

International Labour Conference
58th Session 1973

(P)

101397



Report III
(Part 4B)

Freedom of Association and Collective Bargaining

**General Survey by the Committee of Experts
on the Application
of Conventions and Recommendations**



International Labour Office Geneva

09661/e



*Twenty-fifth Anniversary of the
Universal Declaration of Human Rights
10 December 1973*



International Labour Conference
58th Session 1973

Report III
(Part 4B)

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

**General Survey on the Application of
the Conventions on Freedom of
Association and on the Right to Organise
and Collective Bargaining**

Report of the Committee of Experts on the Application of Conventions and
Recommendations (Articles 19, 22 and 35 of the Constitution)/volume B

International Labour Office
Geneva 1973

The publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

CONTENTS

	Paragraph
CHAPTER I: <i>Introduction</i>	1-28
Background to the Survey	1-4
Developments since the Survey in 1959	5-9
ILO Action since 1959	10-20
Information Available	21
Content of the Conventions and Arrangement of the Survey	22-28
 Freedom of Association	 29-136
CHAPTER II: <i>Recognition of the Right to Organise</i>	29-49
Distinctions Based on Occupation or Employment	31-40
Public Servants and Workers in Public or Semi-Public Institutions or Under- takings	31-36
Agricultural Workers	37-40
Other Distinctions	41-49
Race	41-42
Nationality	43
Sex	44
Political Opinions, Affiliation or Activities	45-46
Employers	47-49
 CHAPTER III: <i>The Right to Establish Organisations Without Previous Authorisation</i>	 50-62
Cases Where Formalities are Not Required or are Optional	55-56
Cases Where Certain Formalities are Compulsory	57-62
 CHAPTER IV: <i>The Right of Workers and Employers to Establish and to Join Organisa- tions of Their Own Choosing</i>	 63-78
Structure and Composition of Organisations	64-67
Trade Union Monopoly	68-78
 CHAPTER V: <i>Rights and Guarantees Applicable to Workers' and Employers' Organisations</i>	 79-114
Drawing Up of Constitutions and Rules	80-82
Election of Representatives	83-98
Internal Administration	99-104
Activities and Programmes	105-114
 CHAPTER VI: <i>Right of Federation and Confederation and of International Affiliation</i> . . .	 115-122
 CHAPTER VII: <i>Suspension and Dissolution of Organisations</i>	 123-129
 CHAPTER VIII: <i>Trade Union Rights and Civil Liberties</i>	 130-136

	Paragraph
The Right to Organise and Collective Bargaining	137-169
CHAPTER IX: <i>Protection against Acts of Anti-Union Discrimination</i>	140-149
CHAPTER X: <i>Protection against Acts of Interference</i>	150-153
CHAPTER XI: <i>Promotion of Collective Bargaining</i>	154-169
Difficulties, Ratification Prospects and General Conclusions	170-212
CHAPTER XII: <i>Difficulties, Ratification Prospects and General Conclusions</i>	170-212
Difficulties and Ratification Prospects	170-171
Difficulties in the Application of Convention No. 87	172-181
Prospects for the Ratification of Convention No. 87	182-187
Difficulties in the Application of Convention No. 98	188-193
Prospects for the Ratification of Convention No. 98	194
General Conclusions	195-212
APPENDIX I: <i>Text of the Substantive Provisions of the Freedom of Association Conventions</i>	
APPENDIX II: <i>Reports Available</i>	

CHAPTER I

INTRODUCTION

BACKGROUND TO THE SURVEY

1. The last time the Committee of Experts was called upon to examine the reports furnished by governments under article 19 of the Constitution of the International Labour Organisation with regard to the freedom of association Conventions was in 1959. The Committee had already examined separately, on three previous occasions (viz. 1953, 1956 and 1957), the reports submitted on these instruments.¹

2. At its session in November 1970 the Governing Body of the International Labour Office considered that it would be appropriate to make the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the subject of reports to be supplied in 1972, in view of the fact that the questions of freedom of association, the right to organise and the promotion of voluntary collective bargaining, which are the subjects of these two instruments, are of fundamental and constant concern to the Organisation. In reaching its decision to request governments which had not ratified these Conventions to supply reports in 1972, in accordance with article 19 of the Constitution, indicating the position of their law and practice in regard to the standards contained in these instruments, the Governing Body recalled that, as usual, such request would be followed by a general survey of the existing position in all member States, whether or not they had ratified the Conventions, and would bring out the reasons which prevent their ratification or their full application. The Governing Body considered that this survey would also provide an incentive to possible further ratifications of these instruments and would thus be a response to the resolution adopted at the 54th Session of the Conference (June 1970) concerning trade union rights and their relation to civil liberties, in which the Conference strongly urged States which had not yet done so to ratify these Conventions or to apply the principles contained therein.

3. It is interesting to note in this connection that there has been an impressive increase in the number of ratifications of Conventions Nos. 87 and 98 since the general survey of 1959. Whereas at that time Convention No. 87 had been ratified by 36 countries, the number of ratifying countries is now 80; Convention No. 98, which had at that time been ratified by 40 countries has now been ratified by 93 coun-

¹ More recently, on the occasion of the fiftieth anniversary of the ILO, the Committee prepared a special survey under article 19 of the Constitution, based on the reports requested from governments on the freedom of association and other important Conventions indicating (a) the extent to which it is proposed to give effect to the terms of the instruments and (b) any difficulties which prevent or delay ratification (see ILO: *The ratification outlook after fifty years: Seventeen Conventions*, Geneva, 1969).

tries.¹ Three countries, namely Australia, Canada and Sri Lanka, have ratified one or both of these Conventions as recently as in 1972 and 1973. It should also be noted, however, that 22 of the 44 ratifications of Convention No. 87 which have been registered since 1959 represented the confirmation by newly independent States of the obligations previously accepted on their behalf by the countries then responsible for their international relations. With regard to Convention No. 98, the number of such cases is 18.

4. Certain difficulties have arisen in the application of the Conventions in the case of some countries which have ratified them; on the other hand, there are countries which, to a large extent, give effect to the terms of the Conventions without having been able to ratify them. The present survey intends to bring out the main problems and difficulties which arise in the application of the principles and standards embodied in the freedom of association Conventions as well as the problems which may prevent or delay the ratification of these Conventions by countries which have not yet done so. With this object, it is first of all important to consider some of the main developments which have taken place since the survey in 1959 and which have strong repercussions on trade unions and their activities.

¹ The Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), has been ratified by Albania, Algeria, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Bolivia, Bulgaria, Burma, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chad, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Lesotho, Liberia, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Senegal, Sierra Leone, Sweden, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Ukrainian SSR, USSR, United Kingdom, Upper Volta, Uruguay, Yugoslavia. With regard to Lesotho, this country has withdrawn from membership of the ILO, but it nevertheless continues to be bound by the Convention.

This Convention has been declared applicable without modification to 27 non-metropolitan territories: *Denmark*: Faeroe Islands, Greenland; *France*: (*Overseas Departments*) French Guiana, Guadeloupe, Martinique, Réunion; (*Overseas Territories*) Comoro Islands, French Polynesia, French Territory of the Afars and the Issas, New Caledonia, St. Pierre and Miquelon; *Netherlands*: Netherlands Antilles, Surinam; *United Kingdom*: Antigua, Bermuda, British Honduras, British Virgin Islands, Dominica, Falkland Islands (Malvinas), Gilbert and Ellice Islands, Guernsey, Jersey, Isle of Man, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia, Seychelles.

It has been declared applicable with modifications to six non-metropolitan territories: *United Kingdom*: Bahamas, Gibraltar, Grenada, Hong Kong, St. Helena, St. Vincent.

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by Albania, Algeria, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Central African Republic, Chad, China, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Democratic Yemen, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Lesotho, Liberia, Libyan Arab Republic, Luxembourg, Malawi, Malaysia, Mali, Malta, Mauritius, Mongolia, Morocco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Senegal, Sierra Leone, Singapore, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Tanzania, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, USSR, United Kingdom, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Zaire. With regard to China, see General Report of the Committee, Volume A, Part One, paras. 11 to 14. With regard to Lesotho, see above under Convention No. 87.

This Convention has been declared applicable without modification to 24 non-metropolitan territories: *Denmark*: Faeroe Islands; *France*: (*Overseas Departments*) French Guiana, Guadeloupe, Martinique, Réunion; *United Kingdom*: Antigua, Bahamas, Bermuda, British Honduras, British Virgin Islands, Brunei, Dominica, Falkland Islands (Malvinas), Gibraltar, Gilbert and Ellice Islands, Grenada, Guernsey, Jersey, Isle of Man, Montserrat, St. Kitts-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent.

DEVELOPMENTS SINCE THE SURVEY IN 1959

5. One important factor has been the continued movement towards national independence, resulting in quite a number of former non-metropolitan territories becoming independent countries with full control over their own legislation. Trade unions had been formed in these countries while they were still under foreign rule, and these organisations were usually associated with the political parties or movements fighting for independence. In many instances this resulted in unions retaining close political connections after independence, even to a point where such links may pose problems concerning the autonomy of trade union objectives and the capacity of trade unions to represent the interests of the workers in full independence.¹ Situations of this kind, and also in some cases the concomitant situation where a trade union monopoly is imposed by a government through legislation or other means, are particularly relevant to the question of freedom of association.

6. This is closely connected with the serious social and economic problems which developing countries have to face in a world of rising expectations. Governments in some of these countries consider that, in order to avoid any dispersal of the effort for national development, it is necessary to enforce certain restrictions on the free establishment of trade unions and the exercise of trade union rights.² It is also contended in other circles that freedom of association acts as a restraint on economic and social development. On the other hand, the question has also been raised as to whether any gains might in fact be obtained from restrictions on such freedom, and, if so, whether such alleged gains are not likely to be outweighed by a destruction of certain prerequisites for continuous development, such as incentive, initiative and flexibility. Furthermore, it has also been asserted that the denial of basic trade union rights invites violence, and that limitations on the freedom of individuals lead to discontent with the trade union movement itself, such a situation being harmful not only to the workers, but in the long run to society as a whole.³ Considerations of this nature can be applied not only to developing countries but also to those which are economically advanced.

7. On the other hand, there has been increasing recognition of the active and constructive part which workers' and employers' organisations should play in the development of the society to which they belong, and in particular their association in the formulation and implementation of social and economic development programmes. This recognition is embodied in the Consultation (Industrial and National Levels) Recommendation (No. 113), adopted by the Conference in 1960, which calls for the promotion of participation with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living. A clear trend is now discernible towards new and increased responsibilities for occupational organisations, which are not in themselves contradictory with the more traditional functions of the organisations in the furtherance and defence of the interests of their members. On the contrary, it has been stressed that these interests can be served by the full participation of occupational organi-

¹ ILO: *Report of the Director-General, Report I (Part I)*, International Labour Conference, 45th Session, Geneva, 1961, pp. 87, 88.

² Idem: *The ILO and human rights*, Report of the Director-General (Part I), International Labour Conference, 52nd Session, Geneva, 1968, p. 37.

³ Ibid., p. 38.

sations in the task of development, which should in turn ensure an equitable distribution of the fruits of such development.¹

8. The mounting complexity of social and economic problems in both the developing and in the economically more advanced countries requires continuous dialogue between governments and the social partners. If national policies are to be applied with success, they have to be understood and supported, and for this purpose the participation of employers' and workers' organisations in the framing of such policies is a condition precedent. The trade unions, for their part, have repeatedly expressed their acceptance of this new responsibility, which complements their traditional role of merely endeavouring to participate in the distribution process. They have stressed, however, that this responsibility can be met only if the organisations are sufficiently independent, strong and well organised. If the unions are to play their role constructively and efficiently, they must have the status and the opportunities which are commensurate with that role.²

9. It is in the light of these considerations that respect for freedom of association acquires an additional dimension. The observance of trade union rights is no longer a requirement limited to the protection of the freedom of individuals, employers and workers to organise among themselves, and to the promotion of constructive labour-management relations, but an essential element in the fulfilment of the participative role assigned to trade unions in social and economic development. Furthermore, it may often be necessary for governments to go beyond the sole recognition of the basic principles of freedom of association and to follow an active policy aimed at encouraging and strengthening the development of an independent trade union movement as an essential part of society.

ILO ACTION SINCE 1959

10. Freedom of association and the protection of trade union rights form part of the basic human rights which the ILO has assumed a solemn obligation to further among the nations of the world. Since the General Survey of the Committee in 1959, the ILO has greatly increased its efforts in this field.

11. The Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), has recognised the role of workers' and employers' organisations in economic and social development. The Termination of Employment Recommendation, 1963 (No. 119), contains provision for the protection of workers in the case of termination of employment and establishes, in particular, that union membership

¹ ILO: *Report of the Director-General, Report I (Part I)*, International Labour Conference, 49th Session, Geneva, 1965, p. 19.

² In addition to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), one should also recall, in this connection, the resolution on the concept of democratic decision making in programming and planning for economic and social development, adopted by the International Labour Conference in 1964. As regards regional conferences, see, for example, the resolution on participation of employers' and workers' organisations in economic and social development (Ninth Conference of American States Members of the ILO, Caracas, 1970) and the resolution concerning freedom of association for workers' and employers' organisations and their role in social and economic development (Seventh Asian Regional Conference of the ILO, Teheran, 1971). With regard in particular to the position of workers' organisations as to their role in economic development, see for example the discussion in ICFTU-ARO (International Confederation of Free Trade Unions-Asian Regional Organisation), *Trade unions, governments and economic development in Asia* (Memorandum submitted at the time of an informal meeting between leaders of Asian Governments and of trade union movements in Asia, Bandung, Indonesia, September 1970).

or participation in union activities outside working hours or, with the consent of the employer, within working hours, and seeking office as, or having acted in the capacity of, a workers' representative, should not constitute valid reasons for termination of employment. The Communications Within the Undertaking Recommendation, 1967 (No. 129), provides for consultation of workers' and employers' organisations in encouraging and promoting the acceptance of communications policies and their effective application, and the participation of union representatives in communications systems. The Examination of Grievances Recommendation, 1967 (No. 130), provides for the participation of employers' and workers' organisations in the establishment and implementation of grievance procedures, and for assistance to workers by trade union representatives in the examination of grievances. The Workers' Representatives Convention, 1971 (No. 135), and Workers' Representatives Recommendation, 1971 (No. 143), provide for the basic protection of workers' representatives (including trade union representatives) against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

12. The resolution concerning trade union rights and their relation to civil liberties, adopted by the Conference in 1970, recognises that the rights conferred upon workers' and employers' organisations must be based on respect for those civil liberties which have been enunciated, in particular, in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights, and states that the absence of these civil liberties removes all meaning from the concept of trade union rights. The resolution places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organisations.

13. The application of the freedom of association Conventions is subject to the normal ILO procedures applicable to all Conventions. These include supervision by the Committee of Experts on the Application of Conventions and Recommendations, and the Conference Committee on the Application of Conventions and Recommendations, which examine the reports submitted periodically by governments having ratified these Conventions, and the procedures for the examination of complaints provided for in articles 24 and 26 of the ILO Constitution, which are applicable to all ratified Conventions. Special machinery has also been established for cases of complaints of infringements of trade union rights which can be referred to the Governing Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association. The Committee on Freedom of Association established in 1951 is the only body which meets on a regular basis, whereas the other complaints procedures function on an ad hoc basis. Since 1959, the Committee on Freedom of Association has dealt with approximately 500 cases, in which it has taken a series of decisions covering most aspects of freedom of association and the protection of trade union rights. This Committee has considered it appropriate that, in discharging the responsibility entrusted to it, it should be

guided, among other things, by the provisions of the Conventions on freedom of association, which afford a basis for comparison when particular allegations are being examined. It is the mandate of the Committee to propose to the Governing Body to draw the attention of the governments concerned to the anomalies which it has noted in each case, with a view to steps being taken to remedy the situation. The Committee's procedure is kept under constant review and recently, in the resolution concerning trade union rights and their relation to civil liberties, mentioned above, the Governing Body was invited¹ to undertake all efforts with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights. In response to this request the Committee, in November 1971, introduced, with the approval of the Governing Body, amendments in its procedure mainly to follow up the action that has been taken in specific cases in the light of its decisions or recommendations.

14. Also in accordance with the request made by the International Labour Conference in the above resolution the decisions taken by the Committee on Freedom of Association, since its inception, have been published in the form of a digest.²

15. Unlike the Committee of Experts, which normally deals with the law and practice in ratifying countries, the Committee on Freedom of Association can also examine cases concerning countries which have not ratified the freedom of association Conventions. The procedure of the Committee makes it possible to consider and make comments on the application of the principles embodied in the Conventions not only in connection with complaints relating to the law and practice of the countries concerned, but also in regard to specific factual situations arising out of the complaints.

16. In the period since 1959 the Fact-Finding and Conciliation Commission functioned for the first time since its establishment in 1950.³ In 1964 and 1965 it was called upon to examine complaints submitted against the Governments of Japan and Greece respectively.⁴ In the case of Japan, following the work carried out by the Commission, Convention No. 87 was ratified by the Government. The recommendations made by the Commission in the case of Japan continue to constitute a basis for the discussion of a number of trade union questions in the public sector of that country, and the findings of the Commission have often been used subsequently as reference material by ILO supervisory bodies in more recent matters concerning Japan. At its session in February–March 1973 the Governing Body nominated a Panel of the Fact-Finding and Conciliation Commission with a view to the examination of allegations of infringements of trade union rights in Lesotho.

17. In the period under review, a Commission of Inquiry was established under article 26 of the ILO Constitution to examine complaints concerning the observance by Greece of Conventions Nos. 87 and 98, made by a number of delegates to the

¹ Resolution concerning trade union rights and their relation to civil liberties (para. 14).

² *Freedom of association—Digest of decisions of the Freedom of Association Committee of the Governing Body* (ILO, Geneva, 1972).

³ Established by the Governing Body in January 1950 by arrangement with the United Nations Economic and Social Council, and composed of independent persons. Unlike the Committee on Freedom of Association, the Commission may only intervene—in the case of countries which have not ratified the Conventions on freedom of association—after the consent of the government concerned has been secured.

⁴ The relevant reports were published, respectively, in ILO: *Official Bulletin*, Vol. XLIX, No. 1, Special Supplement, Jan. 1966, and Vol. XLIX, No. 3, Special Supplement, July 1966.

52nd Session of the International Labour Conference.¹ In its report the Commission of Inquiry stated its findings on a series of measures taken by the Greek Government against a number of trade unions and their leaders and also on various aspects of trade union legislation, and issued recommendations as to the steps which it considered should be taken to meet the complaints.

18. There is a definite link between all these special procedures and the work of the Committee of Experts, particularly in the case of ratified Conventions. For example, whenever appropriate the Committee on Freedom of Association takes account of the conclusions of the Committee of Experts, and it also brings its own conclusions to the attention of this Committee, in order to ensure that a matter is properly followed up under the normal supervisory procedure. Thus, in the case of Greece, the Commission of Inquiry, having set out its findings, recommended, inter alia, that as a follow-up procedure, the Government should indicate regularly in its reports under article 22 of the Constitution of the ILO (concerning the measures taken by it to give effect to the provisions of the Conventions) the action taken during the period under review to give effect to its recommendations. The Committee of Experts, having considered these findings and recommendations, endorsed the views of the Commission of Inquiry and continued to examine the situation in Greece in the light of further developments and the reports submitted by the Government.² The situation in Greece has also been followed up by the Conference Committee on the Application of Conventions and Recommendations and by the Governing Body.

19. Another special procedure was employed following various complaints submitted to the Committee on Freedom of Association against a non-ratifying State (Spain). This procedure consisted in the appointment by the Governing Body of the ILO, on invitation of the Government, of a Study Group composed of independent persons, which made an over-all legal and factual survey of the labour and trade union situation in the country concerned.³ The Study Group also put forward a number of suggestions regarding the trade union situation in the light of the principles of freedom of association as contained in the Constitution of the ILO.

20. In its General Survey of 1959 the Committee expressed the view that it would be extremely useful for separate studies to be undertaken on certain particular aspects of national legislation relating to trade union organisations. A number of such studies have been carried out by the ILO.⁴ Further comprehensive studies and reports are to be prepared in accordance with the wish expressed by the Conference in the resolution concerning trade union rights and their relation to civil liberties, on matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO. Such studies and

¹ The report of the Commission was published in ILO: *Official Bulletin*, Vol. LIV, No. 2, Special Supplement, 1971.

² See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part A), International Labour Conference, 56th Session, Geneva, 1971, pp. 121–123 and 145–146; See also reports of the Committee of Experts, 1972, pp. 154–157 and 185 and 1973, Part Two, under Conventions Nos. 87 and 98 (Greece). References to the reports of the Committee of Experts are hereafter indicated by the abbreviation “RCE”, followed by the year.

³ ILO: *Report of the Study Group to examine the labour and trade union situation in Spain*, (*Official Bulletin*, Second Special Supplement, Vol. LII, 1969, No. 4).

⁴ ILO: *The protection of trade union funds and property*, Studies and Reports, New Series, No. 58 (Geneva, 1960); *Eligibility for trade union office* (Geneva, 1972); “Public authorities and the right to protection of trade union funds and property” (not yet published).

reports would have in view the consideration of further action to ensure full and universal respect for trade union rights in their broadest sense. In this resolution the Conference added that, for this purpose, particular attention should be given to the following questions: right of trade unions to exercise their activities in the undertaking and other workplaces; right of trade unions to negotiate wages and all other conditions of work; right of participation of trade unions in undertakings and in the general economy; right to strike; right to participate fully in national and international trade union activities; right to inviolability of trade union premises as well as of correspondence and telephone conversations; right to protection of trade union funds and assets against intervention by the public authorities; right of trade unions to have access to media of mass communication; right to protection against any discrimination in matters of affiliation and trade union activities; right of access to voluntary conciliation and arbitration procedures; and right to workers' education and further training.

INFORMATION AVAILABLE

21. The present survey is based both on reports supplied under article 19 of the ILO Constitution by countries which have not ratified the Conventions concerned and on the reports supplied under article 22 of the Constitution by countries bound by these instruments. The total number of reports supplied under article 19 is 31 in respect of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and 19 in respect of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Detailed information regarding the countries which have supplied these reports, as well as of the countries for which information has been available in reports supplied under article 22, will be found in Appendix II to this survey. The total number of countries whose reports have been taken into consideration in the preparation of this survey is 113.¹ The Committee, in addition to examining the information contained in the reports, has also sought to take account of relevant legislation and practice. In nine cases it noted comments which had been made by workers' organisations.²

CONTENT OF THE CONVENTIONS AND ARRANGEMENT OF THE SURVEY

22. It is proposed to examine the available material in relation to the basic aspects of freedom of association and trade union rights as covered by the two Conventions.³

23. The first aspect is dealt with entirely in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it concerns the free exercise of the right to organise in relation to the public authorities. Essentially, the Convention contains four guarantees. The first aims at ensuring to all workers and employers the right to establish and to join organisations of their own choosing

¹ No information has been made available by the following countries: Burundi, China, Laos, Lebanon, Nepal, Thailand, Yemen.

² With regard to Convention No. 87: Austria, Barbados, Federal Republic of Germany, Japan, Pakistan. With regard to Convention No. 98: Austria, Barbados, Greece, Japan.

³ The substantive Articles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are reproduced in Appendix I to this survey.

without previous authorisation. The second guarantee protects the right of the organisations to draw up their constitution and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. The third guarantee safeguards the organisations against suspension and dissolution by administrative authority. Fourthly, there is the guarantee afforded to organisations to establish and join federations and confederations and to affiliate with international organisations of workers and employers. Federations and confederations are entitled to the same guarantees as their constituent organisations.

24. Two safeguards are added by the Convention. With regard to the legal personality of the organisations, federations and confederations, the Convention establishes that its acquisition shall not be made subject to conditions of such character as to restrict the guarantees outlined above. On the question of legality, it is provided that in exercising the rights set out in the Convention workers and employers and their respective organisations shall respect the law of the land; but in turn, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees established in the Convention.

25. The two other aspects of basic trade union rights are covered in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); these concern in particular the exercise of the workers' right to organise in relation to the employers and the promotion of voluntary collective bargaining. The Convention contains specific provisions for the protection of individual workers against acts of anti-union discrimination in their employment; as regards workers' organisations, it aims at ensuring adequate safeguards against interference by employers. The right to bargain collectively is dealt with in a provision calling for the adoption of measures appropriate to national conditions, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or their organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

26. The present survey will endeavour to ascertain to what extent national law and practice meet the principles and standards set out in the Conventions under consideration. In doing so, it is proposed to examine the scope and purpose of these principles and standards, to analyse some of their multiple aspects in the light of the information available and, at the same time, to indicate the nature of the problems encountered in regard to their implementation.

* * *

27. One member of the Committee, Mr. Gubinski, stated that he insisted on the fact that he could not associate himself with the Committee's observations regarding the application of the Freedom of Association Conventions in several socialist countries, since, in his opinion, account should be taken of the economic and social systems existing in these countries. If these matters were satisfactorily taken into account, the functions fulfilled by the trade unions in numerous social fields would become apparent, as well as the conformity of the trade union situation with the principles laid down in international labour Conventions. Mr. Gubinski also stated that, in his opinion, the interpretation given by the Committee to certain legal texts was questionable, in particular, that given to article 126 of the Constitution of the USSR concerning the right to establish social organisations.

28. The Committee wishes to emphasise, as it has done with reference to similar views expressed by Mr. Gubinski on earlier occasions regarding the application of

the freedom of association Conventions in certain socialist countries, that in compliance with its terms of reference, while noting the various political, economic and social conditions in different countries, it is not called upon to express any view concerning the systems of different countries, but simply to examine, from a purely legal point of view, to what extent countries give effect in their legislation and practice to the provisions of international labour Conventions. The Committee has also, in making the present survey, proceeded in this manner.

FREEDOM OF ASSOCIATION

CHAPTER II

RECOGNITION OF THE RIGHT TO ORGANISE

29. The first question to be considered in regard to freedom of association concerns the extent to which recognition has been granted to the basic right of workers and employers to organise for occupational purposes, in other words, using the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the right of workers and employers to establish and join organisations for “furthering and defending” their interests (Article 10). According to the Convention, this right shall be guaranteed to all workers and employers “without distinction whatsoever” (Article 2). The only exception to this general principle is that established in Article 9 of the Convention, which permits States to determine the extent to which the guarantees provided for in the Convention shall apply to members of the police and armed forces. In order to leave no doubt as to the real significance of Article 2, it should be noted that it was clearly indicated during the preparatory work of the Convention that freedom of association was to be guaranteed not only to workers and employers in private industry, but also to public employees, and without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.¹ This explanatory statement, from which it follows that the Convention applies to all individuals working for their livelihood, constitutes a basic guideline in examining the compatibility of national law and practice with the right to organise for occupational purposes as it is recognised in this instrument.

