workers to be dismissed.

In Italy, if the management intends to reduce its personnel, it must inform the works committee of the reasons for such action and of the number of workers who will be affected by it. If the committee consents to a reduction, the list of employees to be dismissed is drawn up in accordance with objective standards which are indicated in the agreement (seniority, family responsibilities, skill, output, etc.). Should there be disagreement, the question is referred to the trade unions. In the case of an individual dismissal (for disciplinary reasons or unsatisfactory output) the committee must also be informed in advance of the facts on which the management relies to justify its decision; failing agreement, the question is referred to an arbitration board.

In Sweden, there must be an exchange of views in the committee before an undertaking may close down or reduce its activities in any way. Further, the committee must be given at least two weeks' notice of the dismissal of a worker who has been employed in the undertaking for more than nine months.

**Economic Functions**

The need to increase the productivity of undertakings and to improve the output of the workers was, from the beginning of the war, one of the determining factors in the establishment of works committees and production committees. This need still exists to-day, and the technical and economic functions of the committees are considered as of particular importance.

In the first instance, it should be observed that all laws, regulations, general agreements or collective agreements providing for the establishment of works committees confer on them, in the technical or economic field, functions of an exclusively advisory kind. The actual management is reserved to the head of the undertaking (express provisions in the Czechoslovak and French legislation, for instance).
With regard to the technical side of production, the committees have the functions, *inter alia*, of studying production methods, the organisation and co-ordination of work, the satisfactory employment of manpower (and consequently, in many cases, the action to be taken against unemployment and absenteeism) and the best utilisation of technical equipment and raw materials. With these objects, the committee examines the suggestions of the management and of the personnel and proposes the adoption of any which it considers may improve conditions of production. The joint production committees of the United States, the United Kingdom and other countries of the British Commonwealth are considered to have been most successful in this field during the war.

In order to encourage initiative on the workers' part, the committee may propose to the employer to pay a reasonable reward to a wage-earner whose suggestions have been effectively utilised (as in France and Sweden) or whose output is particularly high (as in Bulgaria).

In the economic field, properly speaking, precise functions are conferred on the committees only by laws or national agreements (for instance, in Austria, Czechoslovakia, Finland, France, Hungary, Norway and Poland).

The committees are consulted on important questions regarding the organisation, administration or general conduct of the undertaking. They may make suggestions with the object of increasing production and rendering the undertaking more efficient. According to the French Act, a committee may also make recommendations regarding the use of profits, and is entitled to give an opinion regarding price increases; it may be consulted in this connection by the officials responsible for price-fixing and price control.

In countries such as Czechoslovakia and Poland, which have nationalised their larger industrial undertakings, the powers of the works committees are particularly extensive. They exercise genuine supervision over the management of the establishments from the technical, administrative and economic points of view. They also supervise the execution of the general production and investment plan of each undertaking, as well as the preparation and execution of the output plan, ensuring in particular that the latter shall be in harmony with the general programme of the State. If they consider that the activity of an undertaking is not in line with the general economic interest of the country, they
may make proposals to the management, and if these are rejected they may take the matter before the competent Government Department.

A similar procedure is also laid down by Austrian legislation. If the works committee of an undertaking with over 500 employees considers that the economic policy followed by the undertaking is contrary to the general economic interest, it may decide by a two-thirds majority to submit a complaint to the Federation of Austrian Trade Unions. This complaint is then referred for a ruling to the National Economic Commission, a tripartite body established at the Federal Ministry for the supervision of private property and economic planning.

In countries which have adopted a national plan of economic reconstruction, in the application of which the workers' organisations are intimately associated (France and Czechoslovakia, for instance), the works committees, in co-operation with the trade unions, also have the right to supervise the application of the plan in the different undertakings.

In Hungary \(^1\), the application of the three-year plan in undertakings is supervised by plan commissioners, whose duty it is to send reports to the planning officer, giving him any information of value regarding the results achieved and the difficulties of enforcement which may have been encountered. These commissioners are appointed by the employer from a list of persons put forward by the works committee. Their reports are also sent to the works committee and to the employer, who may communicate his remarks on the subject within a week of receiving the report.

In several countries, in order to be fully aware of the financial position of the undertaking, the committee has the right to see the accounts and balance sheet in all cases where these documents have to be made public, i.e. in the case of limited liability companies or nationalised undertakings (as in Austria, Czechoslovakia, France, Norway, Sweden). The French Act gives the committees the right to summon the auditors, to hear their explanations, to have, for this purpose, the services of an accounting expert, at the expense of the undertaking, and to make observations which must be transmitted to the general meeting of shareholders. Finally, the Austrian, Czechoslovak, French and Hungarian Acts confer on the committees the power to delegate one or several of their members to the board of management of each nationalised

\(^1\) Order of 5 September 1947.
undertaking; these representatives of the personnel have the right to be present at all meetings in an advisory capacity; in Austria they have the same rights and obligations as the other members of the board.

OBLIGATIONS OF THE EMPLOYER

A number of definite obligations on the part of the employer correspond to the various functions of the works committees.

As a general rule, the employer must not only abstain from any act likely to hinder the working of the committee, but must also facilitate the performance of the committee’s work as far as he can. First, he is required to provide the committee with certain indispensable material faculties (premises, heating, lighting, etc.), and it is he as a rule who is responsible for payment of the overhead costs involved by the activities of the committee (but in Austria the employees may be required to pay a contribution not exceeding one-half of one per cent. of their gross wages for this purpose).

In some countries (for instance, Czechoslovakia and Ecuador) the employer is required to place at the committee’s disposal a certain percentage of the net profits of the undertaking (at least 10 per cent. in Czechoslovakia).

The management must also allow members of the works committee the time necessary for the performance of their functions (in France, save in exceptional circumstances, not more than twenty hours a month apart from the time actually taken up by meetings), or it must pay the members for the time spent in committee meetings if these take place outside working hours. In some countries, the members of the committee are or may be relieved of their occupational duties in the establishment, but retain the right to draw their wages. This is the case in Czechoslovakia, in Hungary and in Poland, where one, two, three or five members of the committee — according to the size of the undertaking — may be exempt from performance of the duties which they would normally carry out under their contract of employment.

In France, where the head of the undertaking is chairman of the committee, he is expected to call it together regularly; the regulations provide that if he fails to do so the committee may be convened by the labour inspector, at the request of not less than one-half of its members, and the inspector then takes the chair.
Another obligation of the employer is to make available to the works committee all the necessary sources of information. With this object it is provided, for instance, that the management shall hand to the committee copies of the contracts of employment, the various documents concerning wages, the commercial records, all documents regarding the administration of social welfare schemes, etc. It has already been pointed out that in some countries the management of an undertaking which is organised as a limited company must transmit to the works committee all documents which are to be submitted to the general meeting of shareholders, since the members of the committee are entitled to the same information and the same papers as the shareholders are.

Most of the schemes provide that the employer shall report to the committee at specified intervals regarding the commercial and technical position of the establishment, the level of production, and probable market trends and production tendencies. Some specify that he is not required to communicate trade secrets (as in Czechoslovakia and Hungary) or information which may damage him (as in Denmark and Sweden). In France, the management is obliged to inform the committee of the profits of the undertaking.

Apart from this obligation to provide information, the employer is also required in certain cases to consult the works committee on any intended economic operation outside the normal limits of management. In Hungary he must have the committee's endorsement of any action involving for the establishment an obligation exceeding these normal limits.

The employer is also required to examine any proposals submitted to him by the works committee. In Czechoslovakia, for instance, when such a proposal has been made to him in writing, he must inform the committee within two months — also in writing — of the action taken or to be taken in connection with it or the reasons which make its adoption difficult or impossible. In France, also, the head of the undertaking must inform the committee, giving reasons, of his decision regarding any proposals submitted to him, and if he refuses to adopt them the committee may carry the matter to a higher organ — the Inspectorate General of Industrial Production, for instance — according to the character of the proposal.
PROTECTION OF MEMBERS OF WORKS COMMITTEES

Most of the schemes provide that members of committees shall enjoy special protection against any discriminatory action on the employers' part, and particularly against dismissal for reasons connected with their activities as representatives of the personnel. In Austria, for instance, the previous consent of a conciliation board is required before a member of a works committee may be dismissed with or without notice, and this consent may only be given in certain cases specified by law. In Finland, members of the committees may not be dismissed without a specially good reason, which must be notified to the works committee if it so wishes. The position is the same in Norway, where the employer must discuss with the remainder of the works committee his reasons for dismissing a member, if the said member wishes it. In France, the consent of the committee is also necessary for dismissal of a member; if there is disagreement, the decision lies with the labour inspector, but if the member has been guilty of serious misconduct, the employer may suspend him at once pending the inspector's decision.

Czechoslovak legislation provides that members of works committees shall be treated not less favourably than other employees of the same grade. The consent of the committee is required for the transfer or termination of the contract of employment of any one of its members, and in certain cases for termination of the contract of an ex-member during the two years following the end of his term of office. If the committee refuses its consent, the employer may apply to an arbitration board. Similar regulations are to be found in Hungary and Poland.

In Italy the authorisation of the trade union organisations representing the workers is required for transfer or dismissal of a member of a works committee, or of an ex-member during the year following the expiry of his term.

OBLIGATIONS OF MEMBERS OF WORKS COMMITTEES

Like the employers, the committees are required, under the different schemes, to fulfil certain obligations. Since they stand as intermediaries between the employer and his personnel, the obligations in question relate to both the former and the latter.
Obligations towards the Employer

Where the works committee is composed of representatives of the personnel alone, the regulations lay special emphasis on the fact that members are required to perform their functions in such a way as not to cause any hindrance to the operation of the undertaking or any disorder in it (in Czechoslovakia, for instance). Some of the regulations expressly specify that the works committee shall in no case have the right to give orders on its own authority or to take the place of the management (in Austria and Poland, for instance).

Since they hold confidential positions, the members of the works committee are bound by the rules of professional discretion. They are consequently not entitled to divulge or use any information of a technical or economic character constituting commercial or professional secrets which they may obtain through their activities on the committees (as is prescribed in Czechoslovakia; Denmark, Finland, France, Norway, Poland, Sweden). French legislation, however, restricts trade secrets for this purpose to information regarding manufacturing processes only, and that of Poland provides that members of works committees are not subject to this obligation when drafting the reports which they send to government agencies or to peoples' councils (they are required to co-operate in supervising the economic activities of undertakings from the social point of view, and must report for this purpose).

