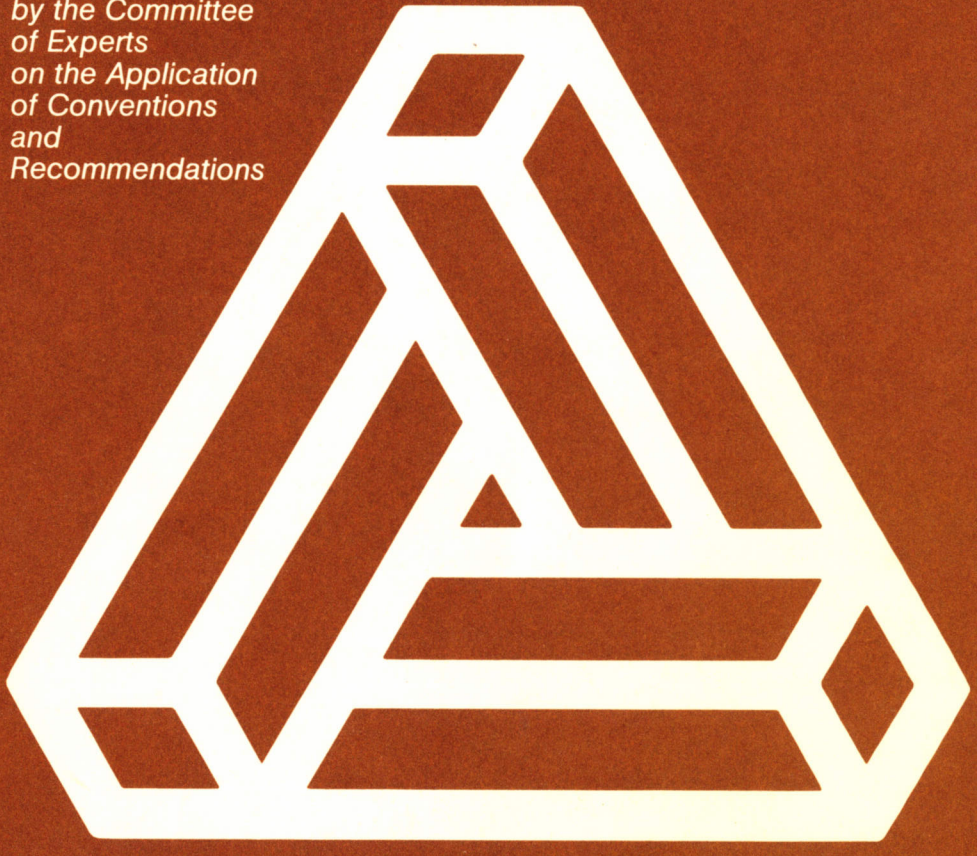
International Labour Conference 68th Session 1982

TRIPARTITE CONSULTATION

(International Labour Standards)

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



International Labour Office Geneva

International Labour Conference

68th Session 1982

Report III
(Part 4 B)

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

General Survey of the Reports relating to Convention No. 144 and Recommendation No. 152

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

International Labour Office Geneva

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INTRODUCTION

1. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the International Labour Office decided at its 208th Session (November 1978) to request reports on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), from those States which had not ratified it and to ask all member States to supply reports on the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152). These reports on the position of law and practice in regard to the standards contained in those instruments, together with those submitted in accordance with article 22 of the Constitution by States which have ratified the Convention, have provided an opportunity for the Committee of Experts, in accordance with its usual practice, to make a general survey of the situation.

2. This introduction contains a brief outline of the provisions and practice of the ILO regarding tripartite consultation and participation and of the various measures and initiatives taken in connection with the adoption of the Convention and Recommendation; it goes on to describe the role of occupational organisations in standard-setting procedures, and specifically in the supervision of the implementation of international labour standards, and concludes with a summary of the contents of the instruments concerned.

I. Tripartism and international labour standards: a national basis

3. Tripartism has remained the outstanding characteristic of the International Labour Organisation since its creation following the First World War. Part XIII of the Treaty of Versailles, adopted in 1919 by the Peace Conference to create an International Labour Organisation, embodied the idea of associating representatives of organised employers and workers with representatives of governments, with a view to a common search for social justice on an international basis. Its preamble, slightly amended, still forms the Constitution of the ILO. It is a remarkable fact that this structure was still unchanged at the end of the Second World War, and the value of the tripartite system was confirmed in 1944 in the Declaration of Philadelphia concerning the Aims and Purposes of the ILO, formally incorporated in its Constitution. Tripartism thus appears as the permanent principle on which the Organisation is based, enshrined in its constitutional structure and omnipresent in its activities. It is also the concept that sets the ILO apart in the United Nations family. Thus, the Declaration of Philadelphia recognises the principle that the Organisation must make a "continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and

democratic decision with a view to the promotion of the common welfare".[1] Also, despite the heterogeneity of political, economic and social systems represented in the ILO, it is remarkable that the tripartite principle has been universally recognised, thus proving its vitality. The various changes which the Organisation has undergone in over 60 years have in fact never brought into doubt the tripartite system and the basic principles of organisation relating to it.