30. Generally speaking, the vast majority of countries recognise the right to organise of most, if not all, of those categories covered by the Convention. In some countries, legislation to this effect has been adopted very recently², and it is only in a few countries that trade union rights are not yet recognised³ or that the legislation has no practical application.⁴ However, even in countries where the right to organise is generally recognised, certain distinctions have sometimes been made with regard to specific occupations or categories of individuals. This situation will first be examined having regard to the particular aspects of each case. At this stage the discussion will concern only the question of the extent to which the right to organise is or is not recognised for certain occupations or classes of individuals. Later in the study consideration will be given to some special problems which exist in regard

¹ ILO: *Record of Proceedings*, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, 1948), p. 570.

² For example Khmer Republic.

³ For example Afghanistan.

⁴ For example Burma. According to the information supplied by the Government, the Trade Unions Act of 1926 has neither been repealed nor amended, but it is not resorted to because of the strict application of the 1964 law defining the fundamental rights and responsibilities of the People's Workers' Councils.

to those occupations where the workers concerned have the right to organise, but where this right is subject to qualifications or restrictions of different kinds.

DISTINCTIONS BASED ON OCCUPATION OR EMPLOYMENT

Public Servants and Workers in Public or Semi-Public Institutions or Undertakings

31. The right to organise of public servants is now widely recognised, either under the legislation applicable to workers in general or under special enactments relating to government servants. The legal framework within which public officials are allowed to organise usually depends on national circumstances and it is irrelevant from the point of view of freedom of association whether or not this legislation is the same as that applied to other workers, provided that all the guarantees of the Convention are respected, both in law and in fact. What is important is that this category of workers may establish organisations for the specific purpose of furthering and defending the occupational interests of their members, and that these organisations are granted all the rights recognised in the Convention.

32. The most usual form in which legal expression is given to the right of public servants to organise is through their inclusion, either directly or by means of special provisions, in the law applicable to trade unions.¹ In all the countries concerned public servants are thus covered by the same law as workers in the private sector, although sometimes specific exceptions have been made with regard to particular aspects of the right to organise. In some other countries the right to organise of public servants is regulated by a set of more or less comprehensive provisions contained in public service statutes or other special legislation.²

33. There are several countries³ where the right to establish trade unions is still denied to public servants (usually by excluding them from the general labour

¹ This is the case, for example, of Argentina, Australia, Austria, Bulgaria, Byelorussian SSR, Central African Republic, Chad, Colombia, Costa Rica, Cuba, Czechoslovakia, Cyprus, Dahomey, Denmark, Finland, France, Federal Republic of Germany, Gabon, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Kenya, Luxembourg, Malaysia, Netherlands, Norway, Philippines, Poland, Senegal, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Ukrainian SSR, United Kingdom, Uruguay, USSR, Yugoslavia.

² For example, Belgium (Royal Decree of 20 June 1955), Cameroon (Decree No. 69-DF-7 of 6 January 1969), Canada (Public Service Staff Relations Act, 1970), Greece (Act No. 4879 of 1931 as amended by Presidential Decree of December 1931 and Act No. 5403 of 1932), Japan (National Public Service Law, 1947, as amended, Rule No. 74-2 of the National Personnel Authority, and Local Public Service Law, 1955, as amended), Mexico (Federal Law for Workers in the Service of the State, 1963), Trinidad and Tobago (Civil Service Act No. 29 of 1965, Education Act No. 1 of 1966), United States (Executive Order No. 11491 of 29 October 1969, as amended by Executive Order No. 11616 of 26 August 1971, with regard to federal employees), Venezuela (Regulations concerning Trade Unions of Civil Servants, 1971).

³ For example, Bolivia (General Labour Law of 1939, section 103), Brazil (Consolidated Labour Laws, section 566), Dominican Republic (Labour Code, section 3; Act No. 2059 of 1949, as amended by Act No. 269 of 1966), Ecuador (Civil Service Law, section 10), El Salvador (Labour Code, section 3), Ethiopia (Labour Relations Proclamation, 1963, section 2), Jordan (Labour Act, 1971), Liberia (Labour Practices Law, section 4700), Nicaragua (Labour Code, section 9), Peru (Supreme Decree No. 009 of 1961; Civil Service Law No. 11377), Portugal (Legislative Decree No. 23048), Spain (Trade Union Act, 1971, section 7), Turkey (articles 46 and 119 of the Constitution), United States (in the case of certain states; however, a federal court held that public employees had a constitutionally protected right to join a labour union (*State, County and Municipal Employees vs. Woodward*, 406 F2 137-8th Circuit, 1969)). In Chile, where public servants are denied the right to organise (Labour Code, section 368), a recent enactment (Law No. 17.549 of 1972) made it possible to grant legal personality to a national organisation of government employees which had been in existence for many years carrying out trade union activities.

legislation), although, in practice, organisations fulfilling similar functions may have been established in some of these countries under the general legislation, which, however, does not always afford the specific guarantees provided for in the Convention. In these countries a clear recognition of trade union rights in respect of public servants would contribute to solving the problems with which this category of workers is confronted in furtherance of their occupational interests. In a few of these countries the right to organise is also denied to workers in public undertakings¹ or public institutions.²

34. The right to establish or to belong to trade unions is sometimes only denied to public servants employed at the higher levels of the administration and some of their supporting staff, that is, public servants occupying managerial, supervisory or confidential positions.³ This does not always exclude their right to associate or group together, even for the purpose of protecting their occupational interests, but without the guarantees afforded by the trade union legislation applicable to public servants in general.⁴

35. Special categories of public servants which are sometimes excluded from the right to establish trade unions are the personnel of the fire service⁵ and more often prison staff⁶, the latter being assimilated in a number of countries, for the purposes of the right to organise, to the police. In some countries, however, special statutes dealing with the conditions of employment of one or other of these categories provide that the workers concerned may form government-approved staff associations, although such associations cannot be registered as trade unions and are not subject to the ordinary trade union legislation.⁷

36. With regard to the armed forces and the police—the only categories which may be excluded from the guarantees of the Convention—while the right to organise is usually not recognised, there exist important exceptions, especially as regards members of the police.⁸

¹ For example, Liberia (Labour Practices Law, section 4700), Peru (Supreme Decree of 12 November 1945; Supreme Decree 009 of 1961). In Chile the same situation as that described above also applies to workers in public undertakings.

² For example, Brazil (Consolidated Labour Laws, section 566). In El Salvador, where public servants do not have the right to organise, a specific exception is made with regard to workers and employees in autonomous and semi-autonomous public institutions (Labour Code, section 3).

³ This is the case, for example, in India, Mexico, Singapore, Sri Lanka and Tanzania. In Mexico, where public officials employed in posts of confidence are excluded from the Federal Law for Workers in the Service of the State, such posts are specifically enumerated and the list includes positions such as those of directors, assistant directors, chiefs and assistant chiefs of departments, offices and sections, inspectors, technical staff, legal and technical advisers, labour conciliators, school directors, auditors, treasurers, supervisors and administrators of various types and certain secretarial staff. In Singapore public servants who hold appointments in the managerial grade may be required as a condition of appointment, transfer or promotion, to resign from trade union membership.

⁴ For example, in Mexico (see ILO, Joint Committee on the Public Service: *"Freedom of association and procedures for staff participation in determining conditions of employment in the public service"*, Geneva, 1970, pp. 15 and 16).

⁵ For example, in Cyprus, Japan, Nigeria and Sudan.

⁶ For example, in Japan, Malaysia, Mexico, Pakistan, Sri Lanka, Sudan, Tanzania and Uganda.

⁷ For example, Trinidad and Tobago (Prisons' Service Act, 1965 and Fire Service Act, 1965) Uganda (Prisons' Ordinance No. 2 of 1958).

⁸ With regard to the armed forces, the right to organise (although sometimes subject to certain limitations) is recognised in countries such as Austria, Denmark, Finland, Federal Republic of Germany, Luxembourg, Norway, Sweden, United Kingdom. As for members of the police, this right (with the same proviso) is recognised, for example, in Australia, Austria, Belgium, Central

(Footnote continued overleaf)

Agricultural Workers

37. The right to organise of agricultural workers is usually recognised in law, but the extent of their organisation is less developed than that of industrial workers and, in some cases, non-existent.¹ From the information available, it would appear that the difficulties which such workers encounter stem from a combination of circumstances rather than from the law itself.

38. Particularly in developing countries, a distinction must be drawn between workers on plantations and other persons engaged in agriculture, such as independent small farmers, sharecroppers, tenants and peasants on estates of the traditional type, all of which workers are covered not only by Convention No. 87 but also by the Right of Association (Agriculture) Convention, 1921 (No. 11), which recognise for all those engaged in agriculture the same rights of association and combination as for industrial workers.

39. Whereas plantation workers, as a rule, belong to the modern sector of the economy, where the enjoyment of the right to organise usually presents less difficulties, the other categories of agricultural workers are often part of the so-called traditional sector in economic and social terms, where the setting up of organisations is subject to a variety of serious obstacles. It is not possible, of course, to ignore the obstacles encountered in the development of trade unions on plantations, such as illiteracy, lack of trained leaders, instability of the labour force, as well as the attitude of some employers. Here, particular emphasis must be placed on the respect of certain civil liberties such as freedom of assembly and opinion, and on the right of entry by trade union officials, which was specifically recognised in a resolution adopted in 1950 by the ILO Committee on Work on Plantations.² The obstacles are much greater in the case of workers in the traditional sector, not only on account of the widespread lack of education but also because of the unstable nature of their work, high unemployment and underemployment, tribal relationships and rivalries in certain countries, remoteness from populous centres, great distances and lack of communication facilities, difficulties placed in their way by certain governments or local authorities, political circumstances, opposition from landowners, who are very often unwilling to accept an organised peasant labour force and last, but not least, the structure of land holdings.

40. In addition to the above considerations, there are a number of countries where agricultural workers are still not allowed to establish trade unions under the law in force, or are not protected by the ordinary trade union legislation. This situation also arises in the case of persons engaged in agriculture who are not wage earners and are, therefore, excluded from the labour legislation applicable to this category of workers. In some of these countries the right to set up such organisations is denied altogether as a result of the exclusion of agricultural workers from the labour code or from the general trade union legislation.³ In other countries the right

African Republic, Denmark, Finland, France, Federal Republic of Germany, Guinea, Ivory Coast, Ireland, Luxembourg, Malawi, Netherlands, New Zealand, Niger, Norway, Sweden, Tunisia, United Kingdom.

¹ In this connection, see, for example, ILO: *Report of the Director-General*, Report I (Part I), International Labour Conference, 45th Session, Geneva, 1961, pp. 38-42; Xavier Flores: *Agricultural organisations and development*, Studies and Reports, New Series No. 77 (ILO, Geneva, 1971).

² Resolution concerning industrial relations on plantations, para. 2.

³ This is the case, for example, of Cuba (with regard to members of agricultural co-operatives). El Salvador (Labour Code, section 181), Libyan Arab Republic (Labour Code, section 1, which, however, exempts from the exclusion persons employed in agricultural establishments which wholly

to organise of agricultural workers is not recognised when they are employed on farms employing less than a certain number of permanent workers.¹ In another case, the exclusion of agricultural workers from the national legislation which protects workers against acts of anti-union discrimination and promotes collective bargaining constitutes in actual practice an obstacle to the development of occupational organisations within this sector or to their effectiveness in industrial relations.² In a further case, national legislation prohibiting industrial unions from exercising any functions for agricultural workers has had the effect of depriving these workers of the assistance of the national trade union federation, and has made it impossible in practice for plantation workers to organise.³ There is also the case where, in view of the differences existing between various categories of workers as regards the legislation applicable to them, rural workers are in fact excluded from the general legislation on trade unions, and are covered instead by other legislation, the provisions of which relating to occupational organisations are not applied in actual practice.⁴

OTHER DISTINCTIONS

Race

41. Racial distinctions in regard to trade union rights do not normally appear in national legislation, and in some countries racial disqualification for union member-

or partly industrialise their products). *Non-metropolitan territories: United Kingdom: Southern Rhodesia* (Industrial Conciliation Act, 1959, section 4).

With regard to members of collective farms, the Government of the USSR, in particular, indicates that they do not at present avail themselves of their right to unite in trade unions because their interests are fully guaranteed by the collective farms, which are voluntary co-operative organisations in which all problems are settled by the collective farmers themselves along democratic lines.

It would appear that in the case of members of collective farms (which as already observed by the Committee in the past, cannot be regarded, either in fact or in law, as "organisations" of workers within the meaning of Article 10 of the Convention), the legal position in the Ukrainian SSR and the USSR is as follows. These members appear to be covered, respectively, by article 106 of the Constitution of the Ukrainian SSR and article 126 of the Constitution of the USSR, which recognise the right to unite in social organisations, including trade unions, for all citizens. As a general rule, the establishment of trade unions is determined by the trade unions themselves in their rules according to section 28 of the Civil Code of the Ukrainian SSR and section 27 of the Civil Code of the RSFSR. However, with regard to the operation of the trade unions, the relevant sections of the Labour Code of the Ukrainian SSR (section 243) and of the Labour Code of the RSFSR (section 225) (which provide that trade unions operate in accordance with the rules they have adopted) are not applicable in the case of members of collective farms, who are excluded from the Labour Code. The Committee has requested the Governments concerned to indicate whether members of collective farms can not only establish organisations under the above provisions of the Constitution and the Civil Code, if they so wish, but whether such organisations could also effectively operate for furthering and defending the interests of their members without the necessity of special legislation being adopted to this effect.

¹ Legislation excluding farms with less than ten permanent workers exists in Ethiopia (Labour Relations Proclamation, section 2), Dominican Republic (Labour Code, section 265 and Regulation No. 7676, section 67), Honduras (Labour Code, section 2).

² United States (Labor-Management Relation Act, section 2). See also ILO, *The trade union situation in the United States* (Geneva, 1960), pp. 80, 81, 117-119; 123rd Report of the Committee on Freedom of Association, Case No. 639, paras. 8-15. According to information supplied by the Government, there has been a recent effort to provide statutory guidelines for agricultural labour due to the emergence of the farm workers' union. A Bill introduced in the House of Representatives would establish an Agricultural Labour Relations Board.

³ See, in this connection, Committee on Freedom of Association, 108th Report, Case No. 506 (Liberia), paras. 219-228.

⁴ This situation exists as regards Portugal, in Angola and Mozambique, where the provisions implementing the Rural Labour Code of 1962 on the right to organise of the workers covered by this Code (unskilled workers), do not appear to have been adopted and where no organisation of rural workers seems to have been established (in this connection, see also RCE, 1972, p. 205).

ship is specifically forbidden by a blanket provision in the law in force.¹ More specifically, in one country² it is unlawful for a trade union to discriminate against a person on the grounds of colour, race or ethnic or national origins, by refusing or deliberately omitting to admit him to membership of the organisation, or by refusing or deliberately omitting to accord him the same benefits as are accorded to other members thereof. In another country³ it is an unlawful employment practice for a trade union to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, colour or national origin; or to limit, segregate or classify its membership on account of race, colour or national origin. In yet another country⁴, fair employment practices Acts prohibit discrimination in trade union membership on grounds of race and colour.

42. In a few countries racial discrimination with regard to the right to organise is the consequence of certain legal provisions and their practical application.⁵ In one case, distinctions based on race result in fact from provisions relating to certain occupations.⁶ In another case, such distinctions result from the fact that unqualified workers (in practice, most indigenous workers) are covered by special legislation, whose provisions on occupational organisations do not appear to have been implemented.⁷

Nationality

43. In the trade union legislation of most countries no distinction is made between national and foreign workers with regard to the right to organise.⁸ In the relatively few countries where the legislation refers to the question of nationality or citizenship, the provisions concerned contain restrictions of varying degrees. Whereas in some countries one of the qualifications required for trade union membership is to be a citizen of the country concerned⁹, in others, a certain proportion of the members of the union must be nationals or citizens.¹⁰ Lastly, there are those countries where trade union affiliation of aliens is subject to the condition of residence and reciprocity.¹¹

¹ For example, in Argentina (Law No. 14445, 1958, section 6), Canada (Ontario) (Labour Relations Act, 1960, section 10), Japan (Trade Union Law No. 174, 1949, section 5), Turkey (Trade Union Act, 1963, section 1).

² United Kingdom (Race Relations Act, 1968, section 4, Ch. 71).

³ United States (Civil Rights Act, section 703).

⁴ Canada.

⁵ With regard to the situation in the Republic of South Africa, see *ILO programme for the elimination of "apartheid" in labour matters in the Republic of South Africa*, paras. 75-143, published in *Apartheid in labour matters* (ILO, Geneva, 1966); for further developments, see the special reports submitted by the Director-General of the ILO to the International Labour Conference in 1968, 1969, 1970 and 1972.

⁶ *Non-Metropolitan Territories: United Kingdom* (Southern Rhodesia): with regard to agricultural workers (in practice, most indigenous workers), who are excluded from the general trade union legislation (see also above, under Agricultural Workers).

⁷ This situation exists as regards Portugal, in Angola and Mozambique, concerning the Rural Labour Code of 1962, which applies to unskilled workers both in the rural and the urban sector (see also above, under Agricultural Workers).

⁸ With regard to trade union officers, see paras. 85 and 86.

⁹ For example, Jordan (Labour Act, 1971, section 218), Libyan Arab Republic (Labour Code, section 118). However, in the latter country aliens may join trade unions in accordance with the conditions and rules to be issued by the Minister of Labour and Social Affairs (Labour Code, section 118).

¹⁰ This is the case, for example, of Colombia (two-thirds of the membership, Labour Code, section 384), and Honduras (90 per cent of the membership, Labour Code, section 475).

¹¹ For example, Central African Republic (residence of at least two years, Labour Code, section 6), Syrian Arab Republic (alien workers who are not Arabs, but working in the Syrian Arab Repub-

Sex

44. Trade union legislation usually makes no distinction based on sex and in some countries the legislation concerned even includes provisions which explicitly or implicitly forbid any discrimination in this respect.¹ In several countries, where restrictions on the right to organise might result from provisions contained in the civil code, the legislation concerning trade unions establishes specifically that a married woman may join such organisations without the authorisation of her husband.² However, in some exceptional cases, women are refused this right if their husbands object.³

Political Opinions, Affiliation or Activities

45. Few references exist in national legislation to the question of the political opinion or affiliation of individuals as a criterion for the recognition of the right to organise.⁴ In some cases, legal prescriptions tend to prevent any discrimination by trade unions themselves against their members on account of political beliefs.⁵ In some other cases, however, the exercise of trade union rights may be restricted by the legislation on grounds of the subversive opinions or activities of the individuals concerned or of their membership in particular organisations. In one country, for example, a person cannot be admitted to membership of a trade union if, inter alia, he belongs to an association which advocates the violent overthrow of the national Constitution or the Government, or if the person himself had advocated or encouraged such matters within one year immediately before seeking to become a member of the union.⁶ In another country, no labour organisation shall knowingly admit as a member or allow to continue in membership therein, any individual who belongs to any subversive organisation or who is engaged directly or indirectly in any subversive activity or movement.⁷ In yet another country, persons professing subversive political opinions forfeit all rights of association.⁸

46. Legislation enacted purely for political reasons is a matter of internal national policy which does not fall within the purview of Convention No. 87 as long as it has no effect on the exercise of trade union rights. However, any measure taken according to this legislation whereby an individual is deprived of his right to become

lic for more than one year, Decree No. 84 of 1968, section 25). In Kuwait reciprocity is not a requirement, but alien workers can join a trade union only if they have a work permit and five consecutive years of residence in the country (Ordinance No. 38 of 1964).

¹ For example Argentina (Law No. 14445, 1958, section 6), Cameroon (Labour Code, section 1), Central African Republic (Labour Code, section 1), Turkey (Trade Unions Act, 1963, section 1), United States (Civil Rights Act, section 703), Venezuela (Labour Code, 1947, section 165).

² This is the case of France (Labour Code, Book IV, section L.411-5); similar provisions exist in Algeria (Labour Code, section 5), Chad (Labour Code, section 43), Congo (Labour Code, section 185), Dahomey (Labour Code, section 10), Gabon (Labour Code, section 7), Guinea (Labour Code, section 9), Ivory Coast (Labour Code, section 7), Madagascar (Labour Code, section 7), Mali (Labour Code, section 285), Mauritania (Labour Code, Book III, section 5), Morocco (Dahir No. 1-57-119, section 5), Niger (Labour Code, section 7), Rwanda (Labour Code, section 9), Senegal (Labour Code, section 8), Togo (Labour Code, section 7). Provisions to this effect have also been adopted in Bolivia (Decree of 23 August 1943, section 122), and Chile (Labour Code, section 369, and Act No. 16625 relating to agricultural trade unions, section 1).

³ For example Republic of Viet-Nam.

⁴ With regard to trade union officers, see paras. 90 and 91.

⁵ Argentina (Law No. 14445, section 6).

⁶ Australia (Australian Commonwealth Crimes Act).

⁷ Philippines (Republic Act No. 875, 1953, section 17).

⁸ Turkey (Act No. 5844, 1951).

or remain a trade union member for professing certain political opinions or engaging in certain political activities in a manner unconnected with his participation in an occupational organisation, would infringe on the right to organise as it is recognised in Article 2 of the Convention. Decisions in these matters should not be taken without due process of law and previous conviction in a fair trial. Any conviction on account of political offences unrelated to trade union activities should not constitute a ground for disqualification as regards trade union membership.

Employers

47. The right to organise of employers is normally covered by the same legislation applicable to workers, although in certain countries employers are excluded from the general trade union law.¹ In such cases they may usually establish their organisations under the ordinary law on associations, but the situation, as it appears from the information supplied by governments, is not always certain.² In certain countries³, employers are governed by special regulations.

48. Whatever the legislation applicable to employers (ordinary law on associations, etc.) there is in general no information on any major difficulty experienced in the exercise of their right to establish organisations for the defence and furtherance of occupational interests.⁴ It is evident that the recognition of this right is of considerable importance to employers.

49. A distinction must be drawn between countries where private employers exist and those others where, under the prevailing system, there is little or no private enterprise. Questions concerning the recognition of the right to organise of private employers and any possible restriction which might be imposed on this right are relevant in the former group of countries, and in the latter only to the extent to which such employers are admitted. In a system under which private ownership of undertakings is excluded, such questions concerning private employers do not arise. However, in such a system the right to organise acquires an additional significance with regard to those persons who are responsible for the direction and management of the undertakings. The Committee had already noted that nothing in the text of the

¹ This is the case, for example, in Argentina, Egypt, Liberia and Uganda.

² For example, in the case of Egypt, with regard to Act No. 32 of 1964, relating to associations and private foundations.

³ For example, Portugal (Legislative Decree No. 23049 of 23 September 1933), Zaire (Act No. 72-028 of 27 July 1972), Zambia (Industrial Relations Act, 1971, Part V).

⁴ There may be certain exceptions, however, as in the case of the National Agrarian Society of Peru, which was dissolved by the new legislation on agrarian organisations adopted in 1972 (Decree-law No. 19400 of 9 September 1972), and in the case of the employers' organisations in Zaire, which were dissolved, as a result of Act No. 72-376 of 14 September 1972, with the exception of the single organisation recognised by law.

⁵ See RCE, *General Survey*, 1959, paragraph 24. In this connection the Government of the USSR indicates that "Soviet legislation does not in any way restrict the right of managers of undertakings to set up social organisations, including trade unions. With the abolition of capitalist ownership of the means of production in the USSR, however, there ceased to be any owners of undertakings and, consequently, any basis for setting up special organisations to defend their particular economic interests, in contradiction to the interests of the workers. In the context of the Socialist State, the manager of an undertaking or organisation is just as much a member of the community of workers as the other wage and salary earners and has similar interests and objectives. He consequently belongs to a trade union in the same way as other workers employed in the undertaking or organisation. At the same time, since a manager's work nevertheless differs both in its greater range of powers and in its higher level of responsibility for the work of the undertak-

freedom of association Conventions or in the preparatory work which led to their adoption would make it appear that the terms used in these Conventions imply any reference whatsoever to the mode of ownership of the undertakings (private property or state property, etc.). Consequently, the Committee had considered that all "workers and employers, without distinction whatsoever", including the managers of undertakings belonging to the State, should be able to enjoy the rights and guarantees laid down in Convention No. 87.

ing as a whole the managers of socialist undertakings, in full accordance with article 126 of the Constitution of the USSR have the right to set up their own organisations for the exchange of scientific and technical experience and information, the discussion of management problems and the further improvement of the organisation of production and work on a scientific basis."

The Committee understands that from a legal point of view the position of managers with regard to the right to organise is as follows. Managers appear to be covered by article 126 of the Constitution of the USSR and sections 2 and 225 of the Labour Code of the RSFSR, which recognises the right to organise in trade unions for all citizens and for wage earners and salaried employees. The procedure and conditions for the establishment of trade unions are determined by the trade unions themselves in their rules, according to section 27 of the Civil Code of the RSFSR. Trade unions operate in accordance with the rules they have adopted, as provided in section 225 of the Labour Code of the RSFSR. The Committee has requested the Government to confirm the understanding of the Committee that by virtue of the above-mentioned provisions, managers have the right to establish not only organisations for the exchange of technical information, discussion of management problems and improvement of productivity, but also other organisations of their own choosing, in particular, for furthering and defending the interests of their members, if they consider it necessary.

CHAPTER III

THE RIGHT TO ESTABLISH ORGANISATIONS WITHOUT PREVIOUS AUTHORISATION

50. According to Article 2 of Convention No. 87, workers and employers shall have the right to establish organisations “without previous authorisation”. It is in the light of this general principle that the formalities which are usually prescribed by law for the establishment of an occupational organisation have to be considered. In the preparatory work of the Convention it was stated that countries “would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. It followed, therefore, that formalities provided for by national regulations concerning the constitution and operation of workers’ and employers’ organisations were in conformity with the provisions of the Convention, provided that these regulations did not impair the guarantees granted by the Convention.”¹ The founders of an organisation are, therefore, not freed from the obligation of observing certain legal formalities as to publicity or other similar formalities, in particular in view of Article 8, paragraph 1, of the Convention, which establishes that “workers and employers . . . shall respect the law of the land”. This principle is, however, qualified by paragraph 2 of Article 8, providing that the law of the land shall not “be such as to impair, nor shall it be so applied as to impair, the guarantees provided for” in the Convention. It is important, therefore, that the legal formalities applicable to the establishment of workers’ and employers’ organisations should not be equivalent, in practice, to previous authorisation nor constitute an obstacle amounting in fact to a prohibition.

51. In laying down the formality requirements, the legislation should define clearly the precise conditions which organisations must fulfil in order to qualify for registration or legal recognition and should prescribe specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not. Legal provision, under which the right to establish an organisation is subject to an authorisation given by the public authorities at their sole discretion, would not be compatible with the principle under examination. This consideration would also apply to cases where the approval of the rules of an organisation is within the discretionary powers of the competent authorities. A similar situation would arise where meetings called to establish an organisation are subject to undue restrictions or are prohibited.