Obligations towards the Personnel

The committees must also maintain contact with the personnel which they are intended to represent. With this object several schemes stress, for instance, the publicity which they should give to their work and the records of their activities which they must transmit at regular intervals to the general meeting of the personnel (in Czechoslovakia, Germany, Norway and Poland, for instance).
CHAPTER II

CO-OPERATION AT THE LEVEL OF THE INDUSTRY

The arguments already mentioned in favour of co-operation at the level of the undertaking are equally valid in favour of associating all interested parties in the study and solution of social, technical and economic problems in each particular industry. In some countries such co-operation has resulted from the common action of employers and workers acting on their own initiative; in others it is encouraged and assisted by the State. In many countries the Government is taking steps to associate representatives of employers and workers with its own activities for industrial reconstruction; this is particularly the case in countries where the national economy, or certain branches of it, are under State control or have been nationalised.

It follows that the extent of co-operation at the level of the industry shows wide variations. It has developed to a greater extent in some industries than in others, and has been made effective to a higher degree in those countries which are faced with the task of post-war reconstruction than in countries which were spared by the war.

The need for such co-operation is none the less felt more and more strongly by all parties concerned, as has been shown by discussions in the industrial committees of the I.L.O. The Iron and Steel Committee and the Metal Trades Committee each adopted, at their meetings in Stockholm in August-September 1947, a resolution recommending the establishment of labour-management co-operation machinery at the level of the industry.

Below will be discussed, in turn, the extent to which such co-operation is being effected by means of working parties and advisory bodies; by supervisory bodies; and by the administrative boards of nationalised industries.
Working Parties or Advisory Bodies

Co-operation of employers' and workers' organisations in the solution of problems common to several industries or throughout a particular industry varies in form as between those countries in which it is a result of the initiative of the parties themselves and those in which it is promoted by Government action.

**Action by the Parties Themselves**

Co-operation machinery which owes its existence to the initiative of the employers' and workers' organisations themselves has a narrower or wider scope according as it covers a single industry or a group of several industries.

In Canada, the National Joint Conference of the Canadian Construction Industry met in 1941 and again in 1946 and drew up a series of recommendations to further the contribution of the construction industry in the rebuilding of Canada; these recommendations refer not only to industrial relations but also refer to Government controls, wages and prices, the situation of the construction industry with regard to the supply of labour and materials, the training of apprentices, etc. A smaller body, the Joint Conference Board, is responsible for giving effect to the decisions of the Conference, and also acts as an advisory body.\(^1\)

In the United States, the close collaboration which has grown up between employers' and workers' organisations in the clothing industry is outstanding for the wideness of its scope. The parties in question not only settle questions of wages and conditions of work by means of collective agreements, but co-operate in solving various problems in connection with general conditions in the industry, such as the stepping-up of production, security of employment, competition, commercial practice, technical improvements, vocational training and so on.\(^2\)

In the Netherlands, as has already been mentioned, the employers' and workers' organisations reached agreement in

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May 1945 to set up a body with functions extending to industry as a whole; it was given the name of "foundation" to emphasise its permanent and private character (Labour Foundation). Under the auspices of this body, industrial councils have been set up in the various economic branches, each composed of equal numbers of employers' and workers' representatives nominated by the organisations concerned. The functions of these councils are essentially of a social character, but the Government also consults them on all questions concerning industry and, in particular, on wages questions and problems of reconstruction and reorganisation.

**Government Action**

Co-operation machinery set up by the Government at the level of the industry may, like machinery set up by the parties themselves, have a particular or general scope; but even when only concerned with one particular industry it often forms part of an over-all plan which it is intended should apply at a later stage to a large number of industries.

**Schemes Applying to Single Industries**

In the woodworking trades of Norway, a joint council of employers and workers has been set up, with a Chairman and Secretary appointed by the Minister of Trade. It has to study the most effective means for a rational distribution of wood, for the equitable sharing of work between the various branches of the woodworking industry and between undertakings, for speeding up the rhythm of production, if necessary by the adaptation or removal of particular undertakings; and it is also instructed to standardise the form of accounts used by individual undertakings.

In India, a tripartite labour conference for the mining industry met in January 1947 and discussed, among other questions, the problem of nationalising the mines. Since then the Government has set up industrial committees on a tripartite basis for the jute industry and the leather and hides industry. These will permit an exchange of views between employers and workers on questions on the agenda of the industrial committees of the International Labour Organisation.

In Belgium, the Act of 13 August 1947, which established the National Coal Council, contemplates the setting up of a National
Institute for the coalmining industry. The National Institute will be attached to the Ministry of Fuel and Power under the direction of a Council consisting of a Chairman and 18 members appointed by the Crown, five being nominated by the most representative organisations of colliery managers, and two by the most representative organisations of the workers and staff employed in the coal mines. The remaining members will be technical or scientific experts and representatives of the Ministries concerned. The purposes of the Institute will include the co-ordination and promotion of research into technical, economic, social and occupational problems of the coalmining industry and the setting-up of an information bureau concerning possible uses of coal; it will also make grants for research work relating to mining methods. The resources of the Institute will be made up of State grants and the proceeds of a levy on each ton of coal mined.

In Uruguay, a Decree of 18 October 1946 established a special committee on a tripartite basis to study the development of the national textile industry.

In Australia, tripartite advisory panels for stoves and ovens, electric motors and refrigeration have been set up under the Secondary Industries Commission.

Schemes of General Application

In 1945 the Government of the United Kingdom adopted a policy of industrial reorganisation to raise national production of goods for the home market and for export to the highest possible level, while improving to the greatest possible extent the living conditions of all persons engaged in production. Working parties were set up in about twenty industries, each party being composed of twelve members representing employers, trade unions and the general public. Their main task was to make a survey of the available resources and to draw up a plan of action. Most of them in their final reports recommended to the Government that a permanent advisory council of similar composition to the working parties themselves should be established in each industry, for the purpose of carrying on research and of maintaining contact between the industry and the Government.

To give effect to the recommendations of the working parties the Government laid a Bill before Parliament in January 1947 which, after certain amendments, was given the Royal Assent
on 31 July 1947 as the Industrial Organisation and Development Act.¹

Under this Act, Orders to establish development councils may be made by the Board of Trade, the Minister of Agriculture and Fisheries, the Minister of Supply, the Minister of Food, the Minister of Works, the Admiralty, the Secretary of State for Scotland, or the Minister of Fuel and Power. The Board or Minister concerned must first consult the organisations representing employers and workers in the industry and must satisfy himself that the establishment of a development council for the industry is desired by a substantial number of the persons engaged in the industry.

The establishment of a development council in a particular industry is made by a Ministerial Order which has to be approved by a resolution of each House of Parliament. The members of the council must represent persons carrying on business in the industry, persons employed in the industry, and independent persons representing the general public; the Chairman must be one of the independent members. All the members are appointed by the Minister after consultation with the organisations concerned. The Minister may also appoint persons having special knowledge of matters relating to the marketing or distribution of products of the industry. The number of members on the council is to be specified by the Ministerial Order; the Act does not itself state that the councils must reproduce the strict balance between workers and employers which was one of the features of the working parties, but it does state that the number of members representing employers and workers shall together constitute a majority of the council.

The functions which may be assigned to development councils include scientific research, enquiry as to materials and equipment, improvement of production methods and renewal of industrial equipment; the councils are also authorised to promote the installation and operation of up-to-date plant, the manufacture and marketing of standardised products, vocational training, improvement of working conditions, methods for the prevention of industrial diseases, development of export trade, advertising on the home market, collection of statistics, etc. Generally speaking, they can advise on any matter relating to the industry — other than remuneration or conditions of employment —

referred to them by the Minister, and may undertake enquiries for this purpose. Every council will not automatically be bound to carry out all the duties listed above, but only those specifically assigned to it by the Ministerial Order to establish the council, and any extension of its functions will require a supplementary Order.

A time-limit is placed on the activity of any development council, since, not later than three years from its establishment and at five-yearly intervals thereafter, the position is to be reviewed by the Board or Minister concerned, and the council may be dissolved, subject to approval by Parliament.

In carrying out their duties the members of councils may call on persons carrying on business in the industry to furnish any returns or information they require, with the provision that if a person considers that he cannot furnish such information without disclosing a secret process he shall not be subject to any liability on this account unless the Minister concerned endorses the request of the council.

The development councils are to be financed by means of charges, the rate of which is not to exceed a maximum specified by the Ministerial Order. Before authorising the imposition of any such charge the Minister must satisfy himself that the incidence of the charges as between different classes of undertakings in the industry will be in accordance with a fair principle.

Similarly, in France, legislative enactments and statutory regulations have been the chief factors in establishing advisory committees to work with each division of the Ministry of Industrial Production. These committees are composed of an equal number of employers, engineers, technicians and supervisory staff, and of workers and salaried employees, appointed on the recommendation of the most representative organisations. They have to be consulted on all questions concerning the production and marketing of products in the industry concerned, and have also to be consulted with regard to price fixing, quotas of raw materials, etc.

In Rumania an Act of 10 June 1947 set up industrial councils to co-ordinate production in particular branches of industry.

In Belgium the Government has introduced a Bill for the establishment of industrial councils as a counterpart, at the industrial level, to the previously mentioned Bill concerning works committees.

It should finally be pointed out that joint machinery existing in various countries to deal with problems of industrial relations,
such as the Belgian joint committees and the industrial councils in the Union of South Africa, may also be consulted by the Government in the preparation and execution of legislation relating to particular industries.

**Supervisory Bodies**

A number of countries which are suffering from shortages of goods, capital and manpower have found themselves obliged to exercise direct supervision over the utilisation of their human and material resources. Such supervision can be thoroughly efficient only if employers and workers both take part in it. Hence several Governments have established in certain branches of their economy, and in some cases for industry as a whole, supervisory bodies which include representatives of employers’ and workers’ organisations.

For instance, a Council for the mining industry was set up in the Netherlands by an Order of 30 June 1945. The Council, under the chairmanship of a Government representative, and consisting of equal numbers of employers’ and workers’ representatives, supervises the production and distribution of coal, the social and economic administration of the mining industry, and the social security of workers in the industry. It exercises supervision, in particular, over the management of mining undertakings, industrial combines, methods of production, etc.; it also has the duty of drawing up a miners’ charter and has wide powers to regulate working conditions. In the exercise of its functions it is assisted within the undertakings by works committees and section committees, composed of employers’ and workers’ representatives.

In Belgium, the National Coal Council was set up by the Act of 13 August 1947.\(^1\) It is composed of twenty-four members appointed by the Crown, and is divided into two sections, a Production Section and a Prices Section, each composed of an equal number of representatives from the most representative organisations of management and workers and of representatives of the Ministries concerned. The Production Section is generally responsible for supervising the working of the collieries, instituting a uniform system of accounts, enquiring into re-equipment needs and the reallocation or merger of pits, keeping down costs, etc.