4. Tripartism is also a constant feature of the ILO's standard-setting activities, the adoption of international instruments and even the supervisory machinery for their implementation. The participation of employers and workers in these activities accordingly takes many forms, whether the initiation of an international labour standard, the establishment of the agenda of the International Labour Conference, the drafting and adoption of the standards themselves or the provision of guidance in the effective implementation of ratified Conventions.

5. Tripartism as a principle is not only applicable at the international level, however, and a national tripartite structure is in fact essential to its proper application world-wide. The Declaration of Philadelphia accordingly makes provision for "the collaboration of workers and employers in the preparation and application of social and economic measures" in every country.[2]

6. To begin with, there are a number of provisions specifically relating to the role of occupational organisations in respect of international labour standards. First, article 23, paragraph 2, of the ILO's Constitution stipulates that each Member must communicate to the representative organisations of employers and workers copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22 of the Constitution, in other words information on the measures taken to bring the Conventions and Recommendations before the competent authorities, reports on unratified Conventions and on Recommendations, and reports on the ratified Conventions.

7. Secondly, it is significant that half the Conventions in force contain provisions relating in one way or another to consultation or collaboration with employers and workers or their organisations in the application of those Conventions.[3] They are to be found in 16 of the 20 Conventions which the International Labour Conference has adopted since 1973.[4] A large number of Recommendations also contain corresponding provisions.

8. The obligation to associate workers and employers in the implementation of the Conventions takes the form of three types of measure:

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[1] Declaration of Philadelphia, I, (d).

[2] ibid., III, (e).

[3] These provisions have been examined by the Committee of Experts on the Application of Conventions and Recommendations on two occasions. See Report of the Committee of Experts on the Application of Conventions and Recommendations, (FCE), International Labour Conference, 57th Session, 1972, Report III (Part 4A), pp. 10-25; and ibid., 64th Session, 1978, pp. 17-19.

[4] Conventions Nos. 137, 138, 139, 140, 142, 143, 145, 146, 147, 148, 149, 150, 152, 153, 155, 156.

(a) the obligation to consult employers and workers or their organisations before the enactment of legislation or regulations, or in regard to the application of certain of their provisions, or as to derogations or optional exceptions. This is the most frequently used form and is found in over 60 Conventions.[1]

(b) the obligation to create special bodies or machinery with the participation of employers' and workers' representatives, such as joint or tripartite bodies, advisory committees, etc. This type of measure is included in 13 Conventions[2] most of which also provide for participation on a basis of equality between employers and workers;[3]

(c) finally, 16 Conventions provide for the collaboration of employers' and workers' organisations in the application of legislation giving effect to the Conventions or the implementation of national policies already decided.[4]

9. More generally, an instrument adopted in 1960 provides for the creation at the national level of tripartite consultation machinery. The Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), states that measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations. Such consultation and collaboration should aim, in particular, at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in respect of such matters as (i) the preparation and implementation of laws and regulations affecting their interests, (ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare, and (iii) the elaboration and implementation of plans of economic and social development.[5]

10. In 1971, the International Labour Conference adopted a resolution[6] concerning the strengthening of tripartism in the over-all activities of the ILO. In the preamble, the resolution considered that

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[1] Conventions Nos. 1, 13, 14, 15, 20, 26, 30, 33, 34, 41, 52, 62, 67, 73, 79, 82, 86, 89, 90, 91, 92, 94, 95, 96, 99, 101, 103, 106, 108, 109, 110, 111, 113, 114, 115, 117, 119, 120, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139, 140, 142, 143, 145, 146, 147, 148, 149, 152, 153, 155, 156.

[2] Conventions Nos. 2, 9, 26, 82, 84, 88, 99, 101, 109, 110, 117, 131, 152.

[3] Conventions Nos. 9, 26, 84, 88, 99, 101, 110, 131.

[4] Conventions Nos. 13, 20, 68, 81, 92, 100, 110, 111, 122, 126, 129, 133, 150, 152, 155, 156.

[5] See General Survey of the Reports relating to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), International Labour Conference, 61st Session, 1976, Report III (4B).