52. A related question is that of the acquisition of legal personality in countries where this requirement constitutes a substantive condition of the existence and activities of organisations. Article 7 of the Convention, which deals with this aspect,

¹ ILO: *Record of Proceedings*, International Labour Conference, 31st Session, San Francisco, 1948 (Geneva, 1950), First Report of the Committee on Freedom of Association and Industrial Relations, p. 477.

lays down specifically that the acquisition of legal personality by workers' and employers' organisations "shall not be made subject to conditions of such character as to restrict" the right to establish occupational organisations in freedom.

53. Requirements of a substantive nature may exist which may give rise to restrictions in the establishment or registration of trade unions, such as, for example, in the case where a trade union monopoly is prescribed by law. This type of requirement will be discussed at a later stage.¹

54. Having regard to the formalities and the ways in which they may be applied, it is possible to group countries into different categories and under two broad headings, i.e. those where such formalities are not required or are optional, and those others (the vast majority), where the fulfilment of certain formalities constitutes a legal requirement prescribed by legislation.

CASES WHERE FORMALITIES ARE NOT REQUIRED OR ARE OPTIONAL

55. In some countries workers' and employers' organisations can be established without being subject to any legal formality such as registration.² In certain other countries, the registration of organisations is optional, but it confers on labour unions a number of important advantages such as special immunities, fiscal exemptions, the right to have recourse to the dispute settlement machinery or to the procedure for dealing with unfair labour practices, or the right to obtain recognition as exclusive bargaining agent on behalf of a category of workers.³ In these countries the formalities to be complied with by the trade unions for the purpose of registration usually consist in the filing of information relating to the establishment of the organisations and the submission or approval of their rules (which must contain provisions on certain specified items concerning the conduct of internal affairs). Such requirements, when they are merely formal and not substantive in character, could not be interpreted as a condition of previous authorisation. However, it should be stressed that in cases where the rights conferred on a registered trade union in a system of optional registration are of such fundamental importance that any organisation deprived thereof might have serious difficulty in furthering and defending the interests of its members (especially when non-registered unions are deprived of immunity in respect of the offence of conspiracy in common law countries or of the right to bargain collectively), the considerations set out at the beginning of this chapter with regard to the right to establish occupational organisations "without previous authorisation" are as relevant as in cases in which registration or other formalities are compulsory.

56. A right of appeal to the courts should be available against an administrative decision concerning registration and the approval of union rules, in order to avoid any risk of abuse which might result from leaving such decisions to the discretion of the administrative or similar authorities.⁴

¹ See below, Ch. IV.

² This is the case, for example, in Belgium, Denmark, Federal Republic of Germany, Iceland, Italy, Luxembourg, Norway, Sweden, Switzerland, Uruguay.

³ For example, in Australia (Commonwealth Conciliation and Arbitration Act, 1904-70, State Trade Union Acts and Arbitration Acts), India (Trade Union Act, 1926), Japan (Trade Union Law, 1949), New Zealand (Industrial Conciliation and Arbitration Act, 1904-67), Pakistan (Industrial Relations Ordinance, 1969, as amended), Philippines (Republic Act No. 875, 1953), United Kingdom (Industrial Relations Act, 1971).

⁴ Such right exists, for example, in Australia, India, Pakistan, Philippines, United Kingdom. However, in New Zealand there is a right of appeal only if the trade union rules are refused by the

(Footnote continued overleaf)

CASES WHERE CERTAIN FORMALITIES ARE COMPULSORY

57. In the majority of countries occupational organisations have to undergo certain prescribed formalities at the time of their establishment, such as the deposit of their rules, or formalities relating to registration or the acquisition of legal personality. In the countries belonging to the first category¹, the rules of the organisation, together with the names of its officers must be submitted to the local authorities and copies thereof are usually circulated to various ministries or departments, the labour inspector and the public attorney. In several of these countries it is the duty of the labour inspector or the public attorney to request the officers of the organisation to amend any clause of the rules which might be contrary to the law. Somewhat different provisions concerning the filing of trade union rules also exist in certain other countries.²

58. Registration with a Registrar or the labour authorities (usually the Ministry of Labour) is a prerequisite in numerous countries for the normal functioning of an occupational organisation.³ Normally, the organisation must submit its rules and certain other information relating to its officers and constituent assembly, and registration is granted when the authorities are satisfied that the organisation has complied with the provisions of the trade union legislation, that its objects are lawful and that it has not been used for unlawful purposes. In a few countries⁴ the requirement consists in the acquisition of legal personality, which is granted by the competent Minister or the President after a similar procedure. Very often the fact that a trade union has been registered gives it the right to act as an entity with legal personality.

59. Although the registration procedure very often consists in a mere formality, there are a number of cases in which the law confers on the relevant authorities more

Registrar on the grounds that they are unreasonable or oppressive (Industrial Conciliation and Arbitration Act, 1904-67, section 70). In Japan, registration is granted by the competent labour relations commission and there is a final appeal to the courts.

¹ For example, Central African Republic (Labour Code, section 7), Chad (Labour Code, section 8), Dahomey (Labour Code, section 8), France (Labour Code, Book IV, section L.411-3), Gabon (Labour Code, section 5), Guinea (Labour Code, section 6), Ivory Coast (Labour Code, section 5), Madagascar (Labour Code, section 5), Mali (Labour Code, section 283), Morocco (Dahir No. 1-57-119, section 3), Niger (Labour Code, section 5), Senegal (Labour Code, section 6), Republic of Viet-Nam (Trade Unions Ordinance, No. 23 of 1952, section 7). Provisions concerning the deposit of trade union rules also exist or apply in the French non-metropolitan territories.

² For example, Iran (Labour Law, 1959, section 26), Israel (Associations Act, 1909, section 6), United States (only for labour organisations; the supply of detailed information on matters such as financial administration, union contributions, assemblies, etc., is also required. Labor-Management Reporting and Disclosure Act, 1959).

³ This is the case, for example, in Argentina (Act No. 14455, section 35), Brazil (Consolidated Labour Laws, section 558), Cameroon (Labour Code, section 6), Costa Rica (Labour Code, section 274), Cyprus (Trade Unions Law, 1965, sections 7, 17), Ecuador (Law 70-05 of 1970, section 7), Ethiopia (Labour Relations Proclamation, section 20), Ghana (Trade Unions Ordinance, 1941, section 10), Greece (Legislative Decree No. 890 of 1971, section 11), Guatemala (Labour Code, sections 217, 218), Jamaica (Trade Union Law, sections 6, 13), Kenya (Trade Unions Ordinance, 1952, section 9), Libyan Arab Republic (Labour Code, sections 115, 119), Malawi (Trade Union Ordinance, section 11), Malaysia (Trade Unions Ordinance, 1959, section 8), Mexico (Federal Labour Law, sections 365, 366), Nigeria (Trade Unions Ordinance, 1939, sections 12, 13), Portugal (Legislative Decree No. 23050, section 8), Sierra Leone (Trade Unions Act, section 9), Singapore (Trade Unions Ordinance, sections 8, 19), Spain (Trade Union Act, 1971, section 48; registration takes place within the official Trade Union Organisation), Tanzania (Tanganyika) (Trade Unions Ordinance, sections 7, 18), Venezuela (Labour Code, section 179), Zaire (Labour Code, section 231), Zambia (Industrial Relations Act, 1971, section 6). Registration is also compulsory in the non-metropolitan territories of the United Kingdom.

⁴ This is the case, for example, in Chile (Act No. 17594 of 1972 and Decree No. 323 of 1964) and Colombia (Labour Code, section 372).

or less discretionary powers in deciding whether or not an organisation is qualified for registration, thus creating a situation which is similar to that in which "previous authorisation" is required. In two countries, for example, the registrar may refuse registration if he considers that a trade union is "likely" to be used for unlawful purposes or purposes inconsistent with its objects and rules.¹ In one country, registration is granted if the registrar is of the opinion that any objections brought to his notice are not of sufficient substance to justify a refusal.² In another country, the registrar may refuse registration if, in his view, the trade union concerned will not be able to implement any of the provisions contained in its rules.³ In still another country, the approval of the rules of a trade union at the time of registration can only be given if a certain official body has reported that the proposed organisation is "justified in view of the economic and social interests of the community".⁴ Situations which are similar in character arise in cases where a complicated and lengthy registration procedure⁵, or the latitude with which the competent administrative authorities sometimes exercise their powers in actual practice⁶, can create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organise without previous authorisation. The available information clearly shows that the problems connected with registration are not only a matter of law, but rather a question of its implementation by the authorities.

60. The importance of the right to appeal to the courts against an administrative decision has already been stressed. Such a right seems to exist in many countries, although, in some cases, an appeal may be lodged only with the competent minister⁷ or another labour authority.⁸ An appeal to the judiciary constitutes a guarantee against an illegal or unfounded decision on the part of the authorities responsible for effecting registration. The Committee has, however, previously pointed out⁹, that when legislation makes it possible for these authorities, directly or indirectly, to exercise substantial control, the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect, this does not alter the nature of the powers conferred on such authorities and the judges hearing an appeal would normally only be able to ensure that the legislation has been correctly applied. The courts should, therefore, be entitled to re-examine the substance of the case as well as the grounds on which an administrative decision was taken. As regards the discretionary powers conferred on the administrative authorities when basing their decisions on the supposed activities or purposes of an organisation seeking registration, the Committee would recall that normal control of the activities of trade unions should be effected *a posteriori*, and by the judiciary; the fact that such authorities may, in advance and of their own judgment, consider that occupational organisations

¹ Malaysia (Trade Unions Ordinance, section 12), and Singapore (Trade Unions Ordinance, section 14). In Singapore registration may also be refused if the Registrar is of the opinion that a union is likely to be used against the interests of the workers concerned.

² Ghana (Trade Unions Ordinance, section 11).

³ Zambia (Industrial Relations Act, 1971, section 7).

⁴ Portugal (Legislative Decree No. 23050, section 18).

⁵ For example Chile (Decree No. 323 of 1964).

⁶ See, for example, Committee on Freedom of Association, 68th Report, Case No. 239 (Costa Rica), paras. 27-32; 129th Report, Case No. 514 (Colombia), paras. 101-117.

⁷ This is the case, for example, in Malaysia (Trade Unions Ordinance, section 17) and Singapore (Trade Unions Ordinance, sections 17, 18).

⁸ In Nicaragua an appeal may be lodged with the labour inspector (Trade Union Regulations, section 13).

⁹ RCE, *General Survey*, 1959, para. 31.

might in certain cases engage in activities foreign to trade union activities (or not be able to exercise their functions), does not appear to constitute sufficient reason for refusing registration or for subjecting these organisations *a priori* to control with respect to their composition and with respect to the composition of their management committees. This would be tantamount to submitting the compulsory registration of trade unions to previous authorisation on the part of the authorities.¹

61. A requirement similar to that of "previous authorisation" exists in countries where trade unions must be registered with an inter-union organisation² or where the application for registration with the authorities must be made jointly by the trade union concerned and such inter-union organisation.³ In these countries the legislation appears to give to the inter-union organisation the right to supervise the establishment of any new primary organisation and, if it wishes, to oppose the formation of such an organisation, or, the individuals wishing to establish a trade union organisation must, by virtue of legislation, obtain the previous authorisation of an inter-union organisation. The result is that the formation of a primary union organisation independent of the inter-union organisation already constituted is impossible.⁴

62. Finally, as the Committee has indicated in its General Survey of 1959⁵, in a number of countries the prior control of the State may be exercised through the legislation relating to public and private meetings. In so far as the holding of meetings to constitute an organisation requires, like any other meeting, previous authorisation by the government or administrative authorities, such meetings may depend, in fact as well as in law, on the consent of the competent authorities.⁶

¹ See, in this connection, RCE, *General Survey*, 1957, para. 41; RCE, 1958, p. 57; Committee on Freedom of Association, 68th Report, Case No. 239 (Costa Rica), paras. 31, 32; 84th Report, Case No. 415 (United Kingdom/St. Vincent), para. 58.

² For example, Poland (Act of 1 July 1949 respecting trade unions, section 9).

³ This is the case in Uganda (Trade Unions Act, 1970, section 9). However, by Decree No. 10 of 1971 it was provided that all trade unions registered under the Trade Unions Act, 1965, shall continue as separate trade unions (of the Uganda Labour Congress) until such time as the Minister shall, by notice in the Gazette, dissolve them.

⁴ It should be noted, in this connection, that the legal situation in the USSR (where trade unions also had to register with an inter-union organisation, as described by the Committee in its General Survey of 1959) has changed following the adoption of the Fundamental Principles Governing the Labour Legislation of the USSR and the Union Republics, 1970, and in particular the new Labour Code of the Russian SFSR, 1971. Section 225 of the Labour Code reproduces the wording of article 95 of the Fundamental Principles, which establishes that trade unions are not required to register with any government authority, and no longer prescribes any registration with an inter-union organisation. The situation is the same in the Ukrainian SSR (Labour Code of 1971).

⁵ Para. 34.

⁶ The Committee has referred, for example, to the situation in the Byelorussian SSR, the Ukrainian SSR and USSR, in relation to Decree of 15 May 1935 respecting the procedure for convening congresses (general assemblies, conferences and meetings). In Spain meetings to establish a trade union outside of the official Trade Union Organisation are illegal under section 166 of the Penal Code.

CHAPTER IV

THE RIGHT OF WORKERS AND EMPLOYERS TO ESTABLISH AND TO JOIN ORGANISATIONS OF THEIR OWN CHOOSING

63. The right to establish occupational organisations without previous authorisation, contained in Article 2 of Convention No. 87, has been supplemented by the further provision in the same Article which recognises the right of workers and employers to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing. From the information available, while the implementation of this principle is not restricted by any legal rules in many countries, in an increasing number of others it gives rise to a series of problems, the importance of which varies depending on the nature or the repercussions of the limitations imposed on it by national legislation and trade union systems. The different aspects of these problems will be examined in connection with matters affecting the structure and composition of organisations and with the important question of trade union monopoly.

STRUCTURE AND COMPOSITION OF ORGANISATIONS

64. One type of restriction, closely connected with the right to organise, is contained in legal provisions fixing the minimum number of members of a trade union at what may be considered as an excessively high figure, which in certain cases may seriously hinder or even render impossible the establishment of the organisation. For example, in some countries this minimum is set at 50 members¹, but there are also the exceptional cases in which the figure is 100² and 1,000 members.³ A similar situation arises in countries where the minimum prescribed consists in a substantial proportion (usually above 50 per cent) of the workers concerned.⁴ Another type of restriction is the setting up by legislation of a limitative list of occupations or branches of activity within which the workers concerned may organise themselves; in the relevant countries not more than one trade union may be established for each occupation or industry.⁵

¹ This is the case in Ethiopia, for plant unions (Labour Relations Proclamation, section 20), Iraq (Labour Law No. 151 of 1970, section 50), Libyan Arab Republic, for branch unions within an administrative area (Labour Code, section 136), Nicaragua, for department-wide unions (Trade Union Regulations, section 8), Panama (Labour Code, section 344), Syrian Arab Republic, for trade union committees (Legislative Decree No. 84, sections 2 and 8).

² Kuwait (Labour (Private Sector) Law, 1964, section 71).

³ Uganda (Trade Unions Act, section 9).

⁴ In the case of plant unions in Chile, Nicaragua and Peru. This particular problem will also be examined under the next heading.

⁵ This is the case, for example, in Iraq (Labour Law No. 151, section 197), Jordan (Labour Act, section 213), Libyan Arab Republic (Labour Code, section 116), Sudan (Workers' Trade Union Act, 1971, section 9). In the Syrian Arab Republic the list must be established by the Council of the General Federation (Legislative Decree No. 84, section 4).

65. A special situation is that in which the membership of trade unions is restricted to persons of the same or similar trades or occupations. Provisions to this effect exist in numerous countries; however, unlike in the previous case, the legislation does not prescribe any list of such trades or occupations, which seems to give the organisations concerned a sufficiently wide scope in defining the category of workers to be covered. On this question, the Committee had indicated¹ that the prohibition of workers employed in different branches of industry or in different regions establishing or joining the same trade union could be of a purely formal character. That is the case, for instance, when these separate primary organisations (constituted for an occupation or for a region) may freely establish and join federations and confederations. These considerations also apply with regard to public servants, who, in several countries may only join organisations the membership of which is confined to this category of workers. The question of trade union structure, however, is not only related to the general problem of the free establishment of occupational organisations but also to that of the promotion of strong and effective organisations. Consequently, in certain cases the desirability of general unions (not restricted to workers of the same trade or occupation) may arise, especially in situations where industry is scarcely developed with a few small or medium-sized undertakings scattered throughout the country.

66. Some further problems exist in the case of public servants and managerial or supervisory staff. As regards the former, certain restrictions have been imposed in some countries² on the scope of the membership of their organisations, which must be confined to public servants employed in a specific government department or belong to a specific class or group. In at least two countries³, a similar provision applies to organisations of workers of a statutory authority. In another country⁴, an employees' union in the public service can only register if the membership is limited to the same class or its scope does not extend beyond the area of a local public body; as a result, national public servants and local public servants, who belong to different classes, cannot group in the same registered organisation. Provisions under which different organisations must be set up for each category of public servants have been considered by the Committee to be incompatible with Convention No. 87.⁵

67. So far as managerial and supervisory staff (and sometimes employees occupying posts of confidence) are concerned, there are several cases where these persons are not permitted to belong to the same unions as do other workers in the undertaking. Sometimes this is brought about by a direct prohibition⁶ under the legislation or by legal prescriptions establishing that a trade union of workers may

¹ RCE, *General Survey*, 1959, para. 15.

² For example, Malaysia (Exemption of Public Officers Order, 1971), Mexico (Federal Law for Workers in the Service of the State), Pakistan (Notification No. 6/1/48-Ests (SE), 7, Sri Lanka (Trade Unions (Amendment) Act No. 24 of 1970).

³ Malaysia (Essential (Trade Unions) Regulations, 1969), Singapore (Trade Unions (Amendment) Act, 1967).

⁴ Japan (National Public Service Law, section 108-4 and Local Public Service Law, section 54).

⁵ See, in this connection, RCE, 1964 (Pakistan), p. 130 and RCE, 1971 (Japan), p. 126.

⁶ For example, Guatemala (Labour Code, section 212), Japan (Trade Union Law, section 2, which also applies to public corporations, national and local public enterprises, National Public Service Law, section 108-2 and Local Public Service Law, section 52), Mexico (Federal Labour Law, section 363), Philippines (Republic Act No. 875, section 3).

not represent or seek recognition in respect of persons acting in such capacity.¹ In certain countries² the law also provides that an employer may require a person upon his appointment or promotion to a managerial position to cease to be, or not to become, a member or officer of a union of workmen. Provisions of this nature may contribute to the prevention of acts of interference by the employers in trade unions and to avoid problems arising from conflicts of interest. However, in order to avoid any incompatibility between such provisions and the principles concerning the free choice of trade unions, the definition of personnel which may be excluded from labour unions should be restrictive and cover only those persons who genuinely represent the interests of employers. The scope of managerial staff and the like should not be defined so widely as to weaken the organisations by depriving them of a substantial proportion of their present or potential membership.³

TRADE UNION MONOPOLY

68. The most serious problems in regard to the effectiveness of the principle of free choice in the setting up and joining of occupational organisations are linked to what is generally known as trade union monopoly, where the legislation provides in a direct or indirect manner for the existence of only one organisation catering for a particular category of workers. In such a situation workers may be compelled to confine the exercise of their trade union rights to a single organisation or to abstain from exercising such rights in freedom. There are, however, various aspects in this type of situation, which need closer examination. In order to obtain a fuller and more balanced picture of the various systems and their position in the light of the principle under consideration, attention will not be confined to primary organisations (established at the level of an undertaking or a certain occupation or trade), but it will also be extended to the general structure of the occupational organisations in the countries concerned.

69. In some countries the legislation prohibits the existence of more than one organisation for all the workers in a given undertaking or public body. This may be brought about by specific prescriptions to this effect⁴ or by provisions laying down that more than 50 per cent of the workers of an undertaking are necessary to establish a trade union.⁵ In certain cases a single trade union may be established within an industry or occupation.⁶ In countries in this category primary organisations are usually free, under the law, to federate and to confederate.

70. The situation is substantially different, at least from a legal standpoint, where the legislation imposes a single trade union system at all levels. Under such a

¹ Malaysia (Essential (Industrial Relations) Regulations, 1969), Singapore (Industrial Relations Ordinance, 1960, as amended, section 16).

² Malaysia (Industrial Relations Act, 1967, section 5), Pakistan (Industrial Relations Ordinance, 1969, section 15), Singapore (Industrial Relations Ordinance, 1960, section 77).

³ As regards certain practical problems in this connection, see Committee on Freedom of Association, 66th Report, Case No. 179 (Japan), and Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan, ILO: *Official Bulletin*, Special Supplement, Vol. XLIX, No. 1, Jan. 1966.

⁴ For example Colombia (Labour Code, section 357), Honduras (Labour Code, section 472), Mexico (public servants, Federal Law for Workers in the Service of the State, sections 68, 71, 72, 73), Panama (Labour Code, section 346).

⁵ For example Chile (Labour Code, section 385, for trade unions of blue-collar workers), Nicaragua (Trade Union Regulations, section 8), Peru (Decree No. 009 of 1961, section 11, as amended).

⁶ For example Mauritania (Law No. 70030 of 1970).

system usually only one primary organisation and one national trade union may be established for a category of workers, or only one federation for each category or region, and all these organisations are then covered by a single national confederation or trade union centre, which is sometimes specifically designated in the law. This unitary structure exists now in an increasing number of countries.¹

71. With regard to certain socialist countries, the Committee had indicated in its observations in connection with the labour codes which were previously in force that the manner in which certain provisions were drafted would seem to preclude the possibility of a second organisation representing the same category of workers in an undertaking being set up.² The present drafting of the provisions relating to the rights and functions of the factory, work or local trade union committees in the new labour codes³ would still preclude such a possibility. Furthermore, although under the new legislation trade union organisations are no longer required to register with the single central inter-union organisation existing in each of the countries concerned, the Constitutions of these countries provide that the Communist Party is the leading core of all organisations of working people.⁴ In this connection the Government of the USSR indicated that the trade unions carry on their work under the direction of the Communist Party of the Soviet Union and that the direction given by the Party is mainly provided through the trade union activity of Party members who are also members of a particular trade union. The exact scope of such direction by the Communist Party is not clear from the indications given by the Government. If the above-mentioned constitutional provision should result in it being legally impossible to set up any organisation, at whatever level, which is independent of the political party in question, this consequence would be incompatible with Article 8, paragraph 2, of Convention No. 87, according to which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", which include the right of workers and employers to establish the organisations of their own choosing.⁵

¹ For example, Congo (Act No. 40 of 1964), Cuba (Act No. 962 of 1961), Czechoslovakia (Constitution, article 5, Act No. 68 of 1951, Act No. 37 of 1959, Labour Code, 1965), Egypt (Labour Code, 1959), Iraq (Labour Law No. 151), Jordan (Labour Act, 1971), Kuwait (Labour (Private Sector) Law, 1964), Libyan Arab Republic (Labour Code, 1970), Poland (Act of 1 July 1949), Sudan (Workers' Trade Union Act, 1971), Syrian Arab Republic (Legislative Decree No. 84), Tanzania (Tanganyika) (National Union of Tanganyika Workers (Establishment) Act, 1964), Zambia (Industrial Relations Act, 1971). The Government of Sudan, for example, indicated in its report that the single trade union system was first introduced in the Labour Code of 1970, which was drafted by a vast panel representing workers, employers and government. The Government added that there was general agreement to introduce this system in order to reorganise the numerous small trade unions into a reasonable number of strong trade unions and to unify the trade union movement.

² See, for example, RCE, 1962 (observations under Convention No. 87 with regard to the Ukrainian SSR, para. 15 and the USSR, para. 17).

³ Ukrainian SSR, Labour Code of 1971; USSR, Labour Code of the RSFSR, 1971; see also Decree of 27 September 1971 approving the Regulations respecting the rights of the factory, works and local trade union committees.

⁴ Ukrainian SSR, article 106 of the Constitution; USSR, article 126 of the Constitution. See also, in this connection, Ch. V, para. 114.

⁵ See in this connection RCE, 1962 (observations with regard to the USSR, paras. 26-28).

It should also be mentioned that article 106 of the Constitution of the Ukrainian SSR and article 126 of the Constitution of the USSR, which relate to the various forms of association, provide that the right of citizens to unite in the different "social organisations" is guaranteed "in conformity with the interests of the working people, and in order to develop the organisational initiative and political activity of the masses of the people". These provisions gave rise to certain questions raised by the Committee for the last time in 1962 such as (a) which authorities would be competent to decide whether in any given case the right of association has been exercised "in

72. In two countries workers' and employers' organisations must combine in mixed bodies in accordance with the established legal system. In the one case, workers and employers can establish only one organisation, respectively, for each occupation, and these organisations are finally grouped in a mixed body (the corporation) which is the "unitary organisation of the forces of production and represents all their interests" as regards each occupation.¹ In the other case, the legislation also provides for the establishment of single workers' and employers' organisations for each category and branch of activity; these organisations are integrated in mixed bodies (called trade unions) which co-ordinate the activities of the constituent occupational organisations. The workers' and employers' organisations establish their own provincial and national councils. All these organisations and other bodies are part of the official Trade Union Organisation.² The establishment of workers' organisations outside this structure is illegal.

73. All these various systems of trade union monopoly imposed by law are at variance with the principle of free choice of workers' and employers' organisations, contained in Article 2 of Convention No. 87. It has been stated that this principle is in no way intended as an expression of support either for the idea of trade union unity or for that of trade union diversity. In many countries there may be several organisations among which the workers or the employers may wish to choose freely. In other countries, however, where no such diversity exists, workers and employers may wish to establish new organisations. In other words, although it is not the purpose of the Convention to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases.³ While it may be to the advantage of workers to avoid a multiplicity of trade union organisations, and while appreciating the desire of any government to promote a strong trade union movement free from the defects resulting from an undue multiplicity of small and competing organisations, it must be noted that unification imposed by legislative means runs counter to the principles of Convention No. 87. There is also a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by legislation and the factual situations which are found to exist in certain countries in which all the workers or their trade unions join together volun-

conformity with the interests of the working people"; and (b) what legal provisions, whether of general application or not, would be applicable in such a case and what kind of sanction could be applied in the event of the competent authorities being of the opinion that certain individuals or organisations did not act in conformity with the interests of the working people. (See in this connection RCE, 1962, observations with regard to the Ukrainian SSR, para. 22 and the USSR, para. 25.)

¹ Portugal (Labour Code of 1933, section 41, Legislative Decree No. 23049 of 1933 concerning employers' associations, and Legislative Decree No. 23050 of 1933, concerning trade unions) More recently, Legislative Decree No. 49058 of 1969 amended Legislative Decree No. 23050, and it would be possible now under the law to establish more than one union for the same occupation in the same district, subject however to a number of conditions of which the most important is the previous approval by the national authorities.