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\(^1\) See above, p. 159.
The Prices Section studies problems involved in fixing scales of charges for the market price of coal, and carries out enquiries into marketing, import and export requirements, etc. The Council is also concerned with social problems such as the standard of living of the workers, recruitment, health and safety, and may use wide investigatory powers in the execution of its duties.

In addition to these supervisory functions, the Council acts as the natural adviser of the Government when the latter has to fix maximum prices for coal, control imports and exports, or order the reallocation or merger of pits.

In the United Kingdom, the Iron and Steel Council, set up in the autumn of 1946, is responsible to the Minister of Supply for supervision of the iron and steel industry. It has to examine equipment programmes and supervise their execution. So far as is found necessary it may issue directives on matters of current importance, including the supply of raw materials; and, within the limits of the powers delegated by the Minister, may exercise supervision over the manufacture, distribution and importing of iron and steel products.

The Council consists of an independent Chairman and six members appointed by the Minister. Members are appointed on the basis of their individual capacity and not as representatives of any particular interest. A number of them, however, must be chosen from industrial and trade union circles.

In certain industries it is particularly urgent to ease the shortage of manpower. Accordingly, in France for instance, departmental committees for accelerated vocational training of workers in the metal trades have been set up. These committees are intended to promote the establishment of vocational training centres and to supervise their operation. In addition to a representative of the competent departmental authority, they include three representatives from the most representative trade unions concerned and three from the employers' organisations in the industry. A national committee, also tripartite, acts as the coordinating and supervisory body, and is consulted by the Minister of Labour in connection with the preparation of laws and regulations concerning vocational training.

In Rumania also it was mainly due to the shortage of manpower that the Government issued an Order, dated 4 July 1947, setting up committees to control the rational distribution of manpower. These committees have power to order the discharge of non-essential workers and their transfer to other establishments.
In Hungary the Decree of 9 June 1946 is a measure of general application. In order to increase production and permit a rational organisation of industrial output the Decree requires the establishment of industrial production committees in each branch of industry, and of a national industrial production council.

The committees consist of two workers' and two employers' representatives; the Chairman is appointed by the Government. The two workers' representatives are appointed, one on the recommendation of the Council of Trade Unions and the other on the recommendation of the trade unions directly concerned. In private industry the employers' members are appointed on the same basis; in the case of public undertakings the authorities responsible for the administration and control of the undertakings appoint the employers' members.

These committees may make proposals to the undertakings or to the occupational organisations concerned, for the introduction of reforms relating to working methods, manufacturing processes, standards of output and remuneration schemes. They may, in particular, decide that wages shall be determined according to output. They are also empowered to supervise the application in the industry of any measures adopted. The National Industrial Production Council supervises and co-ordinates the work of the production committees and acts as a court of appeal from their decisions.

Nationalised Industries

Since the last war, several European countries have nationalised considerable sectors of their national economy. The legislatures have in fact taken the view that it was essential to place a certain number of key industries under national ownership to ensure that they were managed in the best interests of the community.

Particular instances of such countries, apart from the U.S.S.R., are afforded by Austria (electricity); Czechoslovakia (mines and heavy industry, foodstuffs, banks, insurance); France (apart from certain large industrial units, the following branches

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3 Decrees dated 24 October 1945.
of industry: the chief deposit and credit banks\(^1\), electricity and gas\(^2\), insurance\(^3\), coal mines\(^4\); Hungary (coal mines and electricity generating stations\(^5\)); Poland (all basic sectors of the national economy\(^6\)); the United Kingdom (coal mines\(^7\), transport\(^8\) and electricity\(^9\)); and Yugoslavia (all major branches of the economy\(^10\)).

The system established in these countries for administering the nationalised industries is in many ways similar to that which has existed for many years in a large number of countries for certain industries or businesses which have been taken over as public services. A typical example is afforded by railway transport, which is directly or indirectly under State management in many countries as, for example, all European countries except Spain and Portugal. In Canada roughly half the railway system is under national control, in Australia the railways are owned by six States responsible for their operation, and in the Union of South Africa nearly all the ports and railways belong to the State. In the countries of Latin America increasingly large sections of the railway network are passing into the hands of the Governments. In India the greater part of the railway system is owned and managed by the State.\(^{11}\)

In establishing the organisation of nationalised industries, the legislature has in most cases been anxious to ensure the co-operation of employers and workers. In the case also of industries taken over as public services, specific measures have been adopted for this purpose. It is clear that co-operation built up between the State and employers' and workers' associations in these two classes of industry develops certain special features of its own; it is not possible, within the limits of the present report, to make a detailed study of every aspect of this question, but a brief survey of the level at which co-operation is generally effected will be given, followed by a study of the main methods of organising

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\(^1\) Act of 2 December 1945, *Journal officiel*, 3 December 1945.
\(^5\) Order No. 53,000, amending Act VIII — 10, 1946.
\(^7\) Act of 12 July 1946.
\(^8\) Act of 6 August 1947.
\(^9\) Act of 13 August 1947.
\(^10\) Act of 5 December 1946.
co-operation with employers' and workers' organisations, illustrated by current legislation concerning certain of the more important nationalised industries (transport, coal, electricity), especially in the United Kingdom and in France.

**Level at which Co-operation is Effectected**

Co-operation of employers and workers in a nationalised industry generally takes effect both at the level of the industry, either as a whole or region by region, and at the level of the individual production unit.

The nationalisation of an industry always involves its organisation or re-organisation, administratively, by the setting up of a central agency covering the whole industry. As an example it may be recalled that, before the nationalisation of the coal-mining industry in the United Kingdom, the coal mines belonged to more than eight hundred undertakings, widely different one from another both in size and output, and in their industrial history and traditions of management. They had for many years been grouped in twenty-five districts corresponding to the main coalfields, and it was mainly at the district level that co-operation took place between the employers' and workers' organisations on such questions as fixing wages and regulating conditions of work. Nationalisation has deprived the undertakings and districts of the control they previously exercised over the industry by abolishing every executive authority whose control extended to more than a single pit and setting up a single central body, the National Coal Board.

It should be noted that, with certain differences according to industry and country, the management of nationalised undertakings is carried out either by a central agency alone, as in the case of insurance in France and Czechoslovakia, or at two levels, namely, the central level and the regional level. The organisation of the electricity industry in the United Kingdom and in France provides examples of nationalised industries administered on the regional system. In the same way, the National Coal Board in the United Kingdom has set up divisions and regional boards which are themselves subdivided into zones. In Austria, the Act to nationalise the electricity industry provides for regional services and, in some of the cities, municipal services, in addition to placing certain special services under a separate system.
It sometimes happens, on the other hand, that the central agency of a nationalised industry not only abolishes regional bodies but absorbs previously existing undertakings and itself takes the role of a single undertaking for the whole industry, as in the case of the sugar-beet industry in Czechoslovakia.

Furthermore, employers’ and workers’ associations may be called upon to co-operate in the direct management of a nationalised undertaking. Generally speaking, nationalised undertakings are fairly large, and wherever nationalisation laws have preserved the previously existing administrative structure, it has generally been in the case of undertakings which have reached a high degree of centralisation or employ a large number of workers. This is particularly the case, in France, with regard to the four chief deposit banks which have been nationalised, and the Renault factories, which might almost be said to constitute branches of industry by themselves. If, on the other hand, the law has altered this structure, it has been to set up operating agencies in the form of public institutions on a larger scale than that of the previously existing private enterprises. For example, the French Act to nationalise mineral fuel set up regional coal boards (houillères de bassin) as production, operating and marketing agencies. These have taken over the undertakings or pits assigned to their control, that is to say all those lying within a particular coalfield.

**METHODS OF CO-OPERATION**

The methods employed by Governments to associate employers’ and workers’ organisations in the management of nationalised industries are reflected in the composition of the various bodies set up by nationalisation laws. In some countries the legislation provides that a certain number of the members of such bodies are to be representatives of the workers, either directly elected by workers in the industry or appointed on the recommendation of trade union organisations. In other countries the law provides that the nationalised industries are to be administered by independent public boards, the members of which are to represent the general public, it being understood that a certain number of them are to be selected from among employers and trade union leaders who have held positions of responsibility in their own fields.
Direct Representation of Workers on Administrative Boards

In some cases, the workers have gained the right to elect their own representatives to the administrative boards of nationalised undertakings. This method is applied, for example, in Czechoslovakia. In the coal mines and heavy industry of Czechoslovakia, some members of the boards are appointed by the Government, after consultation with the National Council of Trade Unions and other organisations concerned, and some are elected by the workers themselves. Each board is presided over by a chairman who can oppose his veto to any decision taken and appeal to higher governmental authority. In the foodstuffs industry, undertakings are jointly managed by producers, workers and Government departments. Banks and insurance are administered by boards composed of a chairman, a deputy chairman and five members, including two elected by the staff; the other members are appointed by the Minister of Finance on the recommendation of the central bank authority. In the case of the State railways, one third of the members of the executive boards are elected by the workers from their own ranks.

In France it is a fairly general rule that either all or some of the places reserved for representatives of the workers on the administrative boards of nationalised undertakings shall be filled by persons employed in the undertaking. An example is afforded by the administrative boards of the nationalised banks or that of "Air France", three out of the sixteen members of which are appointed by the trade union representing the employees and by the works committee of the company, while in the potassium mines of Alsace and the nationalised Renault factories the members representing the workers are chosen from among the workers' delegates to the works committees.

In Austria, workers and salaried employees in the nationalised electricity industry also elect their representative to the Board of the Central Electricity Company.

Representation of Trade Union Organisations

In many countries the view was held that the associations normally concerned with defending the interests of workers, that is to say the trade unions, should appoint representatives of the workers to sit on the various bodies established by nationalisation laws. Several countries, therefore, admit the right of workers'
organisations to appoint their representatives directly, or, at least, to nominate persons for appointment by the competent Minister, the latter merely giving official confirmation to the names put forward.

Among the many bodies set up in the different nationalised industries on which trade unions are represented, some have a general competence covering the whole of the industry concerned, while the competence of others is restricted to a single region or a single establishment.

**Agencies at the Level of the Industry.**

A study of the administrative structure of the various nationalised industries shows that the agency placed at the head of the industry may have mainly managerial functions proper, or advisory duties, or a merely supervisory role.

**Managerial agencies.** In France the management of the nationalised fuel mines is entrusted for the whole territory to a National Coal Board (*Charbonnages de France*). Its functions are to direct, supervise and co-ordinate the operation of the various coalfields, submit for Government approval a plan for coal production and for re-equipment of the mines, advise on import and export schemes and fuel prices, promote research and training of workers, etc. The Coal Board is administered by a council of eighteen members: six representatives of the State, appointed by the Ministers concerned; six representatives of consumers (three representing industrial consumers and three domestic consumers, one of the latter being appointed by family associations and two by trade unions); and six representatives of the different grades of staff (manual workers, salaried employees, supervisory staff, engineers and higher grades), appointed on the recommendation of the most representative trade unions. It should be noted that the trade unions thus enjoy a double representation, first as representing the workers and secondly as representing the general consumer; this feature also recurs in other nationalised establishments, such as the National Insurance Council.