[6] ILO: Official Bulletin, Vol. LIV, 1971, No. 3 (Geneva, 1971), pp. 260-262.

the tripartite element in the International Labour Organisation had proved to be the most solid foundation for its success and noted "with approval that in many member States of the ILO advisory or other bodies have been established in increasing numbers with a similar tripartite structure [to that of the ILO] which implies equality of representation between employers' and workers' members thereof". It accordingly invited the Governing Body of the ILO, inter alia, "to consider all measures which are necessary for ensuring that the tripartite structure is fully effective in respect of the entire range of the activities of the International labour Organisation ...; to give particular attention to the need for fully integrating all types of activities of the International Labour Organisation so as to achieve, inter alia, that standard-setting activities and technical co-operation be mutually reinforcing, on the basis of tripartite elaboration, implementation and control, for attaining the social objectives of the Organisation; to request the Committee of Experts on the Application of Conventions and Recommendations to give particular attention to the question of whether equality of representation between workers and employers is being accorded in tripartite bodies where provision is made for this in international labour instruments; to request the Committee of Experts ... to consider measures which the ILO could take to ensure effective implementation of article 23, paragraph 2, of the Constitution ... to recommend to governments that they consult the most representative organisations of employers and workers before they finalise replies to ILO questionnaires relating to items on the agenda of sessions of the General Conference".

11. It was during discussions in the Committee on the Application of Conventions and Recommendations at the 57th Session (1972) of the Conference, however, that the possibility was considered for the first time of adopting an instrument dealing specifically with the creation of tripartite bodies in each country so as to ensure the effective participation of employers' and workers' organisations in the drafting of labour legislation and the control of its application, particularly as regards international labour standards. The Workers' members expressed the view that the Governing Body should look into the possibility of including an item in the agenda of the Conference with a view to the adoption of a special Convention on the subject. The proposal was warmly welcomed by the Governing Body which, at its 191st Session (November 1973), decided to include in the agenda of the 60th Session (1975) of the International Labour Conference an item entitled "Establishment of national tripartite machinery to improve the implementation of ILO standards". In 1976, the Conference adopted Convention No. 144 and Recommendation No. 152.

12. A second resolution concerning the strengthening of tripartism adopted by the Conference in 1977[1] noted that the effectiveness of tripartite action in the application of international labour standards had been given an impetus by the adoption of Convention No. 144 and Recommendation No. 152 and emphasised that "the establishment of such tripartite consultations at national level and, where appropriate, at other levels of administration is an important means for the development of tripartism within the framework of the ILO". Noting further "that an institutionalised participation of the most representative employers' and workers' organisations is essential to provide the objectivity and effectiveness needed" for international standards supervisory procedures, it invited the Governing Body, inter

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[1] ILO: Official Bulletin, Vol. LX, 1977, Series A, No. 3 (Geneva, 1977), pp. 168-171).

alia, to strengthen the participation of these organisations in the supervision of the application of Conventions and Recommendations and to endeavour to accelerate the ratification of Convention No. 144.

13. The regional meetings held by the ILO in Africa,[1] the Americas[2] and Asia[3] since 1970 have also all emphasised the importance of tripartite collaboration in the implementation of standards at the national level. They have recommended that member States create and use tripartite consultation machinery or procedures and have encouraged them to ratify Convention No. 144 and apply the provisions of Recommendation No. 152.

II. Supervisory machinery and promotional activities

14. The Committee of Experts has always called attention to the role that occupational organisations are expected to play in the implementation of Conventions and Recommendations and the fact that many Conventions require consultation and collaboration with these organisations on various subjects.

15. One aspect of this role derives from article 23, paragraph 2, of the ILO's Constitution which requires governments to communicate to the representative organisations of employers and workers in their country the reports which they send to the ILO. In the light of these reports and the relevant documentation sent to them by the Office, the organisations may submit their observations on the steps taken by their governments to fulfil their obligations, specifically as regards the practical application of the ratified Conventions; they have in fact always been encouraged to do so by the Committee of Experts and by the Conference Committee.

16. In response to the 1971 Conference resolution referred to above, the Committee made a study[4] of tripartite consultation and collaboration at the national level, of instances where equal representation of workers and employers is provided for in ILO Conventions and of the effective implementation of article 23, paragraph 2, of the Constitution. The study proposed a number of measures for ensuring effective implementation of the latter that were designed both to improve the procedures for communication referred to in the article and to facilitate the presentation of information by governments and the supervisory task of the Committee. It also recommended certain practical steps that might be taken by the Office.

17. These proposals and the discussions that took place in the Conference Committee in 1972 led to a series of measures aimed at encouraging the participation of these organisations in the implementation of standards; at the same time, the Committee of Experts undertook to supervise more closely the manner in which the governments fulfilled their obligations under the Constitution and ratified

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[1] GB.188/6/3; GB.192/4/10; GB.199/6/4; GB.204/9/8; GB.215/7/19.