² Spain (Trade Union Act, 1971). In its report the Government takes the following position. Trade union pluralism, which is not recognised in the Spanish trade union law, seems to have as its only basis what one might call a "radical-individualistic" concept of freedom, which in some way appears to be implicit in Article 2 of the Convention; the application of such a concept could open the way to the most unrestrained and unworkable splintering of the trade union movement. It should not be considered as a general principle that the synthesis of trade union unity and freedom cannot be achieved by legislation or governmental action, when account is taken of the fact that such unit could find no better guarantee than that contained in the law which establishes it and in the governmental action which maintains it.

³ See, for example, Committee on Freedom of Association, 68th Report, Case No. 313 (Dahomey), para. 56; 83rd Report, Case No. 393 (Syrian Arab Republic), para. 63; 105th Report, Case No. 531 (Panama), para. 283.

tarily in a single organisation, without this being the result of legislative provisions adopted to this effect.¹

74. In some countries the law does not prohibit specifically the existence of more than one organisation for a certain category of workers, but it confers on the Registrar some discretion in refusing registration of a trade union (thereby depriving it of its legal existence) when there is another registered union which in his opinion adequately represents the interests of the workers concerned or is likely to become sufficiently representative or when he considers that it is not in the interest of the workers to register a new union.² This type of provision is not compatible with the Convention since it is capable of being utilised to bring about a unification of trade unions by legislative means.

75. Where the law of a country draws a distinction between the most representative trade union and other trade unions for the purpose of avoiding the prejudicial effects of trade union multiplicity, this is not in itself contrary to the principles of freedom of association, if such distinction consists in the recognition of certain special rights—principally with regard to collective bargaining on behalf of a category of workers—to the majority union, that majority being ascertained in accordance with objective criteria. Provisions to this effect exist in several countries.³ This does not imply, however, that the existence of other trade unions to which the workers of a specific unit may wish to affiliate, or all the occupational activities of such other unions, may be prohibited.⁴ Such minority unions should be allowed to function and at least have the right to make representations on behalf of their members and to represent them in the case of individual grievances.

76. There is also the case of countries where registration, although being optional, entitles a trade union to have recourse to the statutory dispute settlement machinery. In one of these countries⁵ the Registrar shall, unless in all the circumstances he thinks it undesirable to do so, refuse to register any organisation if another organisation to which the members of the former "might conveniently belong" has already been registered. According to the information furnished by the Government, the "conveniently belong" provision has been interpreted in a broad way and cases before the Registrar, or on appeal from his decision to the Court, have generally been decided in favour of the applicant for registration. In another country⁶, the powers of the administrative authority seem to be much wider and discretionary, as the law provides that once a trade union is registered for a certain industry, no new union may obtain registration without the approval of the Minister. In these two countries unregistered unions may engage in collective bargaining and have the right to strike.

¹ See, in this connection RCE, 1958, p. 57 and Committee on Freedom of Association, 67th Report, Case No. 303 (Ghana), paras. 260 and 264; 95th Report, Case No. 448 (Uganda), para. 124; 120th Report, Cases Nos. 572, 581, 586, 596, 610 and 620 (Panama), para. 47.

² Provisions of this nature exist, for example, in Malaysia (Trade Unions Act, 1965, section 2), Singapore (Trade Unions Ordinance, section 14), Uganda (Trade Unions Act, 1970, section 11). *Non-metropolitan territories*: United Kingdom, British Solomon Islands (Trade Unions (Amendment) Ordinance, 1969, section 2), Seychelles (Trade Unions and Trade Disputes (Amendment) Ordinance, section 2).

³ See, in this connection, the chapter on collective bargaining.

⁴ In Argentina, for example, the list of exclusive rights of the most representative organisations is drafted in terms so broad that in fact all activities of a trade union character are reserved for these organisations (Act No. 14455 of 1958, section 16).

⁵ Australia (Commonwealth Conciliation and Arbitration Act, section 1427), and similar legislation in the States of the Commonwealth.

⁶ New Zealand (Industrial Conciliation and Arbitration Act, section 58).

77. With regard to what has sometimes been called the negative freedom of association, or the right of workers and employers not to join an occupational organisation, it appears from the discussion prior to the adoption of Convention No. 87, and especially from the rejection in the Conference of an amendment which would have accorded to workers and employers the right not to join an organisation¹, that it is left to the practice and regulations of each State to decide whether it is appropriate to guarantee such a right, or to authorise and regulate the use of union security clauses and practice. The position is however different when the law imposes union security—either in the form of making union membership compulsory or by making union contributions payable in such circumstances as to amount to the same situation.²

78. In many countries³ the law guarantees directly or indirectly the right to refuse to adhere to a trade union organisation and forbids the exercise of any constraint which would cause a person to adhere to a given organisation. In a number of other countries union security clauses are allowed under the law and are used in practice to a varying degree, although in some cases the legislation makes the utilisation of these clauses subject to certain conditions or prohibits specific types of union security arrangements.⁴

¹ ILO: *Record of Proceedings*, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, ILO 1948), p. 571.

See also para. 141 of this Report.

² Compulsory membership exists in countries such as Chile (for plant unions), Cuba, Spain, Tanzania (Tanganyika) (if more than 50 per cent of the workers concerned are members of the union). In New Zealand the right of registered unions to obtain the insertion of union security clauses (in the form of unqualified preferences clauses) in binding arbitration awards, raises barriers against the creation and existence of unregistered unions.

³ For example, Argentina, Austria, Central African Republic, Chad, Costa Rica, Dahomey, Dominican Republic, Ecuador, France, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Niger, Senegal, Switzerland, Togo.

⁴ For example, Australia, Japan, Mexico, Philippines, Sweden, Trinidad and Tobago, United Kingdom, United States.

CHAPTER V

RIGHTS AND GUARANTEES APPLICABLE TO WORKERS' AND EMPLOYERS' ORGANISATIONS

79. Article 3 of Convention No. 87 recognises four basic rights for workers' and employers' organisations which are essential for their normal operation: the right to draw up their constitutions and rules, the right to elect their representatives in full freedom, the right to organise their administration and the right to organise their activities and to formulate their programmes. It also provides that the public authorities shall refrain from any interference which would restrict these rights or impede the lawful exercise thereof. When exercising such rights organisations are naturally bound "to respect the law of the land", but the safeguard prescribed in Article 8, which was mentioned previously with regard to the right to establish organisations without previous authorisation, is also applicable in connection with the activities of organisations, namely, that the law of the land "shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for" in the Convention.

DRAWING UP OF CONSTITUTIONS AND RULES

80. Although in several countries ¹ the legislation contains no special provisions relating to the contents of constitutions and rules, it is quite frequent to find in the trade union law certain prescriptions governing this matter. Such prescriptions usually consist in the enumeration of the various aspects which must be dealt with in the rules ² and in addition some more detailed provisions concerning certain specific questions such as the conditions of eligibility for trade union office, the election of officers, the management of trade union funds, the establishment of political funds and the holding of assemblies.³ Most of these questions will be examined subsequently in the present chapter. In many of the countries considered, it would seem that the relevant provisions are not calculated to infringe the right of organisations to draw up their constitutions and rules in freedom, but that their main pur-

¹ This is the case, for example, in Belgium, Congo, Denmark (except for officials), France, Federal Republic of Germany, Ireland, Italy, Ivory Coast, Luxembourg, Mali, Norway, Senegal, Sweden, United Kingdom (unregistered organisations), Uruguay. The situation is the same in the French non-metropolitan territories.

² For example, in Austria, Canada (registered unions) and the United Kingdom (registered organisations).

³ For example, in Argentina, Cameroon, Chad, Colombia, Costa Rica, Cyprus, Ecuador, Egypt, Guatemala, India (registered organisations), Iran, Japan (registered organisations), Libyan Arab Republic, Jordan, Malaysia, Mauritania, Mexico, Pakistan (registered organisations), Singapore, Sri Lanka, Uganda, Venezuela, Zaire.

The situation is the same in certain non-metropolitan territories of the United Kingdom, such as Bermuda, British Honduras, Hong Kong.

pose is to protect the rights of the individual members, to provide for a sound administration of the organisations and to prevent a situation arising at a later date in which these organisations would have to cope with complicated legal problems which could arise as a result of constitutions and rules being drawn up in insufficient detail. The question arises, however, as to whether an excessive accumulation of details in the legal provisions is always necessary and whether they can be reconciled with realities, in particular in developing countries. Legislation according to which union rules shall comply with statutory requirements does not constitute an infringement of the principles that workers' and employers' organisations should have the right to draw up their constitutions and rules in full freedom, provided that such statutory requirements are in conformity with the principles of freedom of association and that approval of the rules is not within the discretionary powers of the public authorities.

81. There are, however, certain countries where the right of organisations to draw up their constitutions and rules appears to be considerably restricted. This may be the case, for example, where under the trade union law trade unions must register with the central council of the federation designated in the law, which is the principal body representing the trade union movement in the country concerned¹, and which defines the general lines of all the activities of the trade unions in the country and directs the whole of the union activities²; the statutes of a trade union which joins the federation cannot be contrary to the statutes of the federation.³ A similar situation arises in other countries having a single trade union system imposed by law, where primary unions are under the obligation to follow the decisions of the only central federation which may be established and with which they must be affiliated. There is also the extreme case where the public authorities were responsible for the drafting of the rules of the central workers' organisation of the respective country.⁴ This situation is quite different from that in which the government merely makes specimen constitutions available to organisations in process of creation without requiring them to accept an obligatory model.

82. A different type of restrictive provision exists in the case where the law provides that the trade union rules must include a pledge that the organisation will act as a body collaborating with the public authorities and other associations within the concept of social solidarity and subordination of the economic and occupational interests to the national interest⁵; or where the rules of an occupational organisation must conform to the prescriptions of the trade union law, which lays down that the official Trade Union Organisation (of which all occupational organisations are an integral part) must develop its activities in accordance with the Principles of the National Movement.⁶

ELECTION OF REPRESENTATIVES

83. The analysis of the information available shows that there are two main aspects relating to the election of representatives which merit closer examination: firstly, the legislative requirements as to eligibility which persons must fulfil, and

¹ Poland, Act of 1 July 1949 respecting trade unions, sections 5, 9.

² Statutes of the Federation of Trade Unions in Poland, 1967, articles 26, 28.

³ Statutes of the Federation, article 52.

⁴ This is the case of Kenya and Tanzania (Tanganyika).

⁵ Brazil in the case of recognised unions (Consolidated Labour Laws, section 518).

⁶ Spain (Trade Union Law, section 14 (c) and section 1).

secondly, the question of procedure for the election and removal of trade union officers.

84. While the laws of many countries contain no specific provisions concerning eligibility requirements for trade union office, it is fairly common to find statutory prescriptions laying down the conditions which candidates for union posts must fulfil. The main problems concerning compatibility with the Convention would seem to arise mainly from provisions which lay down conditions relating to the following matters: nationality or citizenship, occupational status, political belief or affiliation, the penal record of the candidates for office, and re-election.

85. In many cases ¹ being a national of the country concerned is a condition of eligibility for trade union office. Sometimes, however, the requirement is less strict, as for instance where reciprocity between countries is accepted ², where the authorities have a discretionary power to grant exemptions from the statutory conditions of nationality ³, or where such a condition is required only in the case of a certain proportion of the officers of a trade union. ⁴ In certain countries ⁵ residence is accepted as an alternative to nationality as a condition for union office.

86. The Committee had previously ⁶ observed that, in certain cases, provisions of this kind cannot give rise to difficulty, although everything depends on the manner in which such clauses are applied in practice. There is little doubt that, depending on their practical application, such provisions can involve the risk of a refusal to certain categories of workers or employers of the right freely to elect their representatives. Situations of this type may develop with increasing migration of workers, particularly but not exclusively as a result of regional economic integration. It would appear desirable that, where necessary, the legislation should be relaxed in order to permit foreign workers to hold trade union office.

87. Provisions laying down that certain occupational requirements must be fulfilled before a person can be elected to trade union office are also common in the legislation of many countries. Such provisions may stipulate that trade union officers must actually be engaged or employed in the occupation represented ⁷; in some other

¹ For example, Algeria (Labour Code, Book III, ss. 4 and 2-5), Bolivia (General Labour Law, 1939, s. 101), Brazil (Consolidated Labour Laws, ss. 515 and 537), Ecuador (Labour Code, s. 423), France (Labour Code, Book IV, section L.411-4), Honduras (Labour Code, ss. 510 and 541), Liberia (Labour Practices Act, as amended, s. 4102), Libyan Arab Republic (Labour Law, s. 125), Mexico (Federal Labour Law, s. 372), Morocco (Dahir of 16 July 1957, s. 3), Nicaragua (Labour Code, ss. 197 and 207), Niger (Labour Code, ss. 6 and 25), Portugal (Legislative Decree No. 23050, 1933, s. 15, as amended by Legislative Decree No. 49058 of 1969), Senegal (Labour Code, ss. 7 and 25), Turkey (Trade Unions Act, 1963, s. 11), and Upper Volta (Labour Code, ss. 6 and 24).

² For example, Central African Republic (Labour Code, ss. 10 and 25), Ivory Coast (Labour Code, ss. 6 and 25), Mauritania (Labour Code, Book III, ss. 7 and 22), Spain (Decree No. 1265 of 1971, s. 3).

³ For example, Malaysia (Trade Unions Ordinance, 1959, as amended), Tunisia (Labour Code, ss. 251, 252).

⁴ Argentina (Act No. 14455 of 1958, ss. 11 and 4 and Decree No. 969 of 1966, s. 9, as amended by Decree No. 2977 of 1970).

⁵ For example, Chile (Labour Code, s. 376), Congo (Labour Code, ss. 184 and 203), Costa Rica (Labour Code, ss. 275 and 288), Gabon (Labour Code, ss. 6 and 24), Paraguay (Labour Code, ss. 290 and 305), Venezuela (Labour Code, ss. 173 and 190).

⁶ RCE, *General Survey*, 1959, para. 59.

⁷ For example, Cuba (Act No. 962 of 1961, s. 40), Ecuador (Labour Code, s. 413), Greece (Legislative Decree No. 890 of 1971, ss. 14 and 31, with limited exceptions), Peru (Supreme Decree No. 001, 1963).

cases, the occupational requirement is brought about indirectly by virtue of provisions requiring members of an organisation to be persons actually engaged in the occupation concerned, coupled with provisions requiring the officers of the organisation to be chosen from amongst its members.¹ The requirement of actual engagement in the occupation represented may affect, in particular, certain qualified persons such as pensioners or persons working full time as officers of the trade union, without having been engaged in the trade.² In a number of countries the law requires as an additional condition that trade union officers must be persons who at some time in the past (or, in some cases, immediately preceding the elections) have been employed for a minimum period in the occupation represented, the length of such period varying greatly from country to country.³ In a few of these countries the authorities are empowered to suspend this requirement or grant exemptions in the case of certain unions or individuals.⁴ There is also the case of countries where the occupational qualification applies to only an established proportion of a union's officers.⁵

88. The question of outside leadership in trade unions has given rise to many controversial opinions. Some governments have stated, in this connection, that the essential purpose of the occupational requirements is to prevent trade unions from being used as tools of politicians. It is recognised, however, that in many developing countries the labour force still lacks sufficient education and even social standing to be able to provide a qualified leadership entirely from within, and that outsiders have made a substantial contribution to the foundation and development of the trade union movement.⁶

89. The Committee has already expressed the view that when provisions in national legislation provide that all the trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, the guarantees laid down in the Convention may be impaired. In fact, in such cases, the dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer.⁷ The Committee considers that, for the purpose of bringing legislation which restricts union office to persons actually employed into closer harmony with the principle of free election of trade union representatives, it would appear desirable to introduce in the relevant

¹ For example, Cyprus (Trade Union Law, 1965, s. 18), El Salvador (Labour Code, s. 203), Venezuela (Labour Code, ss. 165 and 200).

² Specific provisions excluding pensioners have been adopted in Greece (Legislative Decree No. 890 of 1971, s. 38).

³ For example, Argentina (Act No. 14455, ss. 4 and 11), Brazil (Consolidated Labour Laws s. 530), Central African Republic (Labour Code, s. 10), Chile (Agricultural Workers, Act No. 16625 of 1967, s. 7), Colombia (Labour Code, ss. 388, 422), Libyan Arab Republic (Labour Code, s. 125), Malaysia (Trade Unions Ordinance, s. 13), Portugal (Legislative Decree No. 23050, as amended by Legislative Decree No. 49058 of 1969, s. 15), Syrian Arab Republic (Legislative Decree No. 84, ss. 44, 53, 61, 66), Zambia (Industrial Relations Act, s. 18).

⁴ For example, Malaysia and Zambia.

⁵ For example, India (one-half of the officers, Trade Unions Act, s. 22), Pakistan (75 per cent, Industrial Relations Ordinance, s. 7), Singapore (two-thirds of the officers, Trade Unions Ordinance, s. 30), Sri Lanka (one-half of the officers, Trade Unions Ordinance, s. 26).

⁶ See, for example, ILO: *Freedom of association for workers' and employers' organisations and their role in social and economic development*, Report III, Seventh Asian Regional Conference, Teheran, 1971, p. 17.

⁷ RCE, *General Survey*, 1959, para. 61.

provisions a greater degree of flexibility, by admitting as candidates for union office persons who have been previously employed in the trade concerned and by exempting from the occupational requirement a fairly large proportion of the officers of an organisation. This seems to be particularly important in the case of trade unions in large undertakings, trade unions established on an industry-wide level, federations and confederations.

90. The question of ineligibility for trade union office on political grounds gives rise to complex problems and the relevant provisions in national legislation may have different implications depending on whether they are directed against activities of a subversive nature¹ or whether they are aimed, for instance, at activities in a particular political party or movement², or in support of a party which is considered as being contrary to the national interest³, or directed against persons convicted for any anti-revolutionary offence.⁴ There is the case, however, where trade union officers must be members of a political party.⁵

91. The question of the establishment of trade unions independent of a certain political party has been mentioned in a previous chapter.⁶ The problem concerning the relations between a political party and a trade union and its officers will be examined further below in connection with the political activities of occupational organisations.

92. Provisions disqualifying from trade union office persons who have been convicted of almost any type of criminal offence exist in the legislation of a number of countries.⁷ In other cases eligibility for trade union office is considered in relation to certain specified crimes, which are considered to render it inappropriate to place the guilty person in a position of trust such as trade union office.⁸ In some countries a penal record can result in the loss of civic or political rights, the possession of which is also a requirement under certain legislation. It may be considered that conviction on account of offences the nature of which is not such as to be prejudicial to the proper exercise of trade union functions should not constitute grounds for disqualification, and that legislation providing for disqualification on the basis of any penal record of the person concerned would not be compatible with the Convention.⁹

93. In only a few countries specific legal provisions exist which impose restrictions on the re-election of trade union officers. In some cases there is an absolute prohibition in this regard¹⁰ and in others the law provides for exceptions or prohibits

¹ For example, Australia (Australian Commonwealth Crimes Act, section 30 A).

² For example, Argentina (Act No. 17401, section 6), United States (Labor-Management Reporting and Disclosure Act, 1959, section 504).

³ Brazil (Consolidated Labour Laws, section 530).

⁴ Cuba (Act No. 962, section 40).

⁵ Egypt (Order No. 35 of 1964).

⁶ See Ch. IV, para. 71.

⁷ For example, Brazil (Consolidated Labour Laws, s. 530), Central African Republic (Labour Code, ss. 11 and 31), Chile (Labour Code, s. 376), Colombia (Labour Code, ss. 388 and 422), Cuba (Act No. 962, s. 40), Greece (Legislative Decree No. 890, s. 17), Honduras (Labour Code, ss. 510 and 541), Madagascar (Labour Code, ss. 6 and 17).

⁸ Egypt (Order No. 35, 1964), Kenya (Trade Unions Ordinance, 1952, ss. 29 and 40), Malaysia (Trade Unions Ordinance, s. 28), Tunisia (Labour Code, ss. 251 and 252), Turkey (Trade Unions Act, 1963, s. 31), Uganda (Trade Unions Act, 1970, s. 22).

⁹ See, in this connection, Committee on Freedom of Association, 86th Report, Case No. 451 (Bolivia), para. 141.

¹⁰ For example, Mexico (in the case of civil servants, Federal Law on Workers in the Service of the State, 1963, s. 75).

re-election beyond a certain number of consecutive terms.¹ Apart from such special prescriptions, there also exists the possibility that officers may be disqualified for re-election if, for example, a specific period of active employment immediately prior to the elections is required. This would affect full-time officers unless they are exempted from this requirement. In any case, where re-election to trade union office is prohibited or limited by legislative provisions, such provisions are not compatible with the Convention.

94. In a large number of countries² no special rules exist concerning the procedure for the election and removal of representatives, although there are some cases where these questions have been regulated in a comprehensive and detailed manner.³ In these and other countries where certain rules on elections exist, it would appear that their main purpose is to ensure that the procedure is conducted in a normal manner and with due respect for the rights of the membership, in order to avoid any dispute arising as to the result of the election. However, there are also cases where national law or practice does not fully respect the Convention or is clearly incompatible with its standards, particularly in connection with the removal of trade union representatives.

95. In several countries the law prescribes that the elections must be held by the general assembly and in some of these countries the law also requires elections to be held periodically.⁴ In other cases the legislation provides that the officers of primary organisations shall be elected by direct vote of all the membership.⁵ The requirement of a secret vote is also fairly common.⁶

96. There are cases where the legislation is more restrictive or prescribes the intervention of certain administrative authorities in the election procedure, thereby creating the risk of an undue interference which is not compatible with the Convention. In a few countries, for example, the legislation establishes that only members having a certain seniority in the occupation concerned are entitled to vote⁷, or that the labour inspector (or some other labour authority) must supervise the elections or is entrusted with the counting of votes.⁸ Although the latter provisions may aim at avoiding disputes, the intervention of administrative authorities is liable to appear

¹ Guatemala (Labour Code, s. 222), Nicaragua (Trade Union Regulations, s. 35), Panama (Labour Code, s. 374).

² For example, Austria, Belgium, Cameroon, Canada, Congo, Dahomey, Denmark, Finland, France, Federal Republic of Germany, Guinea, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Luxembourg, Mauritania, Netherlands, Norway, Pakistan, Philippines, Sri Lanka, Sweden, Switzerland, United Kingdom.

³ For example, Argentina (Decree No. 969 of 1966 as amended by Decree No. 2477 of 1970), Brazil (Consolidated Labour Laws and complementary regulations), United States (Labor-Management Reporting and Disclosure Act, 1959).

⁴ For example, Dominican Republic (Labour Code, s. 333), El Salvador (Labour Code, s. 199), Guatemala (Labour Code, s. 222), Honduras (Labour Code, s. 494), Paraguay (Labour Code, s. 295).

⁵ For example, Argentina (Decree No. 969 of 1966, as amended, s. 9), Chile (Act No. 17594 of 1972).

⁶ For example, Argentina (Decree No. 969 of 1966, as amended, s. 9), Brazil (Consolidated Labour Laws, s. 524), Chile (Act No. 17594), Colombia (Labour Code, s. 391), El Salvador (Labour Code, s. 201), Japan (Trade Union Law, s. 5-2), Malaysia (Trade Unions Ordinance, Schedule), Singapore (Trade Unions Ordinance, Schedule), United States (Labor-Management Reporting and Disclosure Act, 1959, s. 401).

⁷ For example, Argentina (Decree No. 969 of 1966, as amended, s. 6), Brazil (Consolidated Labour Laws, s. 529).

⁸ For example, Brazil (Ministerial Resolution No. 40 of 1965), Chile (Decree No. 323 of 1964), El Salvador (Labour Code, s. 190), Liberia (Labour Practices Law).

arbitrary and it is desirable, in order to guarantee an impartial and objective procedure, that supervision—if necessary—should be exercised by the relevant judicial authority.¹ There is also interference in law or in practice by the administrative authorities where the results of the elections must be approved by the Ministry of Labour², where the authorities have made recommendations³ or expressed their opinion with regard to candidates and the consequences of the election⁴, where the authorities refused to recognise the executive committee elected at a trade union congress⁵ or where the president of a country had the power to appoint the secretary-general of the workers' confederation.⁶

97. In some countries the legislation regulates in a detailed manner the procedure to be followed in cases of contested elections and provides for the intervention of the judicial authorities in such cases.⁷ The guarantees of a judicial procedure do not exist, however, where the investigation and the decision in these matters rest with the administrative authorities⁸, or where these authorities may invalidate the results of a contested election.⁹

98. Similar considerations apply to cases where decisions on the suspension or dismissal of union leaders from trade union office are taken by the administrative authorities¹⁰, where the role of the judiciary in cases of suspension is confined to ascertaining that a preliminary administrative investigation has been carried out¹¹, where the council of the single national trade union federation has the right to dissolve the executive of any trade union organisation¹² or where the suspension of representatives may be ordered by the authorities of the official Trade Union Organisation.¹³ As the Committee had stated before, the removal of trade union leaders, in

¹ In Greece, for example, elections must be presided over by a judge (Legislative Decree No. 890 of 1971, s. 29). See also, in this connection, Committee on Freedom of Association, 127th Report, Case No. 633 (Argentina), para. 148.

² For example, in Brazil (Consolidated Labour Laws, s. 532).

³ See, in this connection, Committee on Freedom of Association, 23rd Report, Case No. 111 (USSR), para. 160.

⁴ See, in this connection, Committee on Freedom of Association, 73rd Report, Case No. 348 (Honduras), para. 112.

⁵ See, in this connection, Committee on Freedom of Association, 127th Report, Case No. 644 (Mali), para. 249.

⁶ Kenya (Presidential Decision, 1965).

⁷ For example, Australia (Commonwealth Conciliation and Arbitration Act), New Zealand (Industrial Conciliation and Arbitration Act), Turkey (Act No. 274 of 1963), United States (Labor-Management Reporting and Disclosure Act, 1959; but the new elections in such cases are supervised by the labour authorities).

⁸ In Brazil there is an administrative procedure in the first instance (Consolidated Labour Laws, s. 532). An appeal against the administrative decision can be lodged with the judiciary according to the Constitution (Article 153).

⁹ See, in this connection, Committee on Freedom of Association, 73rd Report, Case No. 348 (Honduras), para. 114.

¹⁰ For example, Brazil (Consolidated Labour Laws, ss. 553, 557), Colombia (Labour Code, s. 380), Honduras (Labour Code, s. 500), Kenya (Presidential Decision, 1965), Nicaragua (Trade Union Regulations, ss. 39 and 41). See also, in this connection, Committee on Freedom of Association, 128th Report, Case No. 651 (Argentina), para. 56.

¹¹ Portugal (Legislative Decree No. 502 of 1970). See also Committee on Freedom of Association, 133rd Report, Case No. 654 (Portugal).

¹² Syrian Arab Republic (Legislative Decree No. 84 of 1964, s. 49).