The administration of the nationalised electricity and gas undertakings in France is entrusted to two national institutions known as the French Electricity Board (*Electricité de France*) and the French Gas Board (*Gaz de France*). Each is placed under a council of eighteen members, composed as follows: six representatives of the State, appointed on the recommendation of the Ministers concerned; six representatives of consumers;
six representatives of the workers, appointed on the recommendation of the most representative trade unions (three representing the administrative and technical grades, one representing salaried employees and two representing manual workers). The chairmen are appointed by the Minister on the recommendation of the council in question.

In Austria the co-ordination of the regional and special electricity services is entrusted to a central company on a commercial basis, the board of directors of which is composed as follows: one third to be appointed by the central Government; one third by the various regions; and one third to consist of at least one representative of the Federal Chamber of Industry, one representative of the Chamber of Labour, one representative of the chambers of agriculture and one representative of salaried employees and workers in the nationalised undertakings.

The railways are a branch of the transport industry in which State intervention has been in evidence for many years in a large number of countries, and their administrative organisation now provides many examples of legislation giving workers on State railways the right to representation on the responsible administrative boards. This is the case in Canada and Switzerland, where workers have one representative on the administrative board, in Norway, where they have two, in Belgium, where they have three, and in France, where, since 1938, they have five.

Advisory bodies. In establishing the organisation of the nationalised industries the legislature has in several cases set up machinery to advise the Government authorities responsible for economic affairs and to help them in forming their policy.

For example, the French Act of 2 December 1945 concerning the organisation of credit set up a National Credit Council as the central agency of the new financial system. It is composed of thirty-eight members: seven representing the Ministries concerned, seven chosen by the Minister of Finance as persons of financial or banking ability, seven representing public or semi-public financial agencies, and seventeen representing various occupations throughout the country. Of the last-named, seven are nominated by the most representative trade union organisations (three to represent their general interests, to be appointed by the Minister of National Economy, and four to represent the various grades of bank staff, appointed by the Minister of Labour). The Council is given wide powers with respect to financial policy, organisation of the banking system and the financing of economic
reconstruction; it makes recommendations and proposals on these matters directly to the Minister of Finance or the Minister of National Economy, and has also to study measures for the progressive nationalisation of banking establishments.

The nationalisation of insurance in France has also given rise to the establishment of a central agency to advise the Minister of Finance on all measures concerning the general activities of nationalised and non-nationalised insurance undertakings (only 45 of the chief companies having been transferred to the State out of 955 French and foreign undertakings engaged in insurance at the time of nationalisation). This agency is the National Insurance Council, placed under the chairmanship of the Minister of Finance, and composed of twenty-one members appointed as follows: seven representing the State, appointed by the Ministers concerned; seven representing insured persons, appointed respectively by the trade unions, the chambers of commerce, the trade chambers, the French Chamber of Commerce Abroad, and the family associations; seven representing persons employed in insurance, appointed by the federations, trade unions or other national associations concerned (one for managers, one for the higher grades and inspectors, two for clerks, two for agents and one for the staffs of agricultural mutual insurance funds).

In the gas and electricity industries, French legislation has set up a Superior Council for Gas and Electricity, consisting of equal numbers of representatives of Parliament, Government departments, local communities, users of the national services and personnel. The Council must be consulted in the preparation of executive orders and regulations affecting these industries, and will arbitrate in the last resort in respect of disputes arising between individual undertakings and the authority from which they receive concessions. The financing of the industry and the carrying into effect of the plan for improving and extending gas and electricity services is entrusted to a National Equipment Fund, the board of which is composed of representatives of the State and of the agencies concerned, three representing French Electricity, two French Gas, four the National Credit Council, and one the National Land Credit Fund. It should be noted that the trade unions are not directly represented on the board of the Fund though represented indirectly by reason of the fact that seats are allotted to the Electricity and Gas Boards and the National Credit Council, on which they are directly represented.
Certain countries of central Europe, such as Poland and Czechoslovakia, which provided for trade union representation on the committees appointed to advise the Government as to which industries should be nationalised, and the most suitable methods of nationalisation, have set up consultative machinery in each of the nationalised industries. As an example might be mentioned the National Coal Council in Hungary, which is presided over by the Minister of Industry and includes representatives of the competent Government departments and public institutions, and of the employers' and workers' organisations concerned. It gives advice on all questions referred to it by the Minister.

Supervisory bodies. Some bodies have been set up specially to supervise the application of legislation. This is the case in France and Czechoslovakia, where there are committees to supervise the banks. In France, the committee in question includes, in addition to representatives of the public authorities concerned, a representative of the most representative federation of bank employees. It exercises supervision through a study of bank returns and by means of enquiries, when necessary, and is endowed with disciplinary authority.

As in the case of insurance, there is also supervision over the free sector of banking activity (industrial banks). This is exercised by a Government Commissioner, assisted by a board of three persons, one to represent the most representative commercial and industrial organisations, one to represent the most representative trade unions, and one to represent public and semi-public financial agencies.

In addition, many of the bodies already mentioned, although not specially established for purposes of supervision, carry out certain functions of a supervisory nature; for example, the French National Coal Board, National Credit Council, Central Reinsurance Fund, and National Insurance Council.

Regional Bodies and Nationalised Undertakings.

According to the degree of centralisation, undertakings affected by nationalisation legislation have either been absorbed into larger scale administrative units, according to the geographical subdivisions established, or have to a great extent retained their previous administrative structure. In either case, the nationalisation legislation generally defines specifically the composition of the bodies responsible for managing the nationalised undertakings.
In the French coal industry, each coalfield is placed under a regional board (*houillère de bassin*), which is a public corporation responsible for production, operation and marketing. Each regional board is administered by an administrative council composed of nineteen members: six representing the National Coal Board, two representing industrial consumers, two representing domestic consumers, two representing the general interests of consumers, and seven representing the various grades of workers and employees, appointed by the most representative trade unions in the coalfield. The Director-General of each board is appointed by the Minister on the recommendation of the board itself.

In the electricity and gas industries there are electricity distribution departments and gas production and distribution departments for each region. These are administered by boards appointed by the national services. The boards are composed of four members representing the National Board, six representing the various grades of workers and employees, and eight representing consumers. The managers of the distribution departments are appointed by the boards on their own authority.

The chief deposit banks which have now been nationalised are managed by boards of twelve members appointed as follows: four chosen from persons actually engaged in industry, commerce or agriculture, appointed by the Minister of National Economy on recommendations from the most representative occupational organisations; four nominated by the most representative trade unions of the workers and employees concerned, two of these having to be chosen respectively from the higher grades and subordinate staff of the nationalised bank; four appointed by the Minister of Finance, two to represent public credit institutions and two chosen from among persons with a wide experience of banking. The President of each bank is elected by the board, subject to approval by the Minister of Finance.

The nationalised insurance undertakings are similarly managed by boards composed of a Chairman appointed by the Minister of Finance, after consultation with the board, and further members as follows: three appointed by the National Insurance Council for reasons of technical ability; three representing the State; three appointed by the most representative trade unions, to represent the employees, one to represent the senior staff and inspectors and one to represent agents; and three representing insured persons, appointed by the Minister of National Economy.
on the recommendation of the most appropriate national organisations of producers or consumers, according to the type of insurance done.

**Administration by Independent Public Boards**

In some countries employers' and workers' organisations do not take part directly in the management and administration of nationalised industries and undertakings. This is the case, for example, in Great Britain, where legislation has been based on the principle that nationalised industry, if it is to serve the general interest, effectively and exclusively, should be placed under the direction of independent persons who do not represent particular interests. It is, therefore, the Minister concerned who appoints the various members of the administrative or advisory boards provided for in the nationalisation Acts. Parliament has, however, defined the principles on which the Minister concerned is to base his selection; persons invited by him to become members of administrative boards for nationalised industries must be of recognised ability either in the industry concerned or in commercial, financial and industrial affairs generally; in the organisation of workers; in administration, or in applied science. In addition, some members of the administrative boards must be chosen from amongst employers and trade union leaders, on condition that they give up their organisational functions when taking up their new posts. In Poland and Hungary, the members of administrative councils are appointed by the Government, but a large number of trade union leaders and workers have in fact been given appointments on the councils of nationalised industries.

Among the bodies at present established in nationalised industries, a distinction can be made between those which exercise genuine managerial functions, those which protect the public interest in an advisory capacity, and those which ensure cooperation between the administrative authorities and the workers' organisations on questions affecting workers in the industry concerned.

**Administrative Boards.**

The Coal Industry Nationalisation Act of Great Britain establishes a National Coal Board with the duties of working the coal in Great Britain and of making coal available to consumers.
in such qualities, quantities and sizes and at such prices as it considers to be in the public interest.

The Board consists of a Chairman and eight other members, chosen by the Minister of Fuel and Power in accordance with the principles already described. The internal division of the Board comprises six main departments: Production, Research, Marketing, Finance, Manpower and Social Services, and Labour Relations. The Minister of Fuel and Power may, after consultation with the Board, give it directions of a general character as to the exercise and performance of its functions in relation to matters which appear to the Minister to affect the national interest.

The National Coal Board has set up eight regional divisions, each under a regional board. These boards are composed on substantially similar lines to the National Board, and are responsible in their respective regions for the same duties as the Board. They act as the executive agencies of the Board, and enjoy, within the terms of the Act, full authority and complete independence. They are themselves subdivided into zones, the number of which varies according to geographical situation and size of the collieries; there are 48 zones over the whole country, each under a manager.

The Electricity Act has established a central council known as the British Electricity Authority, with the duty of developing and maintaining an efficient, co-ordinated and economical system of electricity supply to all parts of Great Britain, except the North of Scotland District, which is subject to special regulations. For this purpose, Great Britain is divided into fourteen areas, each under an area board.

The central authority is constituted as follows: a Chairman and from four to six members, appointed by the Minister of Fuel and Power according to the principles already described; four of the chairmen of the area boards, appointed in rotation; and the Chairman of the North of Scotland Board.

Each area board consists of a Chairman and from five to seven members appointed by the Minister, after consultation with the central authority, from among persons having similar qualifications to those required for membership of the central authority, or having experience in local government. The Chairman of the consultative council of the area will also be a member of the area board.

The central authority will have the duty of generating and acquiring electricity; the area boards will plan and carry out
the efficient and economical distribution of electricity supplied to them by the central authority.