¹³ Spain (Decree No. 1878 of 23 July 1971, section 23). The final removal of the representatives is a matter to be decided by the trade union protection tribunals (*tribunales sindicales de amparo*), which are composed of elected members and of Trade Union Organisation legal staff, the chairman being a member of the judiciary. However, the Minister for Trade Union Affairs has the power to

cases where violations of the legislation or of the union rules have been proved in the course of judicial proceedings, as well as the appointment of temporary administrators, should be effected only through the courts.¹ However, a judicial procedure does not always appear to be a sufficient guarantee. This is the case, for instance, when the legal provisions on which the courts are to decide whether the conduct of trade union officers warrants their dismissal, are drafted in terms so wide that they would fail to afford any precise criteria for judicial decision² or when these provisions do not respect the principles laid down in the Convention.

INTERNAL ADMINISTRATION

99. In several countries the legislation contains rules providing, as the case may be, for the convening of general meetings, the powers conferred on these meetings, the need for a certain quorum of members and certain prescribed majorities in the adoption of decisions. Such prescriptions and requirements would not appear to infringe the rights and guarantees laid down in the Convention, especially when the purpose of the legislation is to guarantee the democratic participation of the members in the administration of their organisations and when the application of the rules are left mainly to the members themselves. In cases involving basic matters relating to the structure of a trade union and the fundamental rights of its members (such as approval of by-laws and their amendments, exclusion of members, establishment of union contributions, amalgamation, affiliation, withdrawal or dissolution), the regulation by law of the quorum and the majority votes for the adoption of the decisions involved would not imply an undue interference, provided that this regulation is not of such a nature as seriously to impede the running of a trade union in accordance with prevailing conditions, making practically impossible the adoption of decisions proper to it.³ The situation would be different when the law minutely regulates matters such as the proceedings of meetings and assemblies, the composition of the main bodies of the organisation and the days on which meetings are to take place, and in particular, when the labour authorities or other persons not belonging to the occupational organisation concerned are entitled to participate or to be present in such meetings.⁴

100. While the application of the legislative provisions and the trade union rules relating to internal administration is a matter which should be left mainly to the membership, the principles established in the Convention do not prevent an outside control of the internal acts of an organisation if it is alleged that such acts

suspend for an indeterminate period or to rescind the decisions of these tribunals in such instances as when there is a danger of serious disturbance of the public order or of trade union harmony. The decisions of the Minister may be modified by the Supreme Court (Decree No. 2305 of 13 August 1971, section 31). The decisions of the trade union tribunals may be challenged before the Supreme Court (Decree No. 2077 of 1971).

¹ See, for example, in connection with Argentina: RCE, 1971, p. 116.

² As, for example, when trade union officers may be dismissed for not having respected "the higher interests of the nation and the common good" (see, in this connection, Committee on Freedom of Association, 113th Report, Case No. 266 (Portugal), para. 75, where reference is made to Legislative Decree No. 49058, ss. 10 and 21).

³ See, in this connection, Committee on Freedom of Association, 79th Report, Case No. 408 (Honduras), para. 181.

⁴ For example, Brazil (Act No. 4330 of 1964, s. 8), Nicaragua (Trade Union Regulations, ss. 10 and 31). In Spain Decree No. 964 of 1971 provides that the competent delegate of the Trade Union Organisation (a representative of the Minister of Trade Union Affairs) may always act as chairman of the meetings held by members of an occupational association. With regard to Paraguay, see Committee on Freedom of Association, 127th Report, Case No. 439, para. 102.

violate the law (which in turn should not run counter to the principles of freedom of association) or the union rules. Nevertheless, in order to guarantee an impartial and objective procedure, this control should be exercised by the relevant judicial authority.¹ Legislation which accords to the administrative authorities the right, at their entire discretion, to investigate the internal affairs of a trade union, would not be in conformity with the principles of the Convention.

101. Questions relating to the administration of trade union funds merit special consideration in view of their particular nature and importance. National legislation very often contains specific provisions on matters such as sources of union funds, internal control of union finances, powers of the general assembly, supervision of financial administration by public authorities, prescribed rules of accounting and political funds. Usually these provisions are contemplated and utilised to prevent abuses and to protect the members of the trade unions against mismanagement of their funds. In certain cases, however, the provisions give rise to problems concerning compatibility with the guarantees of the Convention.

102. This is the situation, for instance, where the law establishes the minimum contribution of union members², where it provides for the proportion of union funds to be distributed to the federations³, where it requires the approval by the public authorities of trade union budgets, expenses or investments⁴, or where it fixes the proportional amount of union expenses.⁵ Problems also arise where trade unions are mainly dependent for their finances on a system under which the compulsory contributions of all workers are channelled through a state-controlled body.⁶

103. In many countries the law provides for the filing of periodic (usually annual) financial reports to the competent authorities⁷, and these authorities often have the power to demand further information on any matter which is not clear. In certain of these and other countries, the degree of supervision that may be exercised by the authorities sometimes exceeds the formal requirement that a union must furnish periodic financial returns. In such cases it seems that the Ministry of Labour⁸ or the Registrar⁹ may request information or inspect books of account

¹ Specific provisions to this effect exist, for example, in the Philippines (Republic Act No. 875, s. 17).

² For example, Chile (for agricultural workers, Act No. 16625 of 1967, s. 14), Ecuador (Act No. 70-05 of 1970), India (Trade Unions Act, s. 6).

³ For example, Egypt (Labour Code, s. 165), Iraq (Labour Law, s. 221).

⁴ For example, Brazil (Consolidated Labour Laws, ss. 549 and 550), Chile (Decree No. 323 of 1964, and Labour Code, s. 399), Egypt (Labour Code, s. 174), Portugal (Legislative Decree No. 23050 of 1933, s. 13), Syrian Arab Republic (Ministerial Instructions No. B/1/282).

⁵ For example, Egypt (Labour Code, s. 165).

⁶ See, in connection with Greece: RCE, 1972, pp. 155, 156.

⁷ For example, Argentina, Belgium (organisations having obtained legal recognition), Brazil, Cameroon, Colombia, Costa Rica, Cyprus, Egypt, Ghana, Guatemala, India (registered organisations), Iran, Libyan Arab Republic, Malaysia, Nigeria, Pakistan (registered organisations), Paraguay, Philippines (registered organisations), Sierra Leone, Singapore, Sri Lanka, Turkey, United Kingdom (registered organisations), United States. *Non-metropolitan territories*: United Kingdom: for example, Bermuda, Hong Kong.

⁸ For example, Chile (Labour Code, s. 383 and Decree No. 323 of 1964), Colombia (Labour Code, s. 486), Costa Rica (Labour Code, ss. 275 and 279), Greece (Legislative Decree No. 890 of 1971, s. 12), Guatemala (Labour Code, s. 225), Haiti (Labour Code, s. 278), Honduras (Labour Code, s. 465), Libyan Arab Republic (Labour Code, s. 126), Nicaragua (Trade Union Regulations, s. 36), Syrian Arab Republic (Decree No. 84, s. 35).

⁹ For example, Ghana (Trade Unions Ordinance, s. 26), India (registered organisations, Trade Unions Act, s. 28), Kenya (Trade Unions Ordinance, s. 50), Malaysia (Trade Unions Ordinance,

practically at any time. There are also countries where the legislation contains provisions relating to the investigation by the authorities of union finances or of internal union matters in general. In such cases the authorities are empowered to intervene when they presume that certain irregularities have occurred or when they have received complaints from union members in this connection.¹

104. Supervision by the public authorities of union finances should not normally exceed the periodic reporting requirements established in many countries. Inspection and furnishing of information whenever requested by the authorities at their discretion entail a danger of interference in the internal administration of trade unions which may be of such a nature as to restrict the guarantees of the Convention. Investigatory measures should be restricted to exceptional cases, when they are justified by especial circumstances such as presumed irregularities resulting from annual statements or reported by members of the trade union. As the Committee had already stated ² there is a certain measure of guarantee against undue interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where he himself is subject to the control of the judicial authorities. These guarantees, however, do not always exist where the supervision is exercised by the administrative labour services or where no judicial control exists. The general principle concerning the judicial control of internal acts of an occupational organisation in order to ensure an impartial and objective procedure is particularly relevant in regard to the administration of trade union property and finances.

ACTIVITIES AND PROGRAMMES

105. In the main, workers' and employers' organisations have the right to organise their activities and to formulate their programmes in freedom, and in several countries the legislation enumerates extensively the various types of activities which such organisations may develop. This does not exclude, however, certain legal restrictions imposed in a number of countries on some of their activities, specifically occupational or otherwise, or the existence, in exceptional cases, of general provisions which may be applied in such a manner as to impair the guarantees provided for in the Convention.³ Restrictions on activities which are not of an occupational character, such as commercial or religious activities, may result from special provisions to this effect ⁴ or from the legal definition of the objects of a trade union, which confines these objects to the study and defence of the economic, industrial, commercial and agricultural interests of their members and is understood to prohibit any activity of an exclusively lucrative nature.⁵ This kind of restriction, where it exists, does not

s. 57), Nigeria (Trade Unions Ordinance, s. 28), Singapore (Trade Unions Ordinance, ss. 44 and 45), Trinidad and Tobago (Trade Unions Ordinance, s. 16).

¹ For example, Argentina (Decree No. 969 of 1966, s. 12, as amended by Decree No. 2477 of 1970), Barbados (Trade Union Act, s. 35), United Kingdom (Industrial Relations Act, 1971, s. 83).

² RCE, *General Survey*, 1959, para. 64.

³ For example, when the legislation provides that trade unions shall subordinate their respective interests to the interests of the national economic system, in co-operation with the State and the higher organs of production and labour (Portugal, Legislative Decree No. 23055 of 1933, s. 9). See also, in this connection, Committee on Freedom of Association, 113th Report, Case No. 266 (Portugal), para. 54.

⁴ With regard to commercial activities, for example, Colombia (Labour Code, ss. 355 and 379), Costa Rica (Labour Code, s. 280), Guatemala (Labour Code, s. 226). With regard to religious activities, for example, Colombia (Labour Code, s. 379), Ecuador (Act No. 70-05), Paraguay (Labour Code, s. 302).

⁵ For example, France (Labour Code, Book IV, s. L.411-1).

appear to constitute an obstacle to the furthering and defending of the interests of workers and employers by their organisations. As regards the prohibition of commercial activities, the situation may deserve re-examination in the light of the development of trade union activities in general. In any case restrictions of this type should not prevent trade unions from promoting and developing, for example, producers' and consumers' co-operatives.¹

106. With regard to activities which have an occupational character or are closely connected with the furtherance of the social and economic interests of workers and employers, there are certain restrictions which merit special consideration, namely those concerning collective bargaining (which will be examined in the relevant chapter), the right to strike and political activities.

107. The right to strike is subject to restrictions in many countries, but the scope and severity of these restrictions may vary to a considerable extent, ranging from temporary prohibition and prohibition for only certain categories of workers, to prohibition of a general character applicable to all workers. A general prohibition of strikes may result from specific provisions in the law², and it may also result, for all practical purposes, from the cumulative effect of the provisions relating to the established dispute settlement machinery, according to which labour disputes are channelled through compulsory conciliation and arbitration procedures leading to a final award or decision which is binding on the parties concerned.³ A similar situation may arise in cases where in the absence of an agreement reached by the parties, disputes can be settled by compulsory arbitration or decision at the discretion of the public authorities.⁴ Severe restrictions may also occur where the procedure to be followed before a strike can be called is so cumbersome that in practice lawful strike action becomes almost impossible; the effect of restrictions of this kind is accentuated where the workers have not yet been able to develop strong and experienced organisations. A general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organise their activities (Article 3); it should be recalled, in this connection, that Article 8 of the Convention establishes that the law of the land shall not be such as to impair nor shall it be so applied as to

¹ See, in this connection, the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127), Paragraph 16.

² For example, Portugal (Legislative Decree No. 23870 of 1934).

³ For example, Brazil (Act No. 4330 of 1964, ss. 10, 23 and 25, Consolidated Labour Laws, s. 872), Cuba (Act No. 1022 of 1962, s. 36), Dominican Republic (Labour Code, ss. 374, 377, 633 and 655), Haiti (Labour Code, ss. 190, 191, 192, 197, 199 and 210), Iran (Labour Code, Chapter IX), Libyan Arab Republic Labour Law, ss. 143 and 146), Mali (Labour Code, ss. 268, 269, 274, 278 and 280), Paraguay (Labour Code, ss. 284, 296, 302 and 308), Peru (Supreme Decree of 8 August 1956, s. 2, Supreme Decree No. 009 of 1963 and Supreme Decree No. 006-71-TR of 1971), Spain (Decree No. 1376 of 1970), Tanzania (Tanganyika) (Permanent Labour Tribunal Act, 1967), Zambia (Industrial Relations Act, 1971).

The situation is somewhat different in the USSR, where the Labour Code of the RSFSR establishes (s. 10) that disputes between the management of an undertaking and the trade union committee concerned arising on the occasion of the conclusion of a collective agreement shall be settled by the higher economic and trade union organs, with the participation of the parties.

⁴ For example, Ethiopia (Labour Relations Proclamation, ss. 2 and 18), India (Industrial Disputes Act, 1947, ss. 10 and 23), Malaysia (Essential (Industrial Relations) Regulation 1969), Mauritania (Labour Code, Book IV, ss. 40 and 48), Nigeria (Trade Disputes (Emergency Provisions) Decree, 1968 and Trade Disputes (Emergency Provisions) (Amendment), Decree, 1969), Singapore (Industrial Relations Ordinance, 1960), Sri Lanka (Industrial Disputes Act, 1950, s. 4, as amended by Act No. 62 of 1957).

impair the guarantees provided for in the Convention, including the right of trade unions to organise their activities.

108. The situation is different where the law only imposes a temporary prohibition on strikes, as for example, during the conciliation and arbitration procedure, or during a cooling-off period, or before the lapse of a period of strike notice, or during the currency of a collective agreement. Restrictions of this type exist in several countries and they have usually been accepted by the Committee on Freedom of Association, with the proviso that the conditions which have to be fulfilled, under the law, in order to render a strike lawful, should be reasonable and, in any event, not such as to place a substantial limitation on the means of action open to trade union organisations.¹

109. The situation may also be different where the right to strike is denied to a certain category of workers, especially public servants and workers in essential services. With regard to the former, it may be considered that the recognition of the principle of freedom of association does not necessarily imply the right to strike. While in many countries they are prevented from going on strike, in others their right to strike is recognised.² Strikes in essential services are also forbidden in a number of countries, although in certain cases the prohibition depends on whether the authorities decide to refer any unsettled dispute in this sector to compulsory arbitration. The concept of essential services may vary according to national legislation, and sometimes this term is used in a wide sense including such activities as the production, supply and distribution of fuel, dockwork, public transport, markets, agriculture, or all other activities which the government may consider appropriate.³ The Committee on Freedom of Association has called attention to the abuses that might arise out of an excessively wide definition in the law of the term "essential services" and has suggested that the prohibition of strikes should be confined to services which are essential in the strict sense of the term.⁴

110. In certain countries strikes may be prohibited if the authorities consider that they may be prejudicial to the public order or to the general interest, or may affect economic development.⁵ Provisions drafted in such general terms entail the risk of being applied in a wide range of circumstances and not only in cases of real emergency, thus creating an obstacle in the free organisation of trade union activities.

111. In all the cases where strikes may be prohibited for certain workers, particularly civil servants and persons engaged in essential services, it is important that sufficient guarantees should be accorded to these workers in order to safeguard their interests, such as adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can participate at all stages and in which the awards are binding on both parties and are fully and promptly implemented.

¹ See, for example, Committee on Freedom of Association, 58th Report, Case No. 192 (Argentina), para. 445; 92nd Report, Case No. 454 (Honduras), para. 185.

² This appears to be the case, for example, in Dahomey, France, Italy, Ivory Coast, Mexico, Norway, Senegal, Sweden, Togo.

³ See, for example, Colombia (Labour Code, s. 430), Costa Rica (Labour Code, s. 369), Kenya (Trade Disputes Act, 1965), Malawi (Trade Disputes (Arbitration and Settlement) Ordinance), Pakistan (Industrial Relations Ordinance, 1969), Sierra Leone (The Regulation of Wages and Industrial Relations Act, 1971), Trinidad and Tobago (Industrial Relations Act, 1972), Uganda (Trade Disputes (Arbitration and Settlement) Act, 1964).

⁴ See, for example, Committee on Freedom of Association, 74th Report, Case No. 363 (Colombia), para. 230.

⁵ See, for example, Argentina (Act No. 16939 of 1966), Chile (Act No. 12927 of 1958), Ivory Coast (Labour Code, s. 183), Mali (Labour Code, s. 278), Pakistan (Industrial Relations Ordinance, 1969, s. 32, as amended), Senegal (Labour Code, s. 238), Tunisia (Labour Code, s. 387).

112. Finally, there is the special situation in some countries where trade unions, having voluntarily decided to register with the authorities (which in turn entitles them to use the state machinery for the settlement of labour disputes by means of conciliation and arbitration proceedings with binding awards), are not allowed to strike if a strike ban has been included in an award or where they are bound by the terms of an award.¹

113. In several countries the legislation provides for certain restrictions on the political activities of occupational organisations, or such activities may be completely prohibited. In some cases², trade unions are not allowed to make financial contributions to a political party or to persons running for political office. More often, however, the law contains a flat prohibition for the organisations to engage in party politics³ or in any political activity whatsoever.⁴ The extent of such prohibition depends on the interpretation given to the term political activity and on the practical application of the legislation. As the Committee has already indicated on previous occasions, such provisions of a general scope and referring especially to occupational organisations, may, by establishing a prohibition *a priori*, raise difficulties by reason of the fact that the interpretation given to them in practice may change at any moment and restrict considerably the possibility of action of the organisations.⁵ A general prohibition of political activities of any kind is not only incompatible with the principles and guarantees of the Convention, but it would also seem to be unrealistic as regards its application in actual practice. Trade unions may wish to make publicly known their position on matters of economic and social policy which affect their members or even decide to give support to a political party as a means towards the advancement of their economic and social objectives. It is important, however, that when trade unions—at the decision of their members—undertake or associate themselves with political action for these purposes, this action shall not be “of such a nature as to compromise the continuance of the trade union movement or its social and economic functions, irrespective of political changes in the country”.⁶ It is for these reasons that the Committee would again stress that States should be able, without prohibiting in general terms and *a priori* all political activities by occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which had lost sight of the fact that their fundamental objective should be the economic and social advancement of their members.⁷

114. There are a number of countries where through legislative or other means trade unions are closely associated with a political party.⁸ Here again, references

¹ This is the case in Australia (Commonwealth Conciliation and Arbitration Act) and New Zealand (Industrial Conciliation and Arbitration Act).

² For example, Argentina (Decree No. 969 of 1966, section 2), Liberia (Labour Practices Law, section 4110).

³ For example, Argentina (Decree No. 9080 of 1965), Brazil (Consolidated Labour Laws, section 521), Colombia (Labour Code, section 379), Costa Rica (Labour Code, section 280), Ecuador (Act No. 70-05), El Salvador (Labour Code, section 207), Guatemala (Labour Code, section 207).

⁴ For example, Chad (Labour Code, section 36), Ethiopia, (Labour Relations Proclamation, section 22), Greece (Legislative Decree No. 890, section 5), Madagascar (Labour Code, section 3), Paraguay (Labour Code, section 302), Somalia (Labour Code, section 28).

⁵ See, for example, RCE, *General Survey*, 1959, para. 69.

⁶ Resolution concerning the independence of the trade union movement, adopted by the International Labour Conference in 1952.

⁷ RCE, *General Survey*, 1959, para. 69.

⁸ For example, Byelorussian SSR (Constitution, article 101), Mauritania (see Committee on Freedom of Association, 127th Report, Case No. 660, paras. 257-306), Spain (Trade Unions Act,

may be made to the resolution on the independence of the trade union movement, 1952, which establishes that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

sections 1, 34 and 52), Tanzania (Tanganyika) (National Union of Tanganyika Workers (Establishment) Act, 1964, First Schedule, section 3(2)), Ukrainian SSR (Constitution, article 106), USSR (Constitution, article 126).

CHAPTER VI

RIGHT OF FEDERATION AND CONFEDERATION AND OF INTERNATIONAL AFFILIATION

115. Under Article 5 of Convention No. 87, workers' and employers' organisations shall have the right to establish and join federations and confederations, and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers. According to Article 6, the provisions contained in Articles 2 and 3 of the Convention, laying down the right of all workers and employers to establish and join organisations of their own choosing without previous authorisation, the right of these organisations to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, are equally applicable to federations and confederations.

116. To a large extent the rules applicable to primary organisations are, *mutatis mutandis*, applicable to federations and confederations. There are, however, a number of aspects relating to federations and confederations, which merit special consideration in view of the problems to which they give rise in connection with the terms of the Convention.

117. The most serious problem concerns the restriction imposed by law on the free establishment of these organisations under a single trade union system, where only one federation may be constituted for a given occupation (or groups thereof) or region and where not more than one national centre or confederation of workers or employers is admitted. This situation has already been examined and commented upon in the section on Trade Union Monopoly in Chapter IV. It should be added that in some countries a national confederation or trade union has been set up by legislation.¹ In another country establishment of the single general confederation requires the approval of the competent Minister.²

118. While in some cases the law restricts the right to confederate to the establishment of a single central organisation for the whole country, there is also the somewhat opposite situation in which the constitution of a national confederation covering the workers of different industries is prohibited by law. In the country concerned, the legislation confines the confederations that may legally exist for

¹ This is the case in Kenya (the Central Organisation of Trade Unions was established by Presidential decision in 1965), Tanzania (Tanganyika) (the National Union of Tanganyika Workers was established by law in 1964), Uganda (the Uganda Labour Congress was established by the Trade Unions Act, 1970), Zambia (the Zambia Congress of Trade Unions was originally established by the Trade Unions and Trade Disputes Ordinance, 1965, and the Zambia Federation of Employers was established by the Industrial Relations Act, 1971).

² Jordan (Labour Act, 1971, section 258).

employers and workers respectively, to those listed by law and corresponding to specific economic activities.¹

119. Another type of restriction exists where distinctions are made with regard to certain categories of workers, in particular public servants and agricultural workers. In several countries, public servants' unions are not allowed to affiliate with organisations composed of workers of the private sector. This prohibition sometimes results from specific provisions in the law² and in other cases it may be brought about indirectly by stipulations which prevent public servants from belonging to organisations which contemplate, or impose the use of strike action³ or which are based on the "class struggle".⁴ Still with regard to public servants, there is also the case where federations whose scope extends beyond the area of one local public body or beyond one separate category of employees, are not entitled to registration and cannot acquire legal personality.⁵ In so far as agricultural workers are concerned, a special restriction exists in one country whereby joint membership of industrial and agricultural trade unions within a national workers' centre is precluded. The relevant legislation⁶ provides that no industrial labour union shall exercise any function for agricultural workers, which according to the Government implies the above-mentioned restriction.⁷ In another country, federations comprising urban and rural unions are not admitted and the formation of confederations covering workers from both sectors is severely restricted.⁸ In connection with these various situations, it should be pointed out that a provision prohibiting organisations of public servants to freely federate among themselves or jointly with organisations of the private sector is not compatible (unless, in the latter case, such an affiliation may carry with it the obligation of having recourse to strike action)⁹ with the right of these organisations to establish and to join federations and confederations of their own choosing. Similarly, any prohibition or restriction imposed on agricultural organisations to affiliate or federate with other workers' organisations is equally incompatible with this right.

120. Other restrictions concerning federations or confederations, which are not in harmony with the Convention, result from provisions such as those requiring a minimum number of trade unions or federations for the establishment of organi-

¹ Brazil (Consolidated Labour Laws, section 535).

² For example, Cyprus (Public Service Law, 1967, section 59), Malaysia (Essential (Trade Unions) Regulations, 1969, with regard to persons employed by a statutory authority), Mexico (Federal Law for Workers in the Service of the State, section 79; however, the federation of state employees belongs to the "United Workers Block" ("*Bloque de Unidad Obrera*")), Singapore (Trade Unions (Amendment) Act, 1967, with regard to persons employed by a statutory board or body, unless the Minister gives his approval).

In the case of Cyprus the Government indicates that all private sector trade unions are closely affiliated with political parties and thus association therewith would taint the Civil Servants' Trade Union.

³ Philippines (Republic Act No. 875), Switzerland (Federal Act of 30 June 1927-24 June 1949, on the legal status of civil servants).

⁴ Greece (Law No. 4879 of 1931 and Law No. 5403 of 1932).

⁵ Japan (National Public Service Law, section 108, and Local Public Service Law, section 54).

⁶ Liberia (Labour Practices Law, section 4601-A).

⁷ See Committee on Freedom of Association, 108th Report, Case No. 506 (Liberia), para. 223.

⁸ Nicaragua (Trade Union Regulations, section 43, with regard to federations; according to section 62, rural and urban confederations may unite only if both have a national character, i.e. if they are composed of federations of at least eight departments).

⁹ See, in this connection, para. 109.

sations of a higher degree¹, or provisions forbidding the formation of federations comprising unions in different states or departments², or provisions making the affiliation of a union to a federation subject to the consent of the Registrar³, or provisions preventing the establishment of federations composed of unions which represent different industries.⁴

121. A number of countries impose certain important restrictions on the activities of higher-level organisations. These restrictions, which are contrary to Articles 6 and 3 of the Convention, consist in the denial to such organisations of the right to strike or to bargain collectively (or both).⁵ Restrictions of this type can give rise to serious difficulties in the development of industrial relations, particularly in the case of small unions which on account of their limited strength and untrained leadership may not be able by themselves to further and defend in an effective manner the interests of their members.

122. The right of workers' and employers' organisations to affiliate with international occupational organisations seems to be recognised without any restriction in most of the countries. There are, however, several exceptions, due to the existence in some countries of legislative provisions which usually make the affiliation subject to previous authorisation by the public authorities⁶, or which prohibit international affiliation in the case of certain organisations.⁷ Provisions of this nature are not compatible with the principle of free and voluntary affiliation of trade unions with international organisations. This principle also carries with it the right of national trade unions to receive the benefits which may result from such affiliation, the right for representatives of the trade unions to participate in the work of the international organisations to which their unions are affiliated and the right of national and international organisations to keep contacts with one another and to exchange their trade union publications.

¹ Such provisions exist, for example, in Brazil (Consolidated Labour Laws, sections 534 and 535), Dominican Republic (Resolution No. 15 of 1964), El Salvador (Labour Code, section 217), Peru (Supreme Decree No. 021 of 1962, section 23).

² In Brazil (Consolidated Labour Laws, section 534, unless authorised by the Minister of Labour), Nicaragua (Trade Union Regulations, section 43).

³ For example, in Malaysia (Trade Unions Ordinance, section 74).

⁴ For example, in Malaysia (Trade Unions Ordinance, section 72), Peru (Supreme Decree No. 021, section 23), Republic of Viet-Nam (Trade Unions Ordinance, section 24). *Non-metropolitan territories*: United Kingdom: Hong Kong (Trade Unions Ordinance, Ch. 332).

⁵ For example, in Chile (Labour Code, section 386), Colombia (Labour Code, section 417), El Salvador (Labour Code, sections 217 and 394), Honduras (Labour Code, section 537), Nicaragua (Trade Union Regulations, sections 44 and 63).

⁶ For example, Brazil (Consolidated Labour Laws, section 565), Cameroon (in the case of public servants' unions, Decree No. 69/DF/7, section 19), Kenya (Presidential decision, 1965), Libyan Arab Republic (as regards the general federation, Labour Code, section 137), Malawi (Trade Unions Ordinance, section 34), Malaysia (information supplied by the Government), Portugal (Legislative Decree No. 23050, section 10, as amended by Legislative Decree No. 49058), Zambia (Industrial Relations Act, 1971, section 119). *Non-metropolitan territories*: United Kingdom: Hong Kong (Trade Unions Ordinance, Ch. 332).

⁷ Libyan Arab Republic (by virtue of sections 127 and 137 of the Labour Code, no trade union, except the general federation, may have connections with foreign organisations.)

CHAPTER VII

SUSPENSION AND DISSOLUTION OF ORGANISATIONS

123. Article 4 of Convention No. 87 establishes that workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority. According to Article 6 of the Convention, this provision also applies to federations and confederations. Suspension or dissolution of occupational organisations by virtue of administrative powers does not, in fact, provide all the guarantees which normal judicial procedure alone can ensure. Where such measures are issued by administrative authority, there may be a danger that they will appear arbitrary, even though they are only of a temporary nature.

124. If the principle that occupational organisations may not be subject to suspension or dissolution by administrative decision is to be properly applied, it is not sufficient for the law to grant a right of appeal to the judiciary against such decisions, but the latter should not take effect until the expiry of the statutory period for lodging an appeal or until the confirmation of such decisions by a judicial authority. However, even the procedure of appeal to the courts does not always constitute a sufficient guarantee. As the Committee has already pointed out in connection with the formalities which must be fulfilled for the establishment of a trade union, if the administrative authorities have a discretionary power in taking their decisions, the judges hearing an appeal could only ensure that the legislation has been correctly applied. It is important, therefore, that the judges should be able to deal with the substance of the case and to examine the grounds on which the suspension or dissolution of an organisation was declared. In more general terms, it would seem that the extent of the guarantees against arbitrary suspension and dissolution is liable to vary considerably according to the extent of the freedoms enjoyed in fact by the inhabitants of a country.

125. Cancellation of registration may have the same or similar results as does suspension or dissolution, either because such cancellation entails dissolution or because unregistered unions are deprived of important advantages in the carrying out of their occupational functions. For this reason, the cancellation of registration will be examined at the same time as the measures of suspension and dissolution proper.

126. With regard to the suspension of organisations of their activities, there are relatively few cases where the legislation refers specifically to this type of measure. In some of the countries concerned, suspension may be declared by the judicial authorities when the organisations have contravened the national legislation.¹ In

¹ For example, Ecuador (Act No. 70-05, section 5), Haiti (Labour Code, section 279), New Zealand (suspension of registration by the Arbitration Court, Industrial Conciliation and Arbitration Act, section 197), Turkey (Associations Act, section 45. However, in exceptional cases the activities of a trade union may be suspended by administrative authority).

others, the law provides specifically for the suspension by administrative authority. While in two of the countries the measure of suspension may be challenged before the judiciary¹, in others the situation in this respect is not clear or such a possibility is excluded.² There is also the special situation where occupational organisations may be suspended by the Minister for Trade Union Affairs (who is at the head of the official Trade Union Organisation) or his delegates, and where an appeal may be lodged against such measure to the Supreme Court.³ Suspension of trade unions may also arise in another set of circumstances. There are, in fact, a number of countries⁴ and territories⁵, in which the legislation permits the Registrar of trade unions, after due notice, to cancel the registration of an organisation. In cases where such legislation permits a decision of cancellation of registration, even though subject to an appeal to the judicial authorities, to take effect before the judicial authorities have given their decision or even before an appeal has been lodged, it has the effect of permitting the suspension of a trade union by administrative authority, contrary to the Convention. Finally, in a few countries the order of suspension made by an administrative authority is part of the procedure for the judicial dissolution of an organisation, and it has no effect unless a petition for dissolution is brought immediately before the courts by such an authority.⁶

127. As for the dissolution of organisations, it would seem that in the majority of countries such measure can be ordered only by the judicial authorities on the grounds of infringements of the law.⁷ In one country⁸ any administrative decision to this effect does not come into force unless it has been confirmed by the courts

¹ Argentina (Act No. 14455, sections 34 and 37, with regard to the suspension of the trade union personality conferred upon the most representative unions; the lodging of the appeal stays the execution of the suspension measure), Kenya (Trade Unions Ordinance, sections 17 and 18; it is not clear whether the lodging of the appeal has the same effect as in the previous case).

² For example, Colombia (Labour Code, section 380), El Salvador (Labour Code, sections 208 and 209), Honduras (Labour Code, section 500).

³ Spain (Trade Union Act, 1971, section 45 and Decree No. 2077 of 1971). The appeal does not stay the execution of the order of suspension. In addition, it seems that in certain cases the sentence of the court can be suspended or waived by the Cabinet (Decree No. 2077, section 73).

⁴ For example, Ghana (Trade Unions Ordinance, section 14), India (Trade Unions Act, sections 10 and 11), Kenya (Trade Unions Ordinance, sections 17 and 18), Malawi (Trade Unions Ordinance, sections 16 and 17), Nigeria (Trade Unions Ordinance, sections 17 and 18), Sierra Leone (Trade Unions Ordinance, sections 13 and 14), Sri Lanka (Trade Unions Ordinance, sections 15-17). In all these countries a procedure of appeal to the courts exists, but it is not certain from the information available whether the lodging of an appeal stays the execution of the decision of the Registrar.

⁵ *Non-metropolitan territories : United Kingdom*. According to the information supplied by the Government, in most of the territories it is considered that the appeal may be lodged prior to deregistration taking effect and that it stays the execution of the Registrar's decision. However, in others it is considered that the appeal cannot be lodged before cancellation of registration and/or that it does not suspend the execution of the decision of the Registrar. In Bermuda, the Trade Union Act, 1965, provides that where an appeal to the Court has been made, the decision of cancellation shall not become effective until the appeal has been disposed of (section 13).

⁶ Denmark (Constitution, article 78), Finland (Act of 1919, section 21), Iceland (article 73 of the Constitution). *Non-metropolitan territories : Denmark* (Faeroe Islands (section 78 of the Constitution), Greenland (ibid.)).

⁷ For example, Algeria, Belgium, Canada, Central African Republic, Chad, Chile (agricultural unions), Colombia (except for illegal strike action), Congo, Costa Rica, Dahomey, Denmark, Egypt, Finland, France, Greece, Guatemala, Guinea, Honduras (except for illegal strike action), Iceland, Ireland, Italy, Ivory Coast, Libyan Arab Republic, Madagascar, Mali, Mexico, Morocco, Nicaragua, Niger, Norway, Senegal, Sweden, Togo, Tunisia, Uruguay, Zaire.

⁸ Federal Republic of Germany (Associations Act, 1964, section 16).

and in another country¹ the dissolution ordered by the Minister for Trade Union Affairs must be confirmed by the judiciary before becoming effective. In a number of other countries, however, dissolution can be ordered by the administrative authorities. The situation varies according to the possibilities given by the law for lodging an appeal to the courts against the administrative (and, sometimes, Presidential) decision, and the effects of the appeal. In some cases, it is not clear whether such an appeal is possible.² In one country, an appeal can be taken against the decision to revoke the trade union status of an organisation, and such an appeal stays the execution of the administrative decision.³ In another country, the appeal only stays the execution if the court, on request, so decides.⁴ In still another country an appeal is possible, but does not seem to have a suspensive effect on the administrative decision.⁵

128. As previously indicated, there are a number of countries and territories in which the Registrar may cancel the registration of a trade union. Usually there is a right of appeal against the decision of the Registrar, although it is not always certain from the information available whether the appeal stays the execution of this decision. In a few cases, however, the appeal can be taken only to the competent Minister⁶, or the decision is made directly by the Minister without further appeal to the courts.⁷ In some of these cases, certain grounds for deregistration listed in the law seem to confer on the Registrar and the Minister more or less discretionary powers in making their decisions.⁸ There are also a few countries in which it is not a matter for the Registrar to take the decision to cancel the registration of a trade union; in such cases the law provides that such a decision shall be a matter for the courts following a request made by the Registrar.⁹

129. Apart from these various situations covered by the ordinary trade union legislation, there are a number of cases in which trade unions have been dissolved by a special law or decree. Sometimes this measure was taken in order to replace a nation-wide organisation by a new organisation whose structure was established by law or by a constitution prepared by the authorities.¹⁰ In other cases, the decision

¹ Spain (Trade Union Act, 1971, section 45; it seems that in certain cases the sentence of the court can be suspended or waived by the Cabinet: Decree No. 2077 of 1971, section 73).

² For example, Chile (Labour Code, section 415), El Salvador (Labour Code, sections 208-210), Somalia (dissolution of trade unions by the Supreme Revolutionary Council, Labour Code, section 27).

³ Argentina (Act No. 14455, section 37).

⁴ Portugal (Legislative Decree No. 23050, section 20, as amended by Legislative Decree No. 49058).

⁵ Venezuela (Labour Law, sections 193 and 199, and information supplied by the Government).

⁶ For example, Malaysia (Essential (Trade Unions) Regulations, 1969), Singapore (Trade Unions Ordinance, sections 17 and 18). *Non-metropolitan territory: United Kingdom: Bahamas* (Industrial Relations Act, 1970, section 13).

⁷ New Zealand (Industrial Conciliation and Arbitration Act, section 198).

⁸ Malaysia (if it is considered that a union is likely to be used for unlawful purposes or for any purpose contrary to its rules: Trade Unions Ordinance, section 15), Singapore (if it is considered that a union is being used or is likely to be used against the interests of the workers, or having regard to the existence of another union for the same category of workers, it is considered that it is necessary in the interests of the workers to deregister a union: Trade Unions Ordinance, section 15).

⁹ This is the case in Pakistan (Industrial Relations Ordinance, section 10, as amended in 1970), United Kingdom (Industrial Relations Act, 1971, section 77).

¹⁰ Kenya (Presidential decision, 1965: The Kenya Federation of Labour and the Kenya African Workers' Congress were replaced by the Central Organisation of Trade Unions (Kenya)-COTU (K)), Tanzania (Tanganyika) (the National Union of Tanganyika Workers (Establishment) Act,

(Footnote continued overleaf)

of the Government to dissolve an organisation was taken as a sanction because of strike action or was based on political grounds. A number of complaints relating to such measures have been examined by the Committee on Freedom of Association¹ and under the special complaints procedure regulated by the Constitution of the ILO.² The Committee on Freedom of Association pointed out several times that the relevant measures did not ensure the right of defence which normal judicial procedure alone can guarantee and in all these cases the ILO supervisory bodies concluded that such measures were contrary to the principles of the Convention.

1964: under this law, the Tanganyika Federation of Labour and its member unions were dissolved), Uganda (Trade Unions Act, 1970: this law provides for the dissolution of the former Uganda Labour Congress and all other unions registered under the Trade Unions Act, 1965, and it establishes a new Uganda Labour Congress and provides for the formation of branch unions).

¹ See, in this connection, for example, 57th Report Case No. 248 (Senegal), 60th Report, Case No. 191 (Sudan), 68th Report, Case No. 313 (Dahomey), 105th Report, Case No. 537 (Indonesia).

² See, in this connection, Report of the Commission of Inquiry on Greece, appointed under article 26 of the Constitution, *op. cit.*

CHAPTER VIII

TRADE UNION RIGHTS AND CIVIL LIBERTIES

130. On several occasions reference has been made in this report to one of the basic safeguards laid down in Convention No. 87 to ensure full respect for trade union rights, namely that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees established in the Convention. The implications of this principle become particularly relevant when considering the interaction of trade union rights and civil liberties, where experience shows that restrictions on trade union freedoms are more frequently encountered in cases where civil liberties in the general sense are also curtailed.¹ Freedom of association for occupational purposes is, in fact, but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another.² The Committee on Freedom of Association has stated on more than one occasion that a genuinely free and independent trade union movement can develop only under a régime which guarantees fundamental human rights. In its *General Survey* of 1959³, the Committee has observed, more specifically, that the degree of freedom enjoyed by occupational organisations in determining and organising their activities depends very largely upon certain legislative provisions of general application relating to the right of free meeting, the right of free expression and, in general, to civil and political liberties enjoyed by the inhabitants of the country. Similarly, in the Conference Committee on the Application of Conventions and Recommendations the view has been expressed that freedom of association could not be respected when no other civil liberties were recognised, when the elementary freedom from arbitrary arrest and the freedom of the press were not assured, and when freedom to meet seemed to be granted only to those trade unions which the government recognised.⁴ The International Labour Conference has summed up these opinions in its resolution concerning trade union rights and their relation to civil liberties, 1970, where it enumerates the civil liberties which are essential for the normal exercise of trade union rights and considers that the absence of these civil liberties removes all meaning from the concept of trade union rights.⁵

131. The Resolution based itself on the universally recognised principles defining the basic guarantees of civil liberties, as spelled out, in particular, in the Universal

¹ See, in this connection, *The ILO and human rights—Report of the Director-General*, op. cit., p. 36.

² ILO: *Freedom of association and industrial relations*, Report VII, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, 1947), pp. 11–12.

³ Para. 71

⁴ ILO: *Record of Proceedings*, International Labour Conference, 52nd Session, Geneva, 1968 (Geneva, 1969), Appendix VI, p. 614.

⁵ See above Ch. I, *ILO Action since 1959*.

Declaration of Human Rights and the International Covenant on Civil and Political Rights. Although these principles have received the full backing of the General Assembly of the United Nations, they will become obligations binding upon ratifying States only when the International Covenant has entered into force.¹ Thereafter, the supervisory machinery and complaints procedures established in this instrument will also become effective.

132. As regards the question of civil liberties in connection with the exercise of trade union rights, by the nature of their functions the ILO supervisory bodies have been concerned with particular issues thereof as they arose rather than with the systematic analysis of the legal and factual situation in the various countries. Similarly, they have had to consider mainly cases where difficulties had been encountered in the application of the relevant principles and have had less occasion to review measures adopted to give positive expression to these principles. The Committee on Freedom of Association, in particular, had to examine a considerable number of cases where the question at issue revolved around the enjoyment of civil liberties.² From the information available the main problems seem to arise in connection with the enjoyment of freedom of assembly, freedom of expression and opinion, freedom from arbitrary arrest and the right to a fair trial, and freedom from arbitrary interference with privacy. The ILO supervisory bodies have expressed their views on these questions, which may be summarised as follows.

133. Freedom of assembly is essential to the free exercise of trade union rights and occupational organisations should have the right to meet freely on their own premises, without the need for prior notification to or authorisation from the public authorities and without the attendance of these authorities. Public meetings and demonstrations, especially on Labour Day, also constitute an important trade union right, which nevertheless does not release organisations from the obligation to comply with the general formalities uniformly applicable to all meetings of this kind. It rests with the authorities, who are responsible for the maintenance of public order, to decide whether meetings, including trade union meetings, may in special circumstances endanger public order and security and to take adequate preventive measures. With regard to plantation workers, attention has been drawn to a resolution adopted in 1950 by the Committee on Work on Plantations, in which the principle was affirmed that plantation employers should provide trade unions with facilities for the conduct of their normal activities, including free office accommodation, freedom to hold meetings and freedom of entry.

134. The Resolution concerning Trade Union Rights and their Relation to Civil Liberties places special emphasis on freedom of opinion and expression, "and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organisations should enjoy freedom of opinion and expression at their meetings, in their publications, and in the course of their trade union activities. The right to express opinions through the press or any other media is one of the essential elements of trade union rights, and the enjoyment of this right would be affected by prior censorship of all means of communication and publication of trade union views. Considering that the application

¹ Three months after the deposit of the thirty-fifth instrument of ratification or accession. At 1 January 1973 the Covenant had been ratified by 17 States.

² See, in this connection, *Freedom of association—Digest of Decisions of the Freedom of Association Committee of the Governing Body*, paras. 305–384.

of measures for the control of publications and information, as well as the granting and revoking of licences may involve a serious interference by administrative authorities in trade union activities, it is important that in such cases the exercise of administrative authority should be subject to judicial review. The primary role of trade union publications should be to deal essentially with matters relating to the defence and furtherance of the interests of the unions' members in particular and with labour questions in general. It is, however, common for trade union publications to take a stand on questions having political aspects, as well as on social questions. In doing so, trade union organisations should have regard, in the interest of the development of the trade union movement, to the principles enunciated by the International Labour Conference in 1952¹ for the protection and independence of the trade union movement and the safeguarding of its fundamental task of advancing the social and economic well-being of the workers.

135. While it is evident that trade unionists should not be arrested on account of normal trade union activities, the detention of trade unionists in any circumstances runs the risk of involving serious interference with the exercise of trade union rights if such measures are not accompanied by adequate judicial safeguards. It should be the policy of every government to ensure the observance of specific guarantees such as the principle that no one shall be subject to arbitrary arrest, detention or exile, the right of every arrested person to be informed, at the time of arrest, of the reasons for his arrest and also to be informed promptly of any charges against him, and the right of everyone charged with a criminal offence to be presumed innocent until proved guilty according to the law in a public trial in which he has had all the guarantees necessary for his defence. The prolonged detention of persons before being brought to trial is not compatible with the right of all detained persons to a prompt and fair trial. The detention of trade unionists concerning whom no grounds for conviction are subsequently found is liable to involve restrictions upon freedom of association and governments should therefore ensure that the authorities concerned are given appropriate instructions so that any risk of detention for trade union activities is eliminated. In cases of preventive detention of trade unionists under special powers in periods of emergency, such measures should be justified by the existence of a serious emergency and be accompanied by adequate judicial safeguards applied within a reasonable period.

136. With regard to freedom from arbitrary interference with privacy, trade unions, like other associations or persons, cannot claim immunity from search of their premises. It has been emphasised, however, that any such search should only be made following the issue of a warrant by the ordinary judicial authority after that authority has been satisfied that there are reasonable grounds for supposing that evidence exists on the said premises material to a prosecution for an offence against the law, and provided that the search is restricted to the purposes for which the warrant has been issued. The resolution concerning trade union rights and their relation to civil liberties mentions the right to protection of the property of trade union organisations among those civil liberties which are essential for the normal exercise of trade union rights.

¹ Resolution concerning the independence of the trade union movement.

**THE RIGHT TO ORGANISE AND
COLLECTIVE BARGAINING**

THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING

137. The matters examined in this part of the report are covered by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which deals with the protection against acts of anti-union discrimination and acts of interference in occupational organisations (in particular, by employers), and is also concerned with the promotion of voluntary collective bargaining. As in the case of Convention No. 87, this instrument permits States to determine the extent to which the guarantees provided for in the Convention shall apply to members of the police and armed forces (Article 5).

138. With regard to public servants, who are covered without any distinction by Convention No. 87, Article 6 of Convention No. 98 establishes that the Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way. The Committee has expressed the view¹ that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, but who do not act as agents of the public authority (even though they may be given a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The Committee considered that this is made even clearer in the English text of Article 6 of the Convention which permits the exclusion solely of public servants "engaged in the administration of the State". In the opinion of the Committee one could not admit the exclusion from the terms of the Convention of important categories of workers employed by the State merely on the grounds that they are formally assimilated to public officials engaged in the administration of the State. If this were the case, the Convention might be deprived of much of its scope. The distinction to be drawn, therefore, according to the Committee², would appear to be, basically, between civil servants employed in various capacities in government ministries or comparable bodies, that is, public servants who by their functions are directly engaged in the administration of the State as well as lower-ranking officials who act as supporting elements in these activities, and other persons employed by the government, by public undertakings or by autonomous public institutions.³

¹ RCE, 1967, pp. 100 and 101.

² ILO: *The Ratification outlook after fifty years: Seventeen conventions*, op. cit., para. 45.

³ It should be noted that in the Resolution concerning Freedom of Association and Procedures for Staff Participating in Determining Conditions of Employment in the Public Service, adopted by the Joint Committee on the Public Service (Geneva, March-April 1971) it is recognised that, although Convention No. 98 does not deal with the position of public servants engaged in the administration of the State, in some countries such public servants already benefit from all or some of the provi-

(Footnote continued overleaf)

139. Public servants and their organisations are protected against acts of anti-union discrimination and acts of interference in trade unions by Article 11 of Convention No. 87, which establishes that countries having ratified this Convention undertake to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise. Furthermore, any act of interference by the State with organisations of public servants would contravene the provisions of Article 3, paragraph 2, of Convention No. 87, which is applicable to public servants and which provides that the public authorities shall refrain from any interference which would restrict the rights of organisations or impede the lawful exercise thereof.¹

sions of the Convention; and it is considered that public servants should have, in accordance with Convention No. 98 adequate protection against any act which might impair trade union freedom.

¹ RCE, *General Survey*, 1959, para. 84.

CHAPTER IX

PROTECTION AGAINST ACTS OF ANTI-UNION DISCRIMINATION

140. An important aspect of the right to organise is the protection afforded to workers and trade union leaders against acts of anti-union discrimination and victimisation by the employer. Discrimination for trade union membership or activities can take several forms. It is for this reason that Article 1 of Convention No. 98, after establishing in general terms that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, provides that such protection shall apply more particularly in respect of acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. In other words, the Convention requires that workers should be adequately protected against anti-union discrimination both at the time of taking up employment and in the course of their employment relationship.

141. As regards union security arrangements, the Committee on Industrial Relations at the 32nd Session of the International Labour Conference finally agreed to express the view that Convention No. 98 "could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice".¹ Accordingly, countries are in no way bound under the provisions of the Convention to permit union security arrangements established in collective agreements or by practice; on the other hand, those countries which allow such arrangements would not be placed in the position of being unable to ratify the Convention.

142. As the effectiveness of statutory provisions for the protection of workers and trade union representatives depends, to a large extent, on the manner in which these provisions are implemented in actual practice, Article 3 of the Convention lays down that machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined above.

143. In the large majority of countries governments consider that, in one way or another, workers are protected against acts of anti-union discrimination in respect of their employment. In a substantial number of these countries special legal provisions exist (which are sometimes very detailed) intended to protect workers in general against such acts, and which are applicable both in connection with engage-

¹ ILO: *Record of Proceedings*, International Labour Conference, 32nd Session, 1949 (Geneva, 1951), p. 468. See also above, paras. 77 and 78.

ment and with anti-union discrimination in the course of employment.¹ In some other countries workers are specifically protected against victimisation, and in particular dismissal, during their employment, but the legislation does not seem to contain measures of protection applicable to engagement.² In certain countries special protection is afforded against the dismissal or other acts of discrimination with regard to members of a union having applied for registration or being in process of formation for that purpose³, or with regard to the founding members of a trade union or the members thereof prior to its registration⁴; or against dismissals aimed at substantially reducing the proportion of unionised workers (or of members of a particular union) in an undertaking.⁵

144. There are, however, cases where the legislation contains no special provision protecting the workers against dismissals on account of trade union membership or activities, and where the employer is usually not bound to give reasons for effecting dismissals.⁶ But even where protective provisions exist in the law, it would not appear that they are sufficiently effective when the legislation enables employers in practice—on condition that they pay the compensation prescribed by law for cases of unjustified dismissal—to terminate the employment of any worker, even if the true reason is his union membership or activities.⁷

145. In view of the difficulties which exist to ensure a total and absolute guarantee against acts of anti-union discrimination, in a certain number of countries legislation accords more extensive protection to trade union representatives, who are usually more exposed to acts of such nature. This special protection is particularly

¹ For example, Argentina (Act No. 14455, section 42), Austria (Act of 5 April 1930 and Works Councils Act), Belgium (Act of 24 May 1921), Brazil (Penal Code, section 199 and Consolidated Labour Laws, section 543), Byelorussian SSR (Labour Code and Penal Code), Canada (Canada Labour Code, Part V, Criminal Code and provincial legislation), Chad (Labour Code, section 37), Chile (agricultural workers, Act No. 16625, section 19), Congo (Labour Code, section 207), Dahomey (Labour Code, section 7), Dominican Republic (Labour Code, section 307), Ethiopia (Labour Relations Proclamation, section 30), France (Labour Code, Book IV, section L.412-2), Federal Republic of Germany (Works Councils Act, 1972, section 75; Act of 25 August 1969; Art. 9, 3 of the Constitution; and Civil Code, section 134), Greece (Legislative Decree No. 890, sections 4 and 14), Italy (Act No. 300 of 1970, sections 15 and 16), Ivory Coast (Labour Code, sections 4 and 70), Japan (Trade Union Law, section 7), Jordan (Labour Act, 1971, section 269), Luxembourg (Act of 11 May 1936, section 4), Malaysia (Essential Industrial Relations Regulations, 1969), Mali (Labour Code, sections 68 and 306), Mauritania (Labour Code, Book I, section 63; Book III, sections 3 and 26), Niger (Labour Code, section 4), Pakistan (Industrial Relations Ordinance, section 15), Panama (Labour Code, section 388), Paraguay (Labour Code, sections 65, 282), Peru (Decree 009 of 1961, sections 2 and 4), Philippines (Republic Act No. 875, sections 4 and 8), Senegal (Labour Code, section 29), Somalia (Labour Code, section 15), Trinidad and Tobago (Industrial Relations Act, 1972, section 42), Uganda (Trade Unions Act, section 55), Ukrainian SSR (Labour Code and Penal Code), United Kingdom (for members of registered unions, Industrial Relations Act, 1971), USSR (Russian SFSR: Labour Code and Penal Code), United States (Labor-Management Relations Act, sections 7 and 8), Venezuela (Labour Code, sections 168 and 169), Zaire (Labour Code, section 228), Zambia (Industrial Relations Act, section 4). Most of the French non-metropolitan territories apply the same legislation as in France.

² For example, Australia (for members of registered unions), Finland, Ghana, Haiti, Libyan Arab Republic.

³ For example, Australia (Commonwealth Conciliation and Arbitration Act, section 5), New Zealand (Industrial Conciliation and Arbitration Act, section 166).

⁴ Colombia (Labour Code, section 406), Ecuador (Act No. 70-05 of 1970, which protects all workers and not only founding members), Venezuela (Labour Code, section 198).

⁵ El Salvador (Labour Code, section 213), Panama (Labour Code, section 388).

⁶ For example, Switzerland and several non-metropolitan territories of the United Kingdom.