The United Kingdom Transport Act provides for the transfer to public ownership, as from 1 January 1948, of railways and canals, ports and harbours, and certain road transport undertakings, and sets up a central body known as the British Transport Commission, composed of a Chairman and from four to eight members appointed by the Minister of Transport in accordance with the general principles mentioned above.

The duties of the Commission are to carry goods and passengers by rail, road and inland waterway within Great Britain; to provide port facilities and facilities for traffic by inland waterway; to store goods; to provide hotels, hostels and other accommodation, and any other amenities and facilities it may consider expedient.

The Minister of Transport can give the Commission directions of a general character on matters affecting the public interest; he approves the main outlines of programmes for reorganisation or development involving substantial outlay on capital account, and programmes of vocational training.

The Commission is assisted in carrying out its functions by a number of executives, consisting of from four to eight members appointed by the Minister in agreement with the Commission. To these bodies the Commission delegates certain functions relating to the administration of particular branches of transport. The Act makes provision for a Railway Executive, a Docks and Inland Waterways Executive, a Road Transport Executive, a London Transport Executive, and a Hotels Executive; further executives may be set up as and when expedient.

Advisory Bodies to Protect the Public Interest.

The Nationalisation Acts in Great Britain provide in each case for the establishment of one or more committees on which users and consumers are directly represented; such committees have advisory powers and can enquire into any matter which is the subject of a representation made to them by the consumers, or which appears to them to be a matter to which consideration ought to be given apart from any such representation; or matters referred to them by the Minister concerned.

Thus, in the coal industry, the Act provides for the establishment of two consumers' councils, an Industrial Coal Consumers' Council and a Domestic Coal Consumers' Council. These have the duty of considering any matter affecting the sale or supply, whether
for home use or for export, of coal, coke or manufactured fuel; and if action appears to be called for, notifying their conclusions to the Minister.

The Act leaves the number of members to the discretion of the Minister, who is also responsible for appointing the individual members, both those representing the National Coal Board and those representing the various classes of consumers. In appointing the latter, the Minister must consult the representative organisations of the interests concerned.

In the case of electricity, the Act provides for the establishment of a consultative council in each of the fourteen areas under the area boards. The councils are composed of from twenty to thirty members appointed by the Minister concerned, after consultation with such bodies as he thinks fit, to represent local authorities, agriculture, commerce, industry and labour, and the general interests of consumers of electricity and other persons or organisations interested in the development of electricity in the area. The councils consider any matter affecting the distribution of electricity in the area, including variation of tariffs and the provision of new or improved services and facilities within the area. They report to the area board and are informed by the latter of its general plans and arrangements, so that the councils can make representations in respect of such plans.

The Transport Act provides for a Central Transport Consultative Committee for the whole of Great Britain, and for transport users consultative committees in a number of regions to be determined by the Minister. According to the character of the region, these consultative committees may include the users of both goods traffic and passenger traffic, or one or other of these two classes.

Each committee is composed of a number of members appointed by the Ministry of Transport, after consultation with the representative organisations, from among persons suitable to represent the interests of agriculture, commerce, industry, shipping, labour and local authorities, and in addition, a number of members appointed from among persons nominated by the Transport Commission.

The committees are authorised to study and, if they think fit, make recommendations in regard to any matter affecting the services and facilities provided by the Commission; their recommendations will be made to the Transport Commission, while those of the Central Consultative Committee will be brought to the notice of the Minister of Transport.
In Poland, it was thought desirable to provide permanent machinery for liaison between the managements of nationalised undertakings and the classes of the population concerned, and a measure of general application was enacted. The Decree of 3 January 1947 provides for the establishment of public control councils, which are attached to the management of State undertakings and may make recommendations. The limits of their competence and the manner of appointing their members are to be regulated by Order.

**Machinery for Co-operation with Trade Union Organisations.**

In the various nationalisation Acts in the United Kingdom, it is specifically laid down that the administrative boards must consult the trade unions on all questions relating to the establishment and maintenance of machinery for the settlement by negotiation of terms and conditions of employment, and for arbitration in industrial disputes.

The Coal Industry Nationalisation Act, which was the first in the series of nationalisation Acts, provides that it is the duty of the Coal Board to enter into consultation with the organisations appearing to them to represent substantial proportions of the persons in the employment of the Board for the conclusion of agreements providing for the establishment of joint machinery for:

1. the settlement by negotiation of terms and conditions of employment, with provision for reference to arbitration in default of such settlement;
2. consultation on all questions relating to the safety, health and welfare of workers and employees, and the organisation and conduct of the operations in which such persons are employed, and other matters of mutual interest to the Board and the employees.

The practical question of giving effect to such co-operation has been brought up at a number of conferences taking place under the auspices of the National Coal Board, the National Union of Mineworkers and the National Association of Colliery Managers. In November 1946 these organisations set up a joint body known as the National Advisory Council to give advice on all the above matters.

Similar provisions are contained in the Acts to nationalise electricity and transport.
CHAPTER III

CO-OPERATION AT THE NATIONAL LEVEL

The principle of co-operation between public authorities and employers' and workers' organisations for the solution of social and economic problems affecting the national life is now generally accepted. In many countries it forms the regular practice of Governments, while in others it is formally included in the provisions of the Constitution.

In Switzerland, the economic and social provisions of the Federal Constitution have been revised by a Federal Decree of 4 April 1946, accepted by the people and the cantons in a referendum held on 6 July 1947. Under the new Articles the Confederation is empowered to take measures to ensure the general welfare and economic security of citizens and to protect certain sections and occupations in the national economy. With these objects the Confederation may, when the general interest so requires and if necessary notwithstanding the principle of freedom of trade and industry, make provisions to protect any major sections of the national economy or occupations whose continued existence is threatened, though the parties concerned must themselves first take measures for mutual aid, and any legislation enacted by virtue of these Articles must further the development of groups based on mutual aid.

Moreover the Confederation, in consultation with the cantons and the private sector of the national economy, must take measures to prevent economic crises and, in case of need, to combat unemployment. In all such cases the economic groups concerned must be consulted in the preparation and execution of legislation, and may be called upon to co-operate in carrying out its provisions.

It should also be pointed out that the Confederation has power to legislate on relations between employers and workers or salaried employees, especially as regards the joint settlement of questions of concern to the undertaking and the occupation, and the exten-

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1 *Feuille fédérale*, 11 April 1946, p. 389.
tion of collective agreements or other agreements between associations of employers and workers with a view to promoting peaceful industrial relations.

The new Yugoslav Constitution makes it the duty of the State to direct the economic life and development of the country on the basis of a general plan, with the support of the private, State and co-operative sectors of the economy, while exercising a general supervision over private industry. Trade unions of workers and salaried employees are to co-operate in implementing the national plan and applying the system of economic supervision.

Provision is made in the Constitutions of several other States for special industrial co-operation machinery; details of a few recent examples are given below.

Under Articles 152-159 of the new Constitution of the Netherlands, machinery may be set up to organise certain occupations and industries, or certain groups of occupations and industries, and to organise occupational and industrial activities generally. Legislation can be enacted to give statutory powers to the appropriate bodies.

The French Constitution of 27 October 1946 set up an Economic Council which is to study proposed legislation and Bills within its competence and may be consulted by the Council of Ministers. It must in any case be consulted on the setting up of a national economic plan for full employment and the rational utilisation of material resources.

The National Economic Council provided for in the Brazilian Constitution of 18 September 1946 is to study the economic situation of the country and propose any necessary measures to the authorities.

The few examples mentioned above show that widely differing methods can be used to give effect to the principle of co-operation. The State may rely on steps taken by the individuals and organisations concerned; it may consult the organisations of workers and employers in the preparation and execution of social and economic legislation; or in other cases it may set up permanent bodies on which representatives of the public authorities work together with those of the other parties. These various methods will be examined in turn.

1 Constitution de la République fédérative yougoslave, Belgrade, 1946.
2 Staatsblad, 24 January 1947.
BIPARTITE CO-OPERATION

In several countries employers' and workers' organisations have taken the initiative in settling by mutual agreement certain questions which in other States are dealt with by legislation. The most outstanding example is provided by Sweden, where the joint Labour Market Board, officially recognised by the basic agreement of 1938 has, by a series of agreements, settled questions such as the organisation of safety services in undertakings, vocational training of workers, the setting up of works committees, etc. Agreements concerning works committees have also been made in Denmark and Norway. In all the above countries, bipartite organisations, such as the Labour Market Board in Sweden and the co-ordinating committees in Denmark and Norway, are responsible for co-ordinating the work of committees in individual undertakings on a national level and assisting them in carrying out their duties.

The Foundation of Labour set up in the Netherlands in 1945 is to ensure co-operation on a permanent basis between employers' and workers' organisations at both the national and industrial levels. The Foundation acts at the same time as part of the collective bargaining machinery and as an advisory body to the Government.

In France also the General Confederation of Labour and the National Council of French Employers acted on their own initiative and entered into direct negotiations on the economic and social questions of the moment. The general significance of the agreement made between them has already been noted, but we would add here that the discussions covered questions of wages and prices which were later dealt with by Government regulation. The parties decided to continue the discussions and extend them to other subjects of common interest, such as collective agreements, arbitration in industrial disputes, and so on.

In 1946 the Government of the United Kingdom reconstituted the National Joint Advisory Council, which had been set up in 1939 but was more or less superseded in 1940 by a smaller body, the Joint Consultative Committee to the Ministry of Labour. The Council includes 17 representatives of the British Employers'
Confederation and 17 representatives of the Trades Union Congress, and has the function of studying problems of industrial relations as a whole and in so far as they affect economic problems. The Joint Consultative Committee will henceforth act as a sort of executive committee of the Advisory Council, and will be available for consultation between the quarterly meetings of the latter.\footnote{Cf. I.L.O.: \textit{International Labour Review}, Vol. LIV, Nos. 5-6, Nov.-Dec. 1946, p. 369.} 

In the United States, a conference of representatives of the main employers' and workers' organisations was convened by the President in November 1945 to seek the most appropriate means for reducing the number and extent of labour disputes. Although the conference was unable to reach definite conclusions concerning all the questions submitted to it, it was able to reach agreement regarding methods for settling disputes arising out of the interpretation of collective agreements. It also set up a Joint Labor-Management Advisory Committee to study the most effective methods of settling labour disputes. At the end of its first year's work, the Committee issued a statement in which it upheld the principle of free collective bargaining and recommended that the United States Conciliation Service should carry out measures to ensure the greatest possible effectiveness of methods of mediation and voluntary arbitration.\footnote{\textit{Idem}, Vol. LV, Nos. 3-4, Mar.-Apr. 1947, p. 292.} 

\textbf{Consultation of Employers' and Workers' Organisations}

In most countries the Government or Parliament invites employers' and workers' organisations to give advice on particular social and economic problems, including the preparation of economic and social legislation and measures for its application.