⁷ See Committee on Freedom of Association, 119th Report, Case No. 611 (Costa Rica), paras. 99-107.

desirable, because in order to be able to perform their trade union duties in full independence, these representatives must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their organisations. The guarantee of such protection is also necessary in order to ensure that effect is given to the principle that workers' organisations should have the right to elect their representatives in full freedom.¹ The special rules existing in several countries (which sometimes also protect candidates for trade union office or union leaders during specified periods following their term of office) may provide for previous authorisation by an outside body or public authority², by a trade union body³ or by the workers of an undertaking⁴, before certain measures such as dismissals or transfers can be taken against trade union representatives (however, provisional suspension from employment of the representatives is sometimes possible). These rules may also provide for special appeals procedures against such measures⁵ or limit the grounds on which representatives can be dismissed⁶ (this type of provision usually also accompanies certain other forms of protection mentioned above).

146. The information available reveals that the machinery and procedures available to enforce the prohibition of anti-union discrimination vary considerably according to national law and practice: intervention of bodies, established jointly by the parties, of officials belonging to the labour administration, or of courts (ordinary courts, industrial tribunals, labour courts, etc.). In some countries acts of anti-union discrimination may be prosecuted and punished as offences; in other countries they may give rise to industrial disputes and be dealt with through procedures for the settlement of such disputes. Furthermore, in view of the difficulty which workers have in proving that they have been subjected to anti-union discrimination, the legis-

¹ The Convention and Recommendation concerning protection and facilities to be afforded to workers' representatives in the undertaking, adopted in 1971, provide that workers' representatives (including trade union representatives) in the undertaking are to enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. The Recommendation provides that the measures which should be taken to ensure effective protection might include, inter alia, in respect of the unjustified termination of employment of the representatives, provision for an effective remedy which, unless this is contrary to basic principles of the law of the country concerned, shall include the reinstatement of such representatives in their job with payment of unpaid wages and with maintenance of their acquired rights. The Recommendation also lays down the principle that the effective protection referred to above should under certain conditions equally apply to workers who are candidates for election or appointment; and might apply to workers who have ceased to be workers' representatives.

² For example, Chile (Act No. 16455, sections 10 and 11, and Act No. 16625 respecting agricultural unions), Colombia (Labour Code, sections 405-413), Egypt (Act No. 142 of 1963), El Salvador (Labour Code, section 212), France (Labour Code, Book IV, section L.412-15), Greece (Legislative Decree No. 890, sections 34 and 35), Guatemala (Labour Code, section 223), Honduras (Labour Code, section 516), India (Industrial Disputes Act, as amended in 1956, section 33), Iran (Labour Law, section 33), Norway (Basic Agreement, 1966), Spain (Decree No. 1878 of 1971), Venezuela (Labour Code, section 198).

³ For example, Algeria (Order No. 71-75 of 1971, section 10; the dismissal must also be approved by the labour inspector), Bulgaria (Labour Code, section 38), Hungary (Labour Code, section 16), Poland (Decree of 6 February 1945), USSR (Russian SFSR: Labour Code, section 235).

⁴ Finland (Act No. 320 of 1970, section 53).

⁵ For example, Argentina (Act No. 14455, sections 40-46), Turkey (Act No. 1317 of 1970).

⁶ For example, Brazil (Consolidated Labour Laws, section 543), Ecuador (Labour Code, section 168).

lation of certain countries places on the employer the onus of proof that a dismissal is unconnected with trade union matters.¹

147. A number of countries have established special procedures for the investigation and determination of cases of anti-union discrimination.² Bodies set up under these procedures have quasi-judicial competence to deal with such cases, and sometimes also with the settlement of industrial disputes and other matters. In certain of these countries the effectiveness of these procedures would seem to be the result of the experience of the special bodies in dealing with these specific cases and where circumstantial evidence plays an important role in the determination of the actual intentions of the employer.

148. The Committee would place special emphasis on the importance of providing expeditious, inexpensive and wholly impartial means of redressing grievances caused by acts of anti-union discrimination. Having regard to the fact that the excessively lengthy proceedings which exist in some countries can result, in practice, in a denial of justice, it is particularly important to provide for simplified and rapid procedures for the examination of cases relating to such acts, in the absence of which the worker concerned will feel a growing sense of injustice, with consequent harmful effects on industrial relations.³

149. Even in countries in which protection against acts of anti-union discrimination is ensured to a very substantial degree, as some governments report, by the existence of powerful and well-organised trade unions, cases may arise in which some employers refuse to employ workers because of their trade union membership or activities, or take discriminatory measures against workers on such grounds. The Committee has considered in the past that as long as the protection laid down in the Convention is effectively enjoyed, the methods to apply the provisions of the Convention may vary, and that in deciding upon these methods, governments will normally take into account such factors as the historical background of trade union development in their respective countries, the present strength of the trade union organisations and the experience of their leaders. However, if in a country workers were not adequately protected in respect of acts of anti-union discrimination, then, whatever methods were normally applied, the government in question should, in order fully to implement the provisions of the Convention, take such measures as might be necessary to ensure the effective enjoyment of the protection prescribed in

¹ For example, Australia and New Zealand.

The above-mentioned Workers' Representatives Recommendation, 1971, also provides for the possibility of placing upon the employer, in the case of alleged discriminatory dismissal or unfavourable change in the conditions of employment of such representatives, the burden of proving that such action was justified.

² For example, Ethiopia (Labour Relations Proclamation), Ghana (Industrial Relations Act), Japan (Trade Union Law), Pakistan (Labour Laws (Amendment) Ordinance, 1972), Philippines (Republic Act No. 875), United States (National Labor Relations Act).

³ The Fifth Asian Regional Conference (Melbourne, 1962), when adopting its Observations regarding Government services for the improvement of labour-management relations and settlement of disputes, recommended the establishment of simplified procedures for the settlement of disputes over acts of interference with the exercise of the right to organise or to engage in legitimate concerted activity.

The same preoccupation with regard to the effectiveness of protective legislation inspired the provision contained in the Workers' Representatives Recommendation, 1971, which refers to a special recourse procedure open to these representatives when they consider that their employment has been unjustifiably terminated, or that they have been subjected to an unfavourable change in their conditions of employment or to unfair treatment.

the Convention.¹ Such action may be particularly necessary in countries with an incipient trade union movement, but it might also have to be considered in countries where trade unions are of long standing and well developed.²

¹ See, in this connection, *The ratification outlook after fifty years*, op. cit., para. 43.

² Measures to this effect have been adopted, for example, in Italy (Act No. 300 of 1970) and the United Kingdom (Industrial Relations Act, 1971).

CHAPTER X

PROTECTION AGAINST ACTS OF INTERFERENCE

150. Article 2 of Convention No. 98 establishes first in general terms, that workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. The Article goes on to describe particular acts of interference which are designed to promote the establishment of workers' organisations under the domination of employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations. In order to make this protection effective, the same provision applies as in the case of acts of anti-union discrimination, namely, that machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined above (Article 3).

151. The information available is mainly confined to the protection of workers' organisations against acts of interference by employers. Several countries have adopted provisions to this effect. Such provisions are sometimes of a general character, but in other cases they are more specific and may refer to the independence (i.e. the absence of any employers' control) of a trade union in order for it to obtain registration, the refusal of registration of a trade union or its deregistration if it is not a bona fide organisation, the financial or other support of a trade union by an employer for the purpose of placing the organisation under his control, the refusal of bargaining rights to a non-independent trade union, the prohibition of payments by employers to trade union representatives, etc.¹ The machinery to enforce these provisions depends on the type of protection which is afforded by the law, as well as on the various procedural methods established by national law and practice: it may consist in the intervention of the Registrar or the administrative labour authorities, the labour courts or the ordinary courts, or the special bodies referred to

¹ For example, Argentina (Act No. 14455, sections 7 and 42), Australia (Commonwealth Conciliation and Arbitration Act, Regulation 115), Brazil (Consolidated Labour Laws, section 525), Cameroon (Labour Code, section 5), Canada (Canada Labour Code, Part V), Chile (agricultural unions, Act No. 16625, section 19), Ethiopia (Labour Relations Proclamation, sections 12 and 30), Federal Republic of Germany (according to court decisions, only independent unions are covered by the Constitution and entitled to engage in collective bargaining, at present under the Collective Agreements Act, 1969), Ghana (Industrial Relations Act, section 27), India (Bombay, Industrial Relations Act, section 15, and Central Provinces and Berar Industrial Disputes Settlement Act, section 3), Italy (Act No. 300 of 1970, section 17), Japan (Trade Union Law, sections 2 and 7), Malaysia (Industrial Relations Act, 1967, section 4), Mexico (Federal Labour Law, section 133), Panama (Labour Code, section 388), Paraguay (Labour Code, section 284), Peru (Decree 009 of 1961, section 2), Philippines (Republic Act No. 875, section 4), Somalia (Labour Code, section 15), Turkey (Act No. 274 of 1963, section 17), United Kingdom (Industrial Relations Act, 1971, section 67), United States (Labor-Management Relations Act, section 7 and Labor-Management Reporting and Disclosure Act, 1959), Venezuela (Labour Code, section 168).

in the previous chapter which are competent to deal with unfair labour practices such as acts of anti-union discrimination and acts of interference.

152. Specific protective provisions in the law are less frequent with regard to acts of interference than with regard to acts of anti-union discrimination. A number of governments state, in this connection, that the strength and development of the trade unions are sufficient to protect these organisations against any acts of interference. Other governments refer to the recognition of trade unions and of the principles of freedom of association and the right to organise in collective agreements, or indicate that legal provisions are not necessary because of the absence, in actual practice, of such acts of interference. As in the case of anti-union discrimination, whenever it appears that there is insufficient protection against interference, or that such acts do occur in practice, governments having ratified the Convention are under the obligation to take specific action, in particular through legislative means, to ensure the guarantees provided for in the Convention. It is of interest to note that a number of countries which previously relied only on the existence of general principles of law or on the strength of the trade unions, have adopted in the last ten years legal provisions granting special protection against acts of interference.¹

153. There are cases where the question of possible interference arises as a result of the special nature of certain national trade union systems under which directors of state undertakings belong to the same organisations as the workers of the undertakings managed by them, or where workers' and employers' organisations are integrated by law in mixed bodies and are represented in mixed organs, which have powers over the internal affairs and the activities of these occupational organisations.²

¹ For example, Ghana, Italy, Malaysia, Turkey, United Kingdom.

² In the case of Spain (Trade Union Act, 1971), these mixed bodies are the trade unions (see para. 72), and the mixed organs are the Executive Committee of the Trade Union Organisation and the Congress of the Trade Union Organisation. With regard to the trade unions—each of which is composed of a workers' and technicians' union and an employers' union—their rules and by-laws must establish the powers and functioning of the management organs of their constituent unions (section 18). Such rules and by-laws are drawn up by the general board of the trade union (which is mixed) and approved by the Minister for Trade Union Affairs after consultation with the Executive Committee of the Trade Union Organisation (section 26). The latter, which is one of the central organs of the official Trade Union Organisation, and which is also of mixed composition, has among its functions the approval of the rules of the National Employers' Council and the National Workers' and Technicians' Council (see para. 72) (section 23) and the adoption of decisions concerning the management and co-ordination of trade union action (section 36). The Congress of the Trade Union Organisation, equally of mixed composition, includes in its functions the formulation of the guidelines and the general programmes of trade union action for each period, and the reviewing of the results; in addition it adopts general directives concerning trade union elections, the rules of occupational organisations and the organisation and functioning of the Workers' and Technicians' Councils and Employers' Councils (section 39).

CHAPTER XI

PROMOTION OF COLLECTIVE BARGAINING

154. Whereas the first three Articles of Convention No. 98 are concerned with the protection of the right to organise of workers vis-à-vis employers, Article 4 of the Convention deals with the relationship between employers and trade unions in connection with one of the most important aspects of labour relations, namely collective bargaining. It provides, specifically, that measures appropriate to national conditions shall be taken where necessary to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. More detailed provisions regarding this matter may be found in the Collective Agreements Recommendation, 1951 (No. 91), which, however, does not fall within the scope of this survey. It is for this reason that the question of collective bargaining will be examined only with reference to the main aspects contemplated in Article 4 of Convention No. 98, i.e. governmental promotion of collective negotiation and the voluntary character of the negotiation procedure. These aspects may be dealt with from the standpoint of the relations between the bargaining parties, the intervention of governments to promote and develop these relations, and the position of governments with regard to the autonomy of the parties in the conclusion of collective agreements.

155. Although the principle of collective bargaining itself has been recognised in the vast majority of countries, in many cases it is still practised on a limited scale and it is sometimes subject to various types of restriction. Many governments have adopted special legislative provisions and other measures to protect the right to bargain collectively, but such methods do not always exclude certain restrictions on the freedom to conclude collective agreements. Among the methods employed to protect and promote collective bargaining are the following: (a) the establishment of a procedure for the recognition or certification of trade unions as collective bargaining agents; (b) the imposition of sanctions on employers who refuse to bargain collectively with the competent organisation, and sometimes making such a refusal subject to unfair labour practice procedures; (c) the use of conciliation machinery to encourage or to assist the parties in the collective bargaining process; and (d) the setting up of joint committees or councils for collective bargaining.

156. The recognition of a workers' organisation by an employer or an employers' organisation for collective bargaining purposes is a prerequisite in the negotiation process. Although, under the terms of the Convention, a government is under no obligation to make collective bargaining compulsory, this does not exclude the importance which should be attached to employers recognising for such purposes the organisation's representative of the workers employed by them, a principle which has, on several occasions, been emphasised by the Committee on Freedom of Asso-

ciation. Trade union recognition by employers must be distinguished from the registration of a trade union by the public authorities as a result of which it obtains legal status or special immunities or advantages.

157. In order to settle the question of recognition, the legislation of an increasing number of countries also deals with the concomitant problem of determining the organisation which should be entitled to such recognition by the employers. In this connection special provisions have been adopted in several countries, under which an organisation representing a certain proportion, or the majority, of the workers in a unit, or, in the case of competing unions, the most representative organisation (generally determined by means of a ballot) is granted exclusive bargaining rights for a category of workers, often by decision of a court or other similar body.¹ The non-recognition by the employer of the designated or representative union (and sometimes the fact that the employer bargains with another union or does not bargain in good faith with the exclusive bargaining agent)—which is considered in certain of these or other countries as an unfair labour or industrial practice²—may give rise to a special enforcement procedure or to sanctions.³

158. Where systems provide for preferential or exclusive bargaining rights, it is important that the determination of the most representative trade union should be based on objective and pre-established criteria, so as to avoid any opportunity for partiality or abuse.⁴

¹ For example, Canada (Canada Labour Code, Part V), Costa Rica (Labour Code, section 56), Honduras (in the case of competing unions: Labour Code, section 54), Mexico (in the case of competing unions: Federal Labour Law, section 388), Pakistan (Industrial Relations Ordinance, 1969, as amended), Philippines (Republic Act No. 875), Singapore (the Industrial Relations (Recognition of a Trade Union of Employees) Regulations, 1966), Trinidad and Tobago (Industrial Relations Act, 1972), Turkey (Act No. 275 of 1963), United Kingdom (Industrial Relations Act, 1971), United States (Labor-Management Relations Act).

² For example, Argentina, Dominican Republic, Japan, Philippines, United Kingdom, United States. However, in the Dominican Republic employers may request the authorities to suspend the negotiations alleging economic reasons (Labour Code, section 307).

³ Certain special cases should be mentioned. In Jamaica the Labour Adviser may take a poll to resolve representational disputes, but if it is not based on an agreement between the parties, the results are considered merely as determining the wishes of the workers and employers are not forced to recognise the union concerned (Directions by the Minister of Labour). In Malaysia if a trade union is not recognised by an employer, the matter may be referred to the Minister, who shall take steps to find a settlement. If no settlement is reached, the matter is referred to the Industrial Court for decision (Industrial Relations Act, 1967).

In India the National Commission of Labour concluded that it would be desirable to make union recognition compulsory under the central law, in all undertakings employing 100 or more workers, or where the capital invested is above a stipulated amount. Under the Commission's recommendation a union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of the workers in the establishment and where more unions than one contend for recognition, the union having a larger following should be recognised. The Standing Labour Committee agreed in 1970 that provision should be made in a central law for the recognition of representative unions and that there should be only one representative union for an industrial plant or an industry in a local area.

In Sri Lanka an Industrial Disputes Commission published a report in 1969 in which it expressed the view that an employer who fails to recognise a union comprising 51 per cent of the workers in a workplace should be declared guilty of an unfair labour practice.

⁴ It has been suggested that where national legislation provides for a procedure of certifying unions as exclusive bargaining agents, certain safeguards should be attached, such as: (a) the certification to be made by an independent body; (b) the representative organisation to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organisation which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of any organisation other than the certificated organisation to demand a new election after a reasonable period has elapsed since the previous election (in the absence of such a possibility,

(footnote continued overleaf)

159. An established conciliation procedure and machinery of one type or another for the furtherance of collective bargaining exists in most of the countries.¹ Moreover, in many of these countries conciliation is compulsory and workers' and employers' organisations are under an obligation to appear and to participate in the proceedings or in the machinery itself. It could be considered, therefore, that such systems also carry with them or, at least, may be conducive to the recognition by the employers of the unions involved in a specific collective bargaining process.²

160. Finally, there are some countries where the legislation provides for the setting up of joint bodies within which collective agreements must be, or are normally, concluded.³ In other countries, where the legislation provides for different types of collective agreements, these joint bodies are established only for the negotiation and conclusion of agreements to be extended to a whole branch of activity.⁴ Usually, the participation in these joint bodies is restricted to the most representative unions of the branch. The fact that a trade union is debarred from membership of such a joint body does not necessarily imply infringement of the trade union rights of that organisation, provided that the reason for which it is so debarred lies in its non-representative character, as determined by objective criteria.

161. Certain special problems have arisen in connection with the right of workers' organisations to engage in collective bargaining, on which the Committee has expressed its opinion. In one country, any organisation, independently of the existence of another organisation for the same category of workers must, in order to engage in collective bargaining, be recognised as representative. For this purpose it had to meet basic membership requirements and other criteria, such as an attitude of absolute independence towards any influence unrelated to the trade union objectives pursued by it and the activities developed within the limits of such objectives. It had been found that the practical effect of the basic membership requirement was to reduce substantially the number of organisations capable of concluding collective agreements, and the Committee recalled that if "more than one" trade union exists within a particular category of workers, it would not be incompatible with the principles on freedom of association to grant preferential or exclusive bargaining rights to the most representative union.⁵ The Committee considers that while the legislation of a country may provide for the certification of a union as the exclusive bargaining agent for all the workers in a given unit, this should not lead to a situation in which, if the requirements as regards minimum membership or workers'

a majority of the workers concerned might belong to a union which, for an unduly long period, could be prevented from organising its activities with a view to fully furthering and defending the interests of its members). (See Committee on Freedom of Association, 67th Report, Case No. 303, para. 292; 92nd Report, Case No. 376, para. 31; 109th Report, Case No. 533, para. 101).

¹ This also applies to countries such as Australia, where the terms and conditions of most workers are regulated by awards under a system of compulsory arbitration for registered unions, but where a considerable amount of voluntary negotiation also takes place both inside and outside the established conciliation and arbitration machinery.

² Systems of compulsory conciliation exist, for example, in Cameroon, Central African Republic, Chad, Chile, Colombia, Dahomey, Guinea, Ivory Coast, Madagascar, Niger, Nigeria, Peru, Senegal, Tunisia, Venezuela, Zaire.

³ For example, Belgium, Luxembourg, Portugal, Sierra Leone, Spain.

⁴ This is the case, for example, in France and in the following African States: Central African Republic, Chad, Dahomey, Gabon, Guinea, Ivory Coast, Mali, Morocco, Senegal, Togo, Tunisia.

⁵ See RCE, 1971 (Greece), p. 145. In addition, the Committee considered that the other criteria laid down in the legislation were not sufficiently precise for their objective implementation. The basic membership requirements have now been repealed (see RCE, 1973, Part Two under Convention No. 98—Greece).

support for a union for granting such a certification are not met, all bargaining rights (even on behalf of their own members) are denied to all unions that may exist in that unit.

162. In another country, according to the legislation relating to the public sector, an employees' organisation or federation whose scope extends beyond the area of one local public body, or of one prefecture in the case of educational local civil servants, or one which is not limited to one class of employees, does not have the right to be registered and the public authority concerned may, therefore, refuse to recognise such an organisation or federation for collective bargaining purposes. Here, the Committee considered that the Government should re-examine the system of registration, with a view to facilitating the registration of employees' organisations, whatever their composition or scope.¹

163. The position of governments in relation to the autonomy of the parties in the conclusion of collective agreements is another important aspect to be examined in the light of the principle of voluntary negotiation embodied in the Convention. The information available reveals that while in numerous countries workers' organisations and employers or their organisations are free to reach their own settlements, in an increasing number of cases the legislation imposes certain restrictions on this either by excluding matters from the scope of bargaining, or by making the agreement or some of its terms subject to prior approval by the administrative authorities or the industrial courts, or by enabling these authorities to declare as null and void an agreement or certain of its provisions.

164. There are cases where the legislation mentions specific questions as falling outside the scope of negotiation—such as the promotion of a worker, the internal transfer of a worker, the recruitment of staff, the retrenchment of a worker, the dismissal or reinstatement of a worker and the assignment of duties to a worker²—or where it refers more generally to matters affecting the management and operation of a business.³

165. More important restrictions exist where the labour authorities lay down standards for wages, hours of work, leave and conditions of work in general, these matters being excluded from the scope of collective bargaining.⁴ In certain countries

¹ See RCE, 1971 (Japan), pp. 126–127. See also ILO: *Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan*, op. cit., paras. 2221–2228. The Commission also recalled the views expressed by the Committee on Freedom of Association (54th Report, para. 188(f)) that “while the employing authorities have the right to decide whether they will negotiate at the regional or national level, on their side the workers, whether negotiating at the regional or national level, should . . . be entitled to choose as they wish the organisations which shall represent them in the negotiations.” The Commission endorsed this view. The Government indicated in its report that even if an employees' organisation is not registered, the authorities will recognise it for bargaining purposes when a labour-management relationship exists with the local public authority concerned.

² Malaysia (Essential (Industrial Relations) Regulations, 1969) and Singapore (Industrial Relations (Amendment) Act, 1968).

³ Japan (in the public sector). The Fact-Finding and Conciliation Commission on Freedom of Association expressed the view in its Report (para. 2229) that while certain matters appertain essentially to the management of government business and other matters are primarily questions relating to conditions of employment, it must be recognised that there are many questions which affect both. Two of such questions mentioned by the Commission are personnel strength and manning and personnel transfers. The Commission considered that matters of this nature should not be regarded as outside the scope of collective bargaining.

⁴ For example, Cuba (Act No. 1021 of 1962). See also Committee on Freedom of Association, 116th Report, Case No. 551. In Tunisia collective agreements may not deal with wages (Labour Code, section 51).

where collective agreements, concluded at the plant level, had the main purpose of ensuring the full and concrete application of legislative standards¹, thereby excluding terms and conditions of employment (which are laid down by legislation) and only referring to rates of pay currently in force for a given branch of the economy², the economic reforms undertaken in the 1960s led to developments in the labour field and to a strengthening of the independence of individual undertakings as regards, in particular, wage determination³ by means of collective bargaining.⁴

166. In a few countries collective agreements may not, except with the approval of the competent Minister, contain clauses with regard to terms and conditions of employment which are more favourable than those established in the corresponding legislation. These provisions apply in particular to so-called pioneer enterprises, for a period of five years (which may be extended by the Minister) from the date on which such enterprises commence operations.⁵ The situation also exists where wages laid down in agreements may not exceed certain official rates unless the competent Minister gives his consent, and then only on condition that the employers undertake to absorb the increases, and that prices will not be affected.⁶ More frequent are provisions under which collective agreements have to be approved by the labour or other authorities⁷ or by an industrial court before they become effective⁸, and where such approval may be refused if it is considered that they are prejudicial to the economy or not in conformity with the official guidelines on wages and conditions of employment. There are also cases where, for similar reasons, the competent authorities may suspend⁹ or declare non-enforceable¹⁰ an agreement or certain of its provisions.

167. Restrictions such as those described in the preceding paragraph, imposed upon collective bargaining in pursuance of national economic policy, constitute a problem to which both the Committee of Experts and the Committee on Freedom of Association have given particular attention, and as a rule they have been of the opinion that requirements of prior approval of a collective agreement before it can

¹ For example, Byelorussian SSR, Ukrainian SSR, USSR. RCE, *General Survey*, 1959, para. 106.

² See ILO: *The trade union situation in the USSR* (Geneva, 1960), p. 58.

³ See V. Jalnine: "Some recent developments in the labour field in the USSR", in *International Labour Review*, Vol. 106, Nos. 2-3, Aug.-Sep. 1972.

⁴ For example, the Decree of the Presidium of the Supreme Soviet of the USSR, to approve the regulations respecting the rights of the factory, works and local trade union committee (27 September 1971), establishes that the management of the undertaking and the trade union committee shall decide the use to be made of the incentives fund, and the amount of bonuses and other incentives, material aid, and rewards for the annual workload achieved by the undertaking to be paid out of the incentives fund shall be determined by the management in agreement with the trade union committee (section 5).

⁵ Malaysia (Essential (Industrial Relations) Regulations, 1969) and Singapore (Industrial Relations (Amendment) Act, 1968). These provisions were adopted as part of a national policy to attract new investments and create employment opportunities.

⁶ For example, Brazil (Consolidated Labour Laws, section 623 as amended by Legislative Decree No. 229 of 1967, and information supplied by the Government).

⁷ For example, Chad (Labour Code, sections 121 and 122), Greece (Act No. 3239 of 1955, section 20, as amended by Legislative Decree No. 3755 of 1957, section 8), Libyan Arab Republic (Labour Code, sections 64, 65 and 67), Portugal (Legislative Decree No. 49212), Spain (Act respecting trade union collective agreements, 1958), Syrian Arab Republic (Labour Code, sections 92, 93 and 98), Tunisia (Labour Code, section 38).

⁸ For example, Kenya (Trade Disputes (Amendment) Act, 1971), Singapore (Industrial Relations Ordinance, 1960), Tanzania (Tanganyika) (Permanent Labour Tribunal Act, 1967).

⁹ Cuba (Act No. 1022 of 1962, section 39).

¹⁰ Netherlands (Act of 12 February 1970, section 8).

become effective and provisions permitting the refusal of an agreement on the ground that it conflicts with the economic policy of the government, are not consonant with Article 4 of Convention No. 98. These bodies have suggested that, instead of making the validity of collective agreements subject to government approval, steps could be taken to persuade the parties to collective bargaining to have regard voluntarily in their negotiations to considerations relating to the economic and social policy of the government and the safeguarding of the general interest. But to achieve this it is necessary first of all that the objectives to be recognised as being in the general interest should have been widely discussed by all parties on a national scale through a consultative body, such as a national social policy advisory board, in accordance with the principle laid down in Recommendation No. 113 of 1960 concerning consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations.

168. It might also be prescribed that any collective agreement would normally come into force a reasonable length of time after being filed with the competent public authority; if the authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognised as being desirable in the general interest, the case could be submitted for advice and recommendation to an appropriate consultative body, on which the workers' and employers' organisations were represented, and this body could indicate to the parties the considerations of general interest that might call for further examination by them of the agreement in question, provided always, however, that the final decision on the matter rested with the parties to the agreement.