Though not expressly referred to in legislation, this system is generally based on well-established practices. Before important decisions are taken on particular issues Governments endeavour to obtain the opinion of the organisations affected, and when discussing the relevant Bills Parliaments and Parliamentary Committees ask for the advice of representatives of such organisations. For example, the recent Australian Conciliation and Arbitration Amendment Act was discussed by the Government and employers' and workers' organisations before being laid before Parliament.\footnote{See above, Part III, Section 3, p. 120.}
In some countries the Government has convened full-scale conferences in which the representatives of the authorities and those of industrial organisations hold joint discussions on questions of national importance.

Thus, in Belgium, the Government has on several occasions convened a national labour conference under the chairmanship of the Prime Minister, which has included, in addition to the Ministers concerned, representatives of the most representative organisations of employers and workers. The conference has been called upon to give advice to the Government concerning its price and wages policy and other social problems of general importance.

In France, a National Prices and Wages Conference was held in July 1946 under the chairmanship of the President of the Council. In addition to the Ministers concerned, delegates from the most representative employers' and workers' organisations took part. The conference adopted several recommendations concerning the control of prices and wages.

In China, the recent amendment to the Trade Union Act was submitted for previous discussion to a conference of leaders of industry, trade union officials, industrial experts and Government representatives.

In Greece, a tripartite committee, consisting of representatives of the Government, the Employers' Federation and the Greek General Confederation of Workers, formulated, in November 1947, the principles governing wages policy.

The legislation of several States explicitly declares that employers' and workers' organisations are to be consulted in specified circumstances. There are, for example, the previously-mentioned provisions of the Swiss Constitution, requiring that the economic groups affected are to be consulted in the preparation of economic and social legislation and may be called upon to co-operate in applying it.

In some trade union legislation it is expressly stated that trade unions are entitled to represent the workers' interests in discussions with the authorities. The French Act, for example, provides that trade unions may be consulted on all questions within their competence. In Czechoslovakia, the Act of 16 May

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3 I.L.O.: *Legislative Series*, 1927, Fr. 3.
1946 on the organisation of a unified trade union movement gives the unions the right to submit proposals to the competent authorities in regard to the preparation or enactment of laws and regulations relating to social, economic and cultural matters.

In Poland, the Central Committee of the Trade Union Congress plays an active part in formulating general rules for the economic, social and cultural policy of the State.

There are many laws which specifically call for the assistance of employers' and workers' organisations in their execution, such as those relating to working hours, weekly rest, night work, social security, safety and hygiene, and so on. The general rules laid down by legislation must in fact be adapted to the special needs of the various branches of the economy and of particular occupational groups and regions. The organisations affected must, therefore, be consulted before relaxations or special rules can be authorised. In some cases it is even required that there should be previous agreement of employers and workers.1

**PERMANENT BODIES**

*Labour Councils*

Advisory labour councils have existed for many years in a number of countries. In some cases they take the form of national councils with general jurisdiction, in others that of industrial councils for particular branches of the economy, such as agriculture or the merchant marine. In yet other cases they are specialised councils for particular sections of social legislation, such as safety and health, social insurance, placement and vocational training of workers, etc.

Labour councils provide the classical example of permanent advisory bodies on labour legislation. In France and Belgium, such councils have existed since 1891 and 1892 respectively. The French National Labour Council, which was suspended at the beginning of the war, was reconstituted under the Act of 22 May 1946 2, though it has not yet resumed its functions. The

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Superior Commission for Collective Agreements is at present carrying out certain of its duties.

Among institutions of more recent date, mention may be made of the following:

In Chile, a Labour Council was set up in 1934, and, under a Legislative Decree dated 2 October 1942, as subsequently amended\(^1\), is composed of 25 members, including 8 employers' and 8 workers' representatives. The Council is to study the economic and social development of the country, and the living conditions of the workers, and give advice on proposed laws and regulations affecting social questions. It can also act as an arbitration board in respect of industrial disputes.

In Canada, in the Province of Quebec, a Superior Labour Council has been active since 1941. It is composed of 24 members, including 8 representing employers and 8 representing workers, appointed after consultation with the most representative employers' and workers' organisations. The Council is consulted on all questions of a social character, including proposed legislation within its competence.

Labour councils have been established in Greece in 1937\(^2\), in Egypt in 1945\(^3\), and in Iran in 1946\(^4\). In Turkey, a labour council met for the first time in April 1947, attended by representatives of the Ministries concerned and of employers and workers\(^5\).

In several countries there are chambers of labour on the lines of chambers of commerce and industry. In Austria, for example, where they had been abolished under the National-Socialist régime, the chambers of labour were re-established in 1945.

Following the example of the International Labour Organisation, several countries have set up a tripartite labour organisation or a national labour conference.

In India, the Tripartite Labour Organisation was set up in 1942\(^6\). It includes, in addition to Government representatives, equal numbers of delegates from the representative organisations of employers and workers; its principal machinery consists of a plenary conference and a permanent committee. The Organisation has the function of giving opinions on all industrial ques-

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\(^1\) I.L.O.: Legislative Series, 1942, Chile 2.
\(^2\) Idem, 1937, Gr. 7.
tions concerning the country as a whole and in particular on the unification and reform of labour legislation. Hence, it has co-operated in the preparation of the new legislation concerning labour disputes; and is at present considering the reform of existing trade union and factory legislation.

In Luxembourg, a tripartite National Labour Conference\(^1\) was set up immediately after the liberation for the purpose of assisting the Government in its task of economic reconstruction and of co-ordinating the work of national recovery; its duty is to study the economic and social development of the country and to give advice on proposed social legislation.

Advisory councils or similar bodies have been set up in several countries for particular branches of the economy such as, for example, agriculture (France, Venezuela), the merchant marine (Greece), or particular occupational groups such as handicraft trades (Austria), co-operatives (France) and home work (Argentina, Switzerland).

A very large number of such bodies have been set up to ensure co-operation between public authorities and employers and workers in the actual application of legislation. For this purpose central councils have been set up in a number of countries. In Finland, under the Act of 2 August 1946, the Labour Council has been given the duty of settling all questions arising out of the application of laws and regulations for the protection of labour. The Council is to be composed of not less than 8 members, the chairman and deputy chairman being independent persons and the remainder representing employers and workers in equal proportions, appointed after consultation with the central employers' and workers' organisations concerned.\(^2\)

In the field of social security, tripartite machinery has been set up in several countries, as for example the Superior Social Security Council in France\(^3\) and the National Insurance Advisory Committee in Great Britain.\(^4\) The duties of the French Council are both advisory and jurisdictional. The British Committee has essentially advisory functions; in particular, the competent Ministry must submit to it all draft executive orders before laying them before Parliament.

Special machinery has also been set up in a number of countries

\(^{1}\) I.L.O. : *Legislative Series*, 1944, Lux. 2.
\(^{2}\) *La législation et l'œuvre sociale en Finlande*, Ministry of Social Affairs, Helsinki, 1947, p. 86.
\(^{3}\) I.L.O. : *Legislative Series*, 1945, Fr. 14; 1946, Fr. 1. G.
for the study and solution of specific social and economic problems, such as safety and health, manpower, wages and prices. A few examples are given below.

In Belgium, an Order dated 11 February 1946 authorised the establishment of a Superior Safety and Health Committee. Joint district committees for safety and health can be set up in the various regions, and safety and health committees must be set up in all establishments.¹

In most countries the employment services are endeavouring to obtain the co-operation of employers' and workers' organisations in solving the manpower problem, and are setting up permanent machinery at both the national and industrial levels, and in some cases at the regional or local level, to assist in this task.²

Special machinery has been set up in a large number of States to study immigration questions (especially in the countries of Latin America), questions of recruitment of manpower (Czecho-slovakia), vocational training (France), etc. The manpower problem as a whole has been studied by all countries making a survey of their national resources and needs with a view to drawing up an economic reconstruction plan; in France, for example, a special manpower committee was set up by the Planning Commissariat to assist the latter in preparing the Monnet Plan.

We have already mentioned that the question of wages and prices has been discussed at bipartite or tripartite conferences in various countries, for example, Belgium, France and Greece. In addition, permanent bodies have been created such as wages councils (e.g., the National Wages Commission and the Superior Commission for Collective Agreements in France), wages and prices committees (Finland, Norway) and food and distribution committees (France, Czecho-slovakia), etc.

Economic Councils

National economic councils were set up in a number of countries after the First World War for the purpose of advising Governments and Parliaments on questions affecting the national economy.³ At the present day, there are economic councils in one form or

another in a very large number of countries: Argentina, Bulgaria, Canada, Chile, China, Costa Rica, Czechoslovakia, Finland, France, Greece, Hungary, Italy, Mexico, Norway, Poland, Romania, U.S.S.R., United Kingdom, United States, Venezuela and Yugoslavia.

In several countries these bodies are composed exclusively of experts. In the United States for instance, the Council of Economic Advisers established by the Employment Act of 1946 consists of three experts particularly qualified to assist the President in the preparation of the economic report which he has to submit annually to Congress under the provisions of this Act. In order to fulfil this task the Council may consult the representatives of industry, agriculture, labour, consumers, etc. A Joint Parliamentary Committee composed of seven members of the Senate and seven members of the House of Representatives has the duty of studying the development of production and employment, of examining programmes of economic coordination, and of guiding Congress in its preparation of related legislation.

The Production Council of Costa Rica, the Superior Economic Council in Greece and the Chinese Economic Council are, similarly, purely technical agencies in which employers' and workers' organisations are not represented.

In most countries, however, the employers' and workers' organisations are represented on the economic councils. It has in fact during recent years been primarily for the purpose of associating all groups concerned in production with the Government's programme that such councils have been set up, as for example in Canada (Province of Saskatchewan), Chile, Finland, France, Italy and Venezuela.

In France, for instance, 45 of the Council's 150 members are appointed by the most representative organisations of workers, 20 by the organisations of employers in industry, commerce and handicrafts, and 35 by agricultural organisations, etc.

The Argentine Economic and Social Council, set up in 1946, is attached to the technical secretariat of the President and is responsible for assisting the Government in its economic policy by giving advice on all questions within its competence which are referred to it by the secretariat. Employers and workers are represented in the plenary assembly of the Council and on its

standing committee. These representatives are appointed by the President. In addition, advisory committees of employers and workers can be set up by the Council, the employers’ and workers’ representatives on which are appointed by the President after consultation with the organisations concerned.¹

One of the characteristic features of the development of economic organisation in recent years is that the national economic councils are looked upon as agencies for co-ordination and constitute so to speak the apex of a pyramid of agencies existing in the various economic branches and the different geographical regions of the country.

Reference has already been made to the fact that the Hungarian production committees are placed under the supervision of a National Council for Industrial Production. The French National Economic Council has to co-ordinate the work of the many advisory committees which have been set up in late years, and in particular the advisory committees attached to the Ministry of Industrial Production. In Norway, the Economic Council is considered as the focal point of the national economic organisation, the production committees forming the lower ranks of the hierarchy and the occupational councils the middle ranks.

In the United Kingdom the National Production Advisory Council is supplemented by regional boards and district committees. The National Council consists of representatives of the Trades Union Congress and of the British Employers’ Federation, together with the chairmen of the regional boards. It is consulted by the Government on general problems of industry.

The regional boards consist of a chairman, representatives of the employers and trade unions concerned and representatives of Government Departments. They keep the Government advised with regard to industrial conditions within their regions and make suggestions respecting the fuller utilisation of each region’s resources in capacity or labour. The district committees, which include equal numbers of employers and workers, have to advise the regional boards with regard to industrial problems of the districts.

In all countries the duties of the economic council are mainly advisory. It has to study questions concerning the national economy and undertake enquiries, and may make recommen-

¹ Legislative Decree No. 2098/46, dated 1 July 1946, and Executive Order No. 23,209/46, dated 19 December 1946.
dations to the Government. In most cases it is required to examine Bills and proposed regulations of an economic character which the Government intends to bring before Parliament or which have already been submitted to Parliament.

Experience has shown that the economic council can only carry out its functions satisfactorily if it is properly integrated into the legislative process, that is to say, if its powers and duties and those of the Parliament and the Government are clearly defined.

With this in view the French Constitution gives the National Economic Council a well-defined place in the system of political institutions, and the Act of 27 October 1946 concerning the functions and composition of the Council defines its rights and obligations.¹

The Council is empowered to study Bills and proposed legislation relating to economic and social affairs, with the exception of the budget, and international conventions relating to economics and finance which have been submitted to the National Assembly for approval. Bills concerning the national economy may be submitted to it for its opinion, and it must be consulted when regulations are drawn up for the purpose of putting into force such Acts as have been submitted to it for an expression of opinion. It is empowered to deal with economic, social and financial questions, to initiate enquiries on such questions, to give opinions and to make suggestions.

The Council may be consulted on all questions concerning economic and social disputes; in certain cases it may be called upon to arbitrate, provided the parties to the dispute request it and the Ministers concerned agree.

When a Bill or draft legislation within the competence of the Council is under consideration, the opinion of the Council will be laid before the National Assembly by the Council Reporter, who will also state the opinions of the majority and the minority if the Council's opinion is not unanimous. The Council Reporter may also attend the deliberations of the Assembly, at the request of the competent committee or of the Minister concerned, in order to lay before it, if need arises, the opinion of the Council.

Economic Plans

During recent years an increasing number of countries have drawn up plans for the reconstruction of their national economies. Without entering into a detailed examination of this tremendous problem, it may be observed that all these plans seek to establish, on a priority basis according to urgency, certain objectives which the national economy must attain within a specific period (two, three, five years, etc.) and to indicate the measures which will enable the different branches of economy to produce a certain amount of goods or perform certain services within the periods described. Such plans have been adopted, for example, in Argentina, Bulgaria, China, Czechoslovakia, France, Hungary, Netherlands, Poland, U.S.S.R., etc. In Great Britain, a series of measures has been taken which, regarded as a whole, may be considered as the putting into effect of an economic plan.

It is clear that in an economy which is to a great extent nationalised an economic plan has very different functions from those which it has in a completely private enterprise system, or one where nationalisation only extends to certain sectors of industry. In the first case, it comprises a body of regulations which cover the national economic organisation at every level, while in the second case it merely establishes the guiding principles of the Government's economic policy. Naturally enough, the plan cannot be put into effect in either case unless all the factors of production co-operate, but the nature of such co-operation is fundamentally determined by the nature of the plan itself.

In the following paragraphs a few specially characteristic examples will be described.

In the U.S.S.R. all trade unions are incorporated into the State economic system and constitute one of the main organs in the working of the system. This, since 1929, has been based on a series of five-year plans, and the trade union organisation is closely associated in the preparation and execution of these economic plans. At the national level the Central Council of Trade Unions is represented on the Economic Council, while at the level of the industry and of the undertaking the trade unions are consulted by the competent authorities concerning any aspects of the plan which affect them, both in the preparatory stages and during the

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course of its execution. All parties concerned are obliged to carry out and if possible to go beyond the economic programme set out in the plan.

In Bulgaria, the two-year plan recently adopted by the National Assembly was prepared by the Supreme Economic Council. The Government directs and supervises the carrying out of the plan, and its decisions are legally binding on all persons or organisations concerned in the plan's execution, whether they are State establishments, organisations and undertakings controlled by them, or undertakings and private persons called upon to perform any function whatever connected with the execution of the plan. For example, employers are required, with the co-operation of workers' committees, to encourage enthusiasm for work, form shock brigades, introduce rationalisation measures and so on. The employers and the workers' organisations must regard it as part of their duty to see that working hours are properly observed and labour discipline strictly enforced.

In Hungary, an Order of 16 July 1947 has assigned the execution of the three-year plan adopted by Parliament earlier in the same month to an Economic Planning Council, to which there is also attached a Planning Office.

In addition to members proposed by the political parties composing the coalition Government, the Council includes members appointed on the recommendation of the Trade Union Council, the National Council of Agriculture, and the National Co-operative Centre. It directs the work of the Planning Office, which acts as its permanent secretariat and works out the details of the plan. The Council takes the necessary decisions on proposals submitted by the Office. If there should be disagreement between the Office and the Council, or the Council cannot reach a unanimous decision, the Council of Ministers, with the assistance of the Supreme Economic Council, has to give a final decision.

Heads of undertakings draw up production plans in accordance with the provisions of the general plan and submit them for approval to the Planning Office and to the Minister concerned.

In each establishment the execution of the plan is supervised by a planning delegate, appointed by the head of the undertaking.

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1 On the part played by collective agreements in the execution of the plan, see above, Part II, Section 2, p. 57.
2 Le plan économique biennal, Sofia, 1947.
from a list of names proposed by the works committee. The planning delegate makes regular reports to the Planning Office and gives all information concerning the putting into effect of the economic plan.¹

In Poland, a three-year plan has been drawn up by the Central Planning Office, which is attached to the Economic Committee of the Council of Ministers. The plan has been adopted by the National Assembly in the form of an Act, which requires undertakings in the nationalised sector of the economy to carry out the mandatory provisions of the plan, while co-operative undertakings are to draw up their own economic plans within the framework of the general plan, and private undertakings must follow its general directives within specified limits determined by legislation.²

A Decree of 3 January 1947 provides for the setting up of public control councils to supervise the working of State undertakings. The trade union organisations are to be represented on these councils. In addition, the works committees, which are virtually part of the trade union organisation, are instructed to "increase and improve the production of the undertaking in accordance with the general economic policy of the State".³

In Czechoslovakia, the unified Central Council of Trade Unions is represented on the National Economic Council and its committees, that is to say, on all machinery concerned in preparing economic plans and assisting the Government in putting them into effect. The Central Council is also represented in each Ministry and has a kind of watching brief over the progress of the economic plan.

On the industrial level the industrial federations keep close watch over the execution of the plan in the various economic branches. The executive committees of these federations include a number of trade union representatives. Finally, in all establishments the works committees, which are closely associated with the trade unions, "ensure that the economic activity of the enterprise or undertaking is carried on in harmony with the public economic interest", and "take part in drawing up the commercial and production plan and its execution... in harmony with the over-all national economic plan".⁴

According to an Act of 13 February 1947, all acts or omissions which might prejudice or hinder the carrying out of the plan are

² Plan de la reconstruction économique, Central Planning Office, Warsaw, 1946.
³ I.L.O.: Legislative Series, 1945, Pol. 2.
⁴ Idem, 1945, Cz. 1.
punishable offences. Strikes, however, do not fall within the scope of this Act.¹

In France, the four-year recovery plan, based on a survey of the resources and needs of the national economy, aims at fixing a production programme which the various industries must endeavour to carry out during the periods laid down in the plan. Such a task could not be carried out without the co-operation of all concerned, and the most representative organisations have therefore been associated with the Planning Commissariat which drew up the plan and is responsible for putting it into effect. The works committees must assist the employer in his efforts to increase production and are thus called upon to co-operate in reaching the targets laid down in the plan.

In Great Britain, no hard-and-fast plan has so far been adopted. The Government in fact pointed out in a recent publication that planning should be "as flexible as possible" and must not "destroy the essential flexibility of our economic life".² The main elements contemplated for the purpose of co-ordinating the national economy are as follows: (1) an organisation with enough knowledge and reliable information to assess national resources and formulate national needs; (2) a set of economic "budgets" to relate these needs to resources and enable the Government to say what is the best use for the resources in the national interest; and (3) a number of methods the combined effect of which will enable the Government to influence the use of resources in the desired direction without interfering with democratic freedoms.³

This plan was first discussed with the most important organisations of employers and workers and was then debated in Parliament. Since this debate the Government has appointed a Planning Commissioner with his own secretariat, and a Planning Council, to advise the Government on the most efficient use of the nation's economic resources. The British Employers' Federation and the Trades Union Congress are represented on the Council in equal proportions.⁴

The policy the Government intends to follow in carrying out its economic programme has since been discussed at further conferences. At a meeting held on 12 September 1947, Sir Stafford

¹ See above, Part III, Section 3, p. 122.
³ Ibid., pp. 5-6.
⁴ The Economist, 12 July 1947, p. 56.
Cripps, then President of the Board of Trade, discussed with trade union and employers' representatives the Government's programme for restoring the balance of trade: reducing imports, stepping up exports, increasing the output of certain essential industries and reintroducing control of engagement. The Minister emphasised the point that it was the Government's declared policy to make known to industry at each stage what the objective was and to discuss the tasks with the representatives of each industry in turn. He particularly stressed the need for speedy progress in setting up development councils and joint production committees to ensure the fullest consultation between the parties at every level of economic organisation.¹

In his speech in the House of Commons on 23 October 1947, the Minister of Economic Affairs re-emphasised the importance of a complete understanding and consultation throughout the whole national team, Government administration, industrialists, technicians, staffs and workers. "We have now, in our machine of planning, arrangements for that consultation in all the higher levels. That machinery must now be perfected right down to the floor of every factory. Nothing in my view is more important for raising our industrial morale to the high pitch which is necessary than this joint consultation among members of the team. Where it is working now, as it is in many production units, all parties are loud in their praise of the results."²

It becomes clear from the above that in the United Kingdom close and continuous co-operation between the public authorities and the employers' and workers' organisations is being ensured in the economic and social field. "Under a democracy the execution of the economic plan must be much more a matter for cooperation between the Government, industry and the people than of rigid application by the State of controls and compulsions."³

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¹ *Labour* (Official organ of the Trades Union Congress), October 1947, pp. 34, 35 and 45.
² *The Times*, 24 October 1947.
CONCLUSIONS

It will be remembered that at its 30th Session the International Labour Conference had before it, not only the problems connected with industrial relations which are reviewed in the first three parts of this report, but also the much wider problem of co-operation between employers' and workers' organisations and the public authorities. The Conference could not then discuss the substance of this question, but in view of its major interest for a very large number of countries at the present time, the decision was taken to place it on the agenda of the 31st Session for a first discussion.