169. In view of the serious problems that can arise in certain circumstances in the economy of a country, it would be difficult to lay down absolute rules concerning voluntary collective bargaining, and governments might feel in certain cases that the situation calls at times for stabilisation measures during the application of which it would not be possible for wages rates to be fixed freely by means of collective negotiations. Such a restriction, however, should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards.¹

¹ See also Committee on Freedom of Association, 110th Report, Case No. 503, para. 46; 116th Report, Case No. 551, para. 107.

**DIFFICULTIES, RATIFICATION PROSPECTS
AND GENERAL CONCLUSIONS**

Morocco expresses certain doubts as to the compatibility with the Convention of a provision in the law which permits, *inter alia*, the authorities to waive, on a temporary basis, the provisions of the trade union legislation relating to the free establishment of organisations. The Government adds, however, that this provision is not being applied nor is it probable that it would be applied in the future. Moreover, the provision has not been included in the new draft labour code.

176. Certain governments mention the existence of difficulties which are related to the right of workers and employers to establish and join organisations of their own choosing. The Government of Malaysia indicates that ratification of the Convention would permit the formation of general unions, not confined to persons engaged in the same or similar trades, occupations or industries, and that such unions might be led by persons having nothing to do with the occupational activities of the union and pursuing political or subversive aims. In the present circumstances this would subject the political and economic stability of the country to unnecessary risk. In Malaysia trade unions can establish federations, but the constituent unions must also be confined to workers employed in a similar trade, occupation or industry.¹ The Government of New Zealand states that the legal restrictions on the right of workers to establish and join organisations of their own choosing without previous authorisation contradict Article 2 of the Convention.² The Government of Spain refers to the principle of trade union unity, which constitutes a basic element of its trade union system, and indicates that the Convention could be ratified if this instrument is construed as meaning that trade union pluralism is not necessarily its basic assumption.³

177. Some governments mention as difficulties certain limitations on the right of unions to elect their representatives in full freedom and to organise their activities without interference by the public authorities. With regard to the first question, the Government of Morocco indicates that its legislation imposes a nationality or citizenship requirement for those holding trade union office which, in practice, has not created any problems and which is no longer included in the new draft labour code. The Committee has already indicated that in certain cases a provision of this kind cannot give rise to difficulty, although everything depends on the manner in which such a provision is applied, since, in given circumstances, it is possible that a provision to this effect might in practice lead to a denial to certain categories of workers of the right freely to elect their representatives. Situations of this type may develop with increasing migration of workers, and it would, therefore, be desirable that, where necessary, the legislation should be relaxed in order to permit foreign workers to hold trade union office.⁴

178. With regard to the organisation of trade union activities without the interference of public authorities, the Government of Malawi refers to certain provisions in the legislation under which the Registrar has the power to inspect the accounts and documents of an organisation practically at any time ("at all reasonable times", according to the law in question).⁵ The Government of Brazil refers to certain provisions relating to government intervention in union elections.⁶ The Government

¹ See in this connection Ch. VI, para. 120.

² See in this connection Ch. IV, paras. 76-77.

³ See in this connection Ch. IV, para. 73.

⁴ See in this connection Ch. V, para. 86.

⁵ See in this connection Ch. V, para. 104.

⁶ See in this connection Ch. V, para. 96.

CHAPTER XII

DIFFICULTIES, RATIFICATION PROSPECTS AND GENERAL CONCLUSIONS

DIFFICULTIES AND RATIFICATION PROSPECTS

170. An account is given below of the main difficulties preventing full application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which have been specially mentioned as such in their reports by governments of non-ratifying countries, and of the information supplied regarding prospects of ratification.

171. In some cases, governments refer to questions which they consider to be difficulties but which, in the light of the provisions of the Conventions and of the remarks made previously by the Committee of Experts in similar circumstances, would not appear to be incompatible with the standards on freedom of association. Specific comments on such cases are made in the present chapter, in order to eliminate any possible misunderstanding.

Difficulties in the Application of Convention No. 87

172. Of the 31 governments which sent reports under article 19 of the Constitution of the ILO on the above instrument, 17 refer to difficulties of various kinds and of varying degrees of importance in regard to the application or ratification of the Convention.

173. The Governments of Indonesia, Kenya, Khmer Republic, Libyan Arab Republic, Singapore and Turkey indicate in their reports that the difficulties involve problems of a general character, such as the present stage of development of the country concerned, either social, economic or political, or the development of trade unionism, and state that against this background full implementation or ratification of the Convention is not presently envisaged.

174. Other governments point to more specific difficulties involving particular aspects of the Convention.

175. With regard to the right to establish organisations without previous authorisation, the Government of the Republic of Viet-Nam indicates as a difficulty the necessity for each trade union to deposit with the authorities a copy of its statutes and obtain a receipt therefor. In this connection, it should be recalled that the founders of an organisation are not free from the obligation of observing certain formalities provided for under the law, provided however, that such formalities are not equivalent, in practice, to the obtaining of previous authorisation.¹ The Government of

¹ See in this connection Ch. III, paras. 50-52.

of New Zealand indicates that the provisions relating to the supervision of rules of registered unions seem to contravene Article 3 of the Convention. Here it may be considered generally that legislation which merely aims at ensuring the fundamental rights of union members and their democratic participation in the administration of the organisations would not constitute an infringement of the Convention.¹

179. The Governments of Chile, Switzerland, Venezuela and the Republic of Viet-Nam indicate that trade union organisations may be dissolved or suspended by administrative authority. The Government of New Zealand states that the administrative authority has the power to cancel the registration of unions, although in effect unions are not dissolved by such measures, but lose certain privileges under the law. It would seem appropriate to point out that according to the Convention occupational organisations shall not be liable to be dissolved or suspended by administrative authority. In order to be compatible with the Convention national legislation should provide for a right to appeal to the judiciary against administrative measures of this type, and the administrative decision should not take effect until the expiry of the statutory period for lodging an appeal or until the confirmation of such decision by the judicial authority.² These considerations also apply to the cancellation of registration when such a measure entails restrictions in the activities of trade unions.

180. The Government of Malawi mentions the control exercised by the Registrar over the relationship between national trade unions and international organisations.³ The Government of Brazil indicates that international affiliation of trade unions is subject to the consent of the President.

181. Finally, the Government of El Salvador indicates that Article 9 of the Convention is not applicable under the national legal system, in view of the fact that the armed forces and police are covered by special legislation. The Committee wishes to recall that according to Article 9 the extent to which the guarantees of the Convention shall apply to the armed forces and the police shall be determined by national law and regulations. Accordingly, States ratifying the Convention are free to decide the extent to which the right to organise shall apply to these persons, and, if it appears desirable, completely to exclude these persons from the protection afforded by the Convention.

Prospects for the Ratification of Convention No. 87

182. Certain governments have supplied information regarding the possible ratification of the Convention. The Government of the United States indicates that there is no change in the situation as regards ratification. It is recalled that the Convention had been submitted to the Senate in 1949 with a request for advice and consent to ratification.

183. The Government of the Khmer Republic states that it is promoting the establishment of trade unions and that it will not fail to ratify the Convention.

184. The Government of Switzerland indicates that a decision will be taken as to the possibility of ratification when the current study concerning the problems raised by Article 4 of the Convention has been completed.

¹ See in this connection Ch. V, para. 80.

² See in this connection Ch. VII, paras. 123-125.

³ See in this connection Ch. VI, para. 122.

185. The Government of Morocco indicates that new legislation will soon be promulgated and that any obstacles to ratification of the Convention will be removed as a result. The Government of Venezuela indicates that ratification is prevented by the existence of provisions in national legislation on administrative dissolution of trade unions, but that efforts are being made to remove these provisions.

186. In Colombia, a Bill for the ratification of the Convention has been approved by the Senate in 1972 on a first reading, and in Jordan the Convention has been submitted to the authorities for ratification.

187. The Government of Zaire states that the legislation is in conformity with the Convention and that there are no difficulties preventing ratification.

Difficulties in the Application of Convention No. 98

188. Nineteen governments submitted reports under article 19 of the Constitution on the above-mentioned Convention, eight of which refer to difficulties which prevent or impede the ratification of the Convention.

189. The Government of Spain, as in the case of Convention No. 87, refers to the principle of trade union unity as constituting a difficulty regarding the ratification of Convention No. 98. The Government of New Zealand indicates that the major obstacle to ratification of Convention No. 98 is its close link with Convention No. 87. The Committee considers that these two instruments are independent, and there would not be any logical inconsistency for a State to ratify Convention No. 98 if it were prevented from ratifying Convention No. 87 by reason of difficulties unconnected with the rights dealt with in Convention No. 98.

190. The Government of Mexico indicates that its national legislation permits the inclusion in collective agreements of union security clauses. The Committee wishes to recall that during the preparatory work of the Convention the Committee on Industrial Relations at the 32nd Session of the International Labour Conference (1949) stated that, after examining various formulae to cover the case of union security arrangements under the Convention, it finally agreed to express the view that the Convention could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice.

191. The Government of the Netherlands indicates that, in order to comply fully with the terms of the Convention concerning the protection of workers against acts of anti-union discrimination in respect of their employment, an amendment would be necessary to the legislation. However, the Government states this legislation is now being revised. The Government of Canada points out that the only problem as regards full compliance with the Convention is the fact that certain important categories of workers (e.g. professional and agricultural workers) are not covered in all jurisdictions by the legislation protecting the right to organise and bargain collectively. The Government of India points out that its national legislation contains no provision protecting workers against anti-union discrimination at the time of employment, and that there are restrictions on the right to organise of civil servants other than those engaged in the administration of the State.

192. The Governments of El Salvador and the Congo point out as a difficulty the fact that the armed forces and the police are not covered by the national trade union legislation. The Committee would recall that, according to Article 5 of the Convention, the extent to which the guarantees of the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Accordingly, States ratifying the Convention are free to decide the extent to which the right to organise shall apply to these persons, and if it appears desirable, to exclude these persons completely from the protection afforded by the Convention.

193. Finally, the Government of the Congo states that Article 6 of the Convention does not deal with public servants, while, according to its national legislation, this category of workers is dealt with in the same way as other state workers, although a special statute exists for them. The Committee would point out that Article 6 only excludes from the scope of the Convention those public servants who are engaged in the administration of the State, although it is not to be construed as prejudicing their rights or status in any way.

Prospects for the Ratification of Convention No. 98

194. In Colombia a Bill for the ratification of the Convention was approved by the Senate in 1972 on a first reading. The Government of the Netherlands indicates that an Act of 1964 laying down that all unions shall be granted corporate status has removed a major obstacle preventing ratification and that an amendment to the law on dismissal is expected soon. Ratification of the Convention is now under consideration.

GENERAL CONCLUSIONS

195. Twenty-five years have now elapsed since the General Assembly of the United Nations framed the Universal Declaration of Human Rights and since the International Labour Conference adopted the basic ILO principles and standards on freedom of association. In this period the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association of the Governing Body, as well as other ILO bodies, gained a large insight into the multiple aspects of trade union rights and the problems which arise in connection therewith in the light of the freedom of association Conventions.

196. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), belong to the category of ILO instruments designed to promote and maintain certain fundamental human rights aimed at safeguarding man's freedom, equality and dignity. As such, they figure among those Conventions which have obtained the largest number of ratifications and from the reports submitted by governments it appears that further ratifications are anticipated. However, particularly with regard to Convention No. 87, the situation often arises where, given the wide scope of its principles and their close links with a diversity of substantive issues, sometimes of an institutional or political character, or related to basic questions of social and economic development, a number of difficulties exist in connection with their effective application at the national level. In substance, it would appear that although general recognition is given to the right to organise, a series of obstacles are often found in the application of the wider principles of freedom of association as defined in the Convention.

197. It is the purpose of this Survey to bring out these difficulties and to indicate the reasons which prevent the ratification or the full application of the freedom of association Conventions.

198. The Committee would emphasise the importance and utility of undertaking studies on separate topics of trade union law and practice with a view to obtain-

ing more detailed knowledge of the many problems connected with occupational organisations and their functioning. Reference has already been made in Chapter I of this Survey to such studies, which were undertaken in response to comments made by the Committee in 1959. The Committee is of the opinion that much knowledge could be gained from additional studies on such individual topics as protection against acts of anti-union discrimination and the degree of effectiveness of such protection, intervention of the administrative and judicial authorities in trade union elections, the removal of trade union representatives, legal regulation of trade union administration and functioning, and the right of workers and employers to establish and join organisations of their own choosing.

199. In the preceding pages the Committee has examined a variety of situations relating to the recognition and the exercise of trade union rights, and has commented on the compatibility of national law and practice with the principles and standards embodied in the Conventions which are the subject of this Survey. In these concluding remarks the Committee wishes to summarise the position with regard to what it considers to be the main problems in the field of freedom of association and trade union rights, as revealed by the information available.

200. Convention No. 87 recognises the right to organise for occupational purposes of all workers and employers without any distinction whatsoever. Consequently, freedom of association should be guaranteed not only to workers and employers in the private sector, but also to public employees, and without distinction as to occupation, sex, colour, race, creed, nationality or political opinion. The only exception to this general principle relates to the members of the police and armed forces, States being permitted under the Convention to determine the extent to which the guarantees provided for in the Convention shall apply to these categories. From the information available, it would appear that the right to organise of workers and employers is generally recognised in the vast majority of countries. There are, however, two categories of workers in regard to whom special difficulties exist, either in law or in fact: these are public servants and agricultural workers.

201. Public servants are still denied the right to organise for occupational purposes in several countries. It seems appropriate to recall the following remarks made in this connection in the preparatory work of the Convention, where, after certain reservations had been expressed by some governments with regard to the recognition of trade union rights to public servants, a specific distinction was drawn between the right to organise and the right to strike: "It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organised. However, the recognition of the right to organise in no way prejudices the question of the right of such officials to strike, which is something quite apart from the question under consideration."¹

202. As regards agricultural workers, the difficulties encountered are generally less a matter of law than the result of a combination of other circumstances, particularly in the case of peasants in the so-called traditional sector of developing countries. Here, it is evident that legal recognition of the basic principles of freedom of association is, in itself, insufficient and requires to be supplemented by other measures

¹ ILO: *Freedom of association and industrial relations*, Report VII, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, 1947), p. 109. See also, in this connection, idem: Joint Committee on the Public Service, *Freedom of Association and Procedures for Staff Participation in Determining Conditions of Employment in the Public Service*, op. cit., pp. 5 to 8.

on the part of governments for the removal, as far as possible, of impediments to the establishment and functioning of independent and representative rural organisations, as well as by activities of a promotional type undertaken by the authorities and the industrial unions for the purpose of developing such organisations.

203. Workers and employers shall have the right to establish organisations without previous authorisation. The legislation of most countries requires the fulfilment of certain formalities in the establishment of trade unions, or recognises special advantages to unions having fulfilled these formalities. Requirements of this type usually do not give rise to any particular problem, but, in certain cases, the legislation provides that the public authorities may, at their discretion, refuse the official recognition or registration of an organisation, or in practice these authorities exercise their powers with excessive latitude, thereby creating obstacles to the establishment of specific organisations. Such provisions or practice are liable to restrict the right of workers and employers to establish occupational organisations without previous authorisation.

204. Of a wider scope are the problems which arise in connection with the right of workers and employers to establish and to join organisations of their own choosing, especially as regards legislation providing for a system under which only one trade union can exist for a particular category or group of workers, or where a unified trade union structure is imposed for the whole country. The principle of free choice of trade unions is an essential element of the concept of freedom of association and one of the most serious difficulties in the application of Convention No. 87 lies in the full observance of this principle. This Survey has shown that such a difficulty seems to be appearing in an increasing number of countries. While it may be to the advantage of workers to avoid a multiplicity of trade union organisations, and while governments may, in certain cases, consider that a single trade union movement is more convenient for an adequate representation of the workers and their participation in the social and economic field, unification should be the result of a voluntary decision of the workers and should not be imposed or maintained by legislation or other compulsory means. The principle of free choice laid down in the Convention is in no way intended as an expression of support for the idea of trade union pluralism, but it does at least require such a possibility to remain open. Freedom of association and trade union unity are by no means incompatible, but only to the extent to which such unity is established on a voluntary basis.

205. Interference by administrative authorities in trade union activities is another aspect which may give rise to difficulties in the application of Convention No. 87, in particular, when it takes place in connection with the election or removal of trade union representatives, or when these authorities have discretionary power in the control of internal union affairs. The principles embodied in the Convention do not prevent an outside control of the internal acts of an organisation if it is considered or alleged that such acts violate the law (which, in turn, should not run counter to the principles of the Convention) or the union rules. Measures of control by administrative authorities are liable to appear arbitrary, and it is for this reason, and also in order to ensure an impartial and objective procedure, that control should, as a general rule, be exercised by the relevant judicial authorities.

206. The information available shows that government interference in trade union matters is not always limited to the supervision of the legality of internal acts of occupational organisations. Such interference may be related to political problems or may be intended to make unions subject to government control. In some cases, it constitutes a means of imposing a unified trade union movement. Measures of

intervention of this kind may even lead to the dissolution of trade unions by administrative authority or government decision. Such interference is obviously contrary to the principles of the Convention and constitutes a serious infringement of the right to organise in full freedom.

207. In certain countries unions are subject to political or government control, while in others they are not allowed to engage in any political activity. The Resolution adopted by the International Labour Conference in 1952 on the independence of the trade union movement, laid down the principle that governments should not attempt to transform trade unions into an instrument for the pursuance of political aims. On the other hand, a general prohibition of political activities is not only incompatible with Convention No. 87, but it is also unrealistic for all practical purposes. Trade unions often undertake some measure of political action, including support for a political party, which they may consider necessary for the advancement of their economic and social objectives. However, in accordance with the above resolution, when any such action is undertaken by the trade unions, by the decision of their members, it should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions, irrespective of political changes in the country. In view of these considerations, instead of prohibiting all political activities by trade unions governments should be able to entrust to the judicial authorities the task of repressing the abuses which might be committed in certain cases by such organisations when engaging in political action.

208. According to Convention No. 98, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Although numerous countries have adopted legal provisions to this effect, the guarantee offered by these provisions is often insufficient, especially in view of the difficulty of proving that certain measures are, in fact, motivated by trade union membership or activities. The effectiveness of any legal protection against acts of anti-union discrimination depends, to a large extent, on the machinery which exists for its implementation and the remedies and sanctions which are available. One effective method of ensuring increased protection would be the establishment, where necessary, of special bodies competent to deal with these matters, and the adoption of procedural rules emphasising the value of circumstantial evidence in determining the real intentions of an employer. As regards remedial action, consideration should be given to the fact that protective provisions are not always sufficiently effective if the employment of a worker may be terminated on condition that he receives the compensation prescribed by law, even if the true reason for dismissal is his union membership or activities.

209. Workers and employers should not only have the right to establish the organisations of their own choosing, but such organisations should also be free to organise their activities and formulate their programmes for the furtherance and defence of the interests of their members. Two questions merit special consideration since they relate to basic aspects of trade union activity in the field of labour relations. The first of these questions concerns collective bargaining which, according to the standards laid down in Convention No. 98, should be promoted by governments and should have a voluntary character. Although the principle of collective bargaining is widely recognised and governments have adopted different types of measures to promote negotiations between workers' organisations and employers or their organisations, it would appear that in an increasing number of cases restrictions are being imposed on the freedom of parties to conclude collective agreements, thereby impinging on its voluntary character. Such restrictions, which are usually incompatible with the Convention, may consist, for example, in the exclusion of specific matters from the bargaining scope, or more often in making agreements

subject to prior approval by the authorities. Certain temporary exceptions to voluntary bargaining may be considered as admissible under the Convention, particularly in circumstances which governments might feel a call for special stabilisation measures. On the other hand, with regard to restrictions which are of a permanent nature, it would be desirable, in the light of the principle of voluntary collective bargaining, that considerations should be given by governments to possible alternative measures, such as those outlined in the corresponding chapter of this Survey, which, however, would always leave the final decision in the bargaining process to the parties to the agreement.

210. The second question concerns the right to strike, which has been considered by the ILO supervisory bodies as a legitimate means whereby workers' organisations may defend their occupational interests. The right to strike is recognised in numerous countries, but seems to be subject to increasing restrictions. Such restrictions may be considered as admissible, for example, when they are of a temporary character, especially in the course of a dispute settlement procedure, or when they affect certain categories of workers, in particular public servants or workers in essential services. In these cases, sufficient guarantees should be accorded to these workers in order to safeguard their interests, such as adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can participate at all stages, and in which the awards are binding on both parties and are fully and promptly implemented. Where legislation directly or indirectly places a general prohibition on strikes applicable to all workers, such prohibition would constitute an important restriction on the activities of trade unions and, therefore, be inconsistent with the principles of freedom of association.

211. One final but important aspect is the interrelationship between trade union rights and civil liberties. The fundamental importance of this question has been stressed on many occasions by the ILO supervisory bodies, and also, more recently, the Resolution concerning Trade Union Rights and their Relation to Civil Liberties adopted by the International Labour Conference in 1970. Experience shows that a genuinely free and independent trade union movement can develop only in a situation where the basic human rights are also respected, in law and in fact. As stated in the Resolution, the absence of those civil liberties which have been enumerated, in particular, in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights, removes all meaning from the concept of trade union rights. The Resolution places special emphasis on certain civil liberties which are considered as essential for the normal exercise of trade union rights, namely freedom from arbitrary arrest and detention, the right to a fair trial, freedom of opinion and expression, freedom of assembly and the right to protection of the property of trade union organisations. The Committee cannot but subscribe to these views and reaffirms its belief in the importance of maintaining the rule of law to ensure respect for fundamental human rights in all countries, irrespective of the nature of their political, economic, social and legal system.

* * *

212. The importance of freedom of association as a prerequisite for the effective furtherance of occupational interests within the traditional process of labour-management relations, is now generally accepted. However, since freedom of association became the subject of basic ILO Conventions, there has also been an increasing trend towards the recognition of occupational organisations as major partners in the promotion of social and economic development. The expanded role which has, as a consequence, been assigned to workers' and employers' organisations and the

recognition of the importance of organised participation in national and international life has given new significance to the principles of freedom of association. Organised participation is meaningful only to the extent to which occupational organisations are really representative of the interests of their constituents; in turn, their representative character depends on the measure of freedom with which they can be established and carry out their functions. The principles and standards laid down by the ILO continue to reflect the basic aspirations of workers and employers in regard to freedom and the right to organise. The absence of such rights and freedoms can only result in the ultimate annihilation of incentive and initiative, which are essential for human progress.

APPENDIX I

TEXT OF THE SUBSTANTIVE PROVISIONS OF THE FREEDOM OF ASSOCIATION CONVENTIONS

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

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Conventions the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

**Right to Organise and Collective Bargaining
Convention, 1949 (No. 98)**

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

APPENDIX II

REPORTS AVAILABLE

State ¹	Convention No. 87		Convention No. 98	
	Article 22	Article 19	Article 22	Article 19
Afghanistan		—		—
Algeria	x		x	
Argentina	x		x	
Australia ²		x		x
Austria	x		x	
Barbados	x		x	
Belgium	x		x	
Bolivia	x			—
Brazil		x	x	
Bulgaria	x		x	
Burma	x			—
Burundi		—		—
Byelorussian SSR	x		x	
Cameroon	x		x	
Canada ²		x		x
Central African Republic	x		x	
Chad	x		x	
Chile		x		x
China		—		—
Colombia		x		x
Congo	x			x
Costa Rica	x		x	
Cuba	x		x	
Cyprus	x		x	
Czechoslovakia	x		x	
Dahomey	x		x	
Democratic Yemen		—	x	
Denmark	x		x	
Dominican Rep.	x		x	
Ecuador	x		x	
Egypt	x		x	
El Salvador		x		x
Ethiopia	x		x	
Finland	x		x	
France	x		x	
Gabon	x		x	
Germany (Fed. Rep.)	x		x	
Ghana	x		x	
Greece	x		x	
Guatemala	x		x	
Guinea	x		x	
Guyana	x		x	
Haiti		x	x	
Honduras	x		x	
Hungary	x		x	
Iceland	x		x	
India		x		x

See notes and explanation of symbols at the end of the table, p. 93.

State ¹	Convention No. 87		Convention No. 89	
	Article 22	Article 19	Article 22	Article 19
Indonesia		x	x	
Iran		x		x
Iraq		x	x	
Ireland	x		x	
Israel	x		x	
Italy	x		x	
Ivory Coast	x		x	
Jamaica	x		x	
Japan	x		x	
Jordan		x	x	
Kenya		x	x	
Khmer Rep.		x		x
Kuwait	x			x
Laos		—		—
Lebanon		—		—
Lesotho	—		—	
Liberia	x		x	
Libyan Arab Rep.		x	x	
Luxembourg	x		x	
Madagascar	x			—
Malawi		x	x	
Malaysia		x	x	
Mali	x		x	
Malta	x		x	
Mauritania	x			x
Mauritius		—	x	
Mexico	x			x
Mongolia	x		x	
Morocco		x	x	
Nepal		—		—
Netherlands	x			x
New Zealand		x		x
Nicaragua	x		x	
Niger	x		x	
Nigeria	x		x	
Norway	x		x	
Pakistan	x		x	
Panama	x		x	
Paraguay	x		x	
Peru	x		x	
Philippines	x		x	
Poland	x		x	
Portugal		—	x	
Romania	x		x	
Rwanda		—		—
Senegal	x		x	
Sierra Leone	x		x	
Singapore		x	x	
Somalia		—		—
Spain		x		x
Sri Lanka ²		x		x
Sudan		x	x	
Sweden	x		x	
Switzerland		x		x
Syrian Arab Rep.	x		x	
Tanzania		—	x	
Thailand		—		—
Togo	x			—
Trinidad and Tobago	x		x	

See notes and explanation of symbols at the end of the table, p. 93.

State ¹	Convention No. 87		Convention No. 98	
	Article 22	Article 19	Article 22	Article 19
Tunisia	×		×	
Turkey		×	×	
Uganda		×	×	
Ukrainian SSR	×		×	
USSR	×		×	
United Kingdom	×		×	
United States		×		×
Upper Volta	×		×	
Uruguay	×		×	
Venezuela		×	×	
Rep. of Viet-Nam		×	×	
Yemen		—		—
Yugoslavia	×		×	
Zaire		×		
Zambia		×		×

Note : A total of seven reports has also been received in respect of the following non-metropolitan territories: Australia (Papua, New Guinea); Netherlands (Surinam); New Zealand (Norfolk Island).

¹ Bangladesh, Qatar and the United Arab Emirates became member States after the date on which the supply of reports had been requested.

² The reports from Australia (Conventions Nos. 87 and 98), Canada (Convention No. 87) and Sri Lanka (Convention No. 98) cover the period prior to the date of the ratification of these Conventions.

× = reports received; — = reports not received.