This is indeed one of the most complex problems which could possibly come before the Conference, and it would therefore appear advisable to undertake its regulation by stages. Consequently, the appended questionnaire does not attempt to deal with all its aspects, but is in fact restricted to a consultation of Governments on points which are as a rule covered by national legislation and handled there in a more or less uniform manner.

As regards the question of co-operation in the undertaking, the statement of law and practice shows that in a very large number of countries some machinery for such co-operation has been established, either by agreement between the parties or by legislative action. This machinery is found under various titles — production committees, works committees, staff delegations, etc. Furthermore, experience indicates that the rules governing the establishment, operation and powers of these agencies may be regarded as sufficiently similar for the question to be already appropriate for international regulation by means of either a Convention or a Recommendation.

As regards co-operation at the industrial level, the national systems on which possible international regulations might be based are less numerous and less clear cut. Nevertheless, the parties directly concerned are feeling more and more strongly the need for the establishment of co-operation machinery at the industrial level (national industrial boards, etc.), which would directly supplement the activity of the works committees and
similar bodies. For instance, the international industrial committees on the iron and steel industry and on the metal trades, which met at Stockholm in August and September 1947 respectively, each adopted a resolution favouring the establishment — in their respective industries — of national agencies, a major function of which would be to facilitate implementation of the decisions of the industrial committees.

However, the status and powers of the national agencies vary so widely, in the countries where they have been established, that it does not appear possible at present to proceed to an international regulation of the matter by means of a Convention.

The same applies to machinery for co-operation established at the national level, in the form of economic councils, planning councils, national labour councils, etc. In some countries such bodies have powers of a purely advisory character, whereas in others they enjoy the power to initiate action and sometimes even to take decisions. In this field also it would appear that any international regulations must take the form of a Recommendation, at least as a first step.

In any case, it will not be possible to decide on the form and content of possible international regulations until after the replies of Governments to the questionnaires have been received.
QUESTIONNAIRES

I

CO-OPERATION AT THE LEVEL OF THE UNDERTAKING

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning co-operation between employers and workers in the undertaking, in the form of a Convention or of a Recommendation?

II. Establishment of Machinery for Co-operation

2. Do you consider that it should be provided in the international regulations that machinery for co-operation such as, for instance, works committees, production committees, staff delegations, etc., should be established, either by agreement between the parties or by legislation, in order to promote a gradual raising of the conditions of work and life of the personnel and a continuous improvement in the organisation of production?

III. Scope of the Regulations

3. Do you consider that it should be provided in the international regulations that machinery for co-operation should be established in all industrial and commercial establishments, public or private, ordinarily employing at least fifty persons?

IV. Appointment of Representatives of Personnel

4. (a) Do you consider that it should be provided in the international regulations that the representatives of the personnel for the purpose of co-operation in the undertaking should be elected by the whole of the personnel by direct secret ballot, or

(b) Do you consider that the representatives of the personnel should be appointed by the representative organisations of the workers?
V. Composition of Representative Bodies

5. Do you consider that it should be provided in the international regulations that the number of representatives of the personnel on the committees or other bodies for co-operation in the undertaking should be proportionate to the number of persons employed therein?

6. Do you consider that it should be provided in the international regulations that the different categories of persons employed in the undertaking — manual workers, salaried employees, technicians — should be represented on the said committees, etc.?

VI. Working of the Co-operation Machinery

7. Do you consider that it should be provided in the international regulations that the committees or other bodies for co-operation in the undertaking should meet whenever they have urgent questions to consider and in any case not less than once a month?

8. Do you consider that it should be provided in the international regulations that the said committees, etc., should be able to have the assistance of trade union representatives whenever their deliberations relate to matters for which such persons are competent?

9. Do you consider that it should be provided in the international regulations that appropriate action should be taken to secure close collaboration between the machinery for co-operation in the undertaking and the occupational organisations of the employers and workers concerned?

VII. Functions of the Co-operation Machinery

10. Do you consider that it should be provided in the international regulations that the machinery for co-operation in the undertaking should have more particularly the following functions of a social character:

(a) to secure application of collective agreements, social legislation and regulations regarding health and safety;
(b) to give an opinion regarding the engagement and dismissal of employees and their allocation to different jobs;
(c) to promote the vocational training of the different categories of employees;
(d) to set up and administer social schemes for the welfare of the employees and their families; and
(e) in general, to promote a good understanding between the management and the personnel?

11. Do you consider that it should be provided in the international regulations that the machinery for co-operation in the undertaking should have more particularly the following functions of an economic character:

(a) to inform the personnel regarding the economic and technical situation of the undertaking;
(b) to study any suggestion put forward by the management of the undertaking or by the personnel with the object of raising the level of production or improving the efficiency of the undertaking;
(c) to propose to the management the rewards to be granted to employees whose suggestions have been effectively applied;
(d) to study the methods of production used in the undertaking and to make proposals to the management regarding the best utilisation of its material and human resources?

VIII. Obligations of the Management

12. Do you consider that it should be provided in the international regulations that the management of an undertaking should be required:

(a) to place at the disposal of the committees or other bodies for co-operation in the undertaking the premises, material, and in appropriate cases the staff essential to its meetings or indispensable for its secretariat;
(b) to allow to the representatives of the personnel the time required for performance of their functions as such and to remunerate them for this time as hours of work;
(c) to consult the said committees, etc., on questions concerning the organisation and general conduct of the undertaking;
(d) to inform the said committees, etc., at regular intervals, but at least once a year, regarding the activity of the undertaking and the plans for the coming twelve months;
(e) where the undertaking is a limited company, to submit to the said committees, etc., the same documents as are submitted to the general meeting and more particularly the annual balance sheet and the profit and loss account?
IX. Obligations of Representatives of the Personnel

13. Do you consider that it should be provided in the international regulations that the representatives of the personnel chosen for cooperation should be required, within the limits laid down by national legislation, not to disclose confidential information which may be communicated to them by the management?

14. Do you consider that it should be provided in the international regulations that the representatives of the personnel should be required to give an account of their activity to the whole personnel at regular intervals but at least once a year?

X. Protection of Representatives of the Personnel

15. Do you consider that it should be provided in the international regulations that appropriate action should be taken to ensure that the representatives of the personnel are adequately protected in the performance of their functions?

XI. Application of the International Regulations

16. Do you consider that the international regulations should provide that effect may be given to their provisions:

(a) by means of legislation?

(b) by means of collective agreements?

17. If the reply to question 16 (b) is in the affirmative, do you consider that the international regulations should provide that States should be required to communicate to the Director-General of the International Labour Office information regarding the measures on the strength of which the regulations are applied, and particularly data regarding all collective agreements through which effect is given to the regulations and regarding the number of undertakings having such machinery for co-operation, the number of persons employed in these undertakings, and the distribution of the co-operation machinery by industry or occupation?

* * *

18. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation in the undertaking which has not been mentioned in the present questionnaire?
II

CO-OPERATION AT THE LEVEL OF THE INDUSTRY

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning co-operation at the level of the industry, in the form of a Recommendation?

II. Establishment of National Industrial Boards

2. (a) Do you consider that it should be recommended in the international regulations that joint national boards should be established on a permanent basis in the different branches of industry and commerce, either by agreement between the employers' and workers' organisations concerned or by legislation?

   (b) Do you consider that where there are several representative organisations of employers and of workers in the branch concerned, the representation of the workers on the board should be proportionate to the membership of such organisations?

III. Functions of National Industrial Boards

3. Do you consider that it should be recommended that the national industrial boards should have the function of taking all appropriate action:

   (a) to raise the standard of life of the workers;

   (b) to increase the level of production and the efficiency of the industry, and

   (c) in general, to examine the social, technical and economic problems of the industry or trade concerned?

4. Do you consider that it should be recommended in the international regulations that the national industrial boards should have the power to submit to the competent authorities opinions or recommendations on all questions of an economic or social character falling within their terms of reference?
IV. Co-operation in Nationalised Industries 
and those Established in the Public Services

5. Do you consider that it should be recommended in the international regulations that, where certain branches of economy have been nationalised, or established in the public services, all appropriate action should be taken to ensure close and permanent co-operation between the authorities responsible for the administration of the nationalised industries and the workers’ organisations concerned?

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6. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation at the level of the industry which has not been mentioned in the present questionnaire?

III

CO-OPERATION AT THE NATIONAL LEVEL

I. Desirability and Form of International Regulations

1. Do you consider that the International Labour Conference should adopt international regulations concerning co-operation at the national level, in the form of a Recommendation?

II. Consultation of Employers’ and Workers’ Organisations

2. Do you consider that it should be provided in the international regulations that the employers’ and workers’ organisations should be consulted during the preparation and implementation of economic and social measures of national scope?

III. Establishment of Machinery for Co-operation at the National Level

3. Do you consider that the international regulations should recommend the establishment, by legislative or other means, of national advisory councils of a social and economic character such as, for instance, national economic councils, national labour councils, etc.?
4. Do you consider that it should be provided in a Recommendation that the national advisory councils should include among their members an equal number of employers' and workers' representatives, either nominated directly by the representative organisations of employers and workers, or appointed by the competent authorities on the basis of proposals from these organisations?

IV. Functions of National Advisory Councils

5. Do you consider that it should be provided in a Recommendation that the national advisory councils should have more particularly the following functions:

(a) to study social and economic questions falling within their terms of reference, undertake the necessary investigations to this effect, and submit their opinions and recommendations to the competent authorities?

(b) to give a previous opinion on proposed legislation of an economic or social character falling within their terms of reference, and on proposed regulations to apply such legislation?

6. Do you consider that it should be provided in a Recommendation that the competent authorities should be required to submit to the national advisory councils, for their opinion, proposed legislation of an economic or social character falling within their terms of reference, and proposed regulations to apply such legislation?

V. Participation in Administration of Social Institutions

7. Do you consider that it should be provided in a Recommendation that the employers' and workers' organisations should be associated in the administration of national institutions, such as those responsible for social security, organisation of employment, industrial health and safety, and other forms of labour welfare?

* * *

8. Have you any proposal or suggestion to put forward on any point regarding the question of co-operation at the national level which has not been mentioned in the present questionnaire?