[2] GB.188/7/12; GB.191/8/15; GB.195/8/17; GB.201/9/12; GB.211/6/5.

[3] GB.185/3/3; GB.191/7/4; GB.199/2/3; GB.205/7/5; GB.215/5/1.

[4] RCE, 1972, pp. 10-25.

Conventions. At its 188th Session (November 1972), for example, the Governing Body decided to modify and clarify the questions in report forms (relating to ratified Conventions and to unratified instruments) and in the Memorandum (relating to the submission of Conventions and Recommendations to the competent authorities) with a view to obtaining from governments fuller information on any observations received from employers' and workers' organisations. Moreover, the Conference Committee suggested in 1972 that the Office send to the representative employers' and workers' organisations copies of the report forms for all ratified Conventions on which reports were due for the current year; it further suggested that information be made available in future to indicate, on the basis of data supplied by governments, the identity of the employers' and workers' organisations to which governments had communicated copies of their reports in accordance with article 23, paragraph 2, of the Constitution.

18. The Office accordingly sent the organisations concerned a list of the Conventions on which reports were due from the government of their country and a copy of the report form for the reports required under article 19 of the Constitution. At the same time it informed them that additional copies of the report forms for ratified Conventions (which had been sent to them previously) and copies of the Committee's observations and direct requests were available on request; as a result, a number of organisations requested and received copies of the comments addressed to their government by the Committee. At the suggestion of the Workers' members of the Conference Committee in 1974, the ILO sent the representative workers' and employers' organisations of each State a copy of the observations and direct requests addressed to their government by the Committee. It has since become the practice each year to send the organisations a letter concerning the various opportunities open to them to contribute to the implementation of Conventions and Recommendations and relevant documentary material, including a list of the reports due from the government of their country and copies of the Committee's comments to which the government was required to reply in its reports. Having all these documents to hand is obviously very useful for the organisations in preparing any observations they may wish to make. One organisation having consultative status with the ILO - the International Confederation of Free Trade Unions - adopted a resolution in October 1975 calling on its affiliated organisations to take advantage of their rights within the context of the ILO's supervisory machinery for the implementation of international labour standards, and in particular to insist that their governments communicate to them copies of the information and reports sent to the ILO on the Conventions and Recommendations and to send to their governments, to the ILO, or to both, their observations concerning the measures taken by their government to meet their obligations, particularly as regards the practical application of ratified Conventions.

19. In some cases the governments send the observations with their reports, sometimes adding their own comments, or else consult the organisations during the preparation of their reports and take the observations into account in the final draft; in others the observations are communicated directly by the organisations to the ILO which, in accordance with the practice established by the Committee of Experts, forwards them to the government concerned for comment. The situation varies from one year to the next.

20. An effort has been made to shorten the time needed to examine the observations sent by the occupational organisations. Once the governments' comments on them have been received, the Committee

examines the observations whether or not a report is due on the Convention; if the Government fails to send its comments within a reasonable space of time, the Committee proceeds to an examination of the substance of the observations.

21. Reviewing the practical effect of these new measures, the Committee in 1974[1] noted a marked increase in the number of observations received from employers' and workers' organisations: the 30 observations received in 1973 and the 34 in 1974 were a definite improvement on the small number of observations that have been received in previous years (an average of 9 per year over the period 1963-1972). This trend was to continue and more than 50 observations were received in 1975 and 1976, 69 in 1977 (double the figure for 1974), 61 in 1978 (following the introduction of the new arrangements for spacing out the reports due, which meant that they were fewer in number), 77 in 1979, 64 in 1980 and 63 in 1981.

22. Most of the observations received relate to the application of ratified Conventions, but they may also relate to the submission of Conventions and Recommendations to the competent authorities, to the effect given to certain unratified Conventions or Recommendations and to proposals to ratify Conventions. In 1980[2] the Committee noted that the occupational organisations were continuing their efforts to obtain and present concrete facts on the practical application of ratified Conventions. It also observed that the questions dealt with in their observations that year related to a wider range of Conventions than in earlier years. Whatever their nature, the observations of the organisations, which have direct experience of the situation in their country, are a valuable source of information for the Committee. More generally, their activity is an essential means of ensuring that legislation to give effect to a ratified Convention is applied in practice. Furthermore, experience has shown that the governments concerned are more and more inclined to follow up the observations of employers' and workers' organisations aimed at ensuring better implementation of ratified Conventions by means of legislative or other measures.

23. The need, which the Conference Committee on the Application of Conventions and Recommendations has emphasised, for the employers' and workers' organisations to be kept informed of the ILO's standard-setting activities and, specifically, of their role in the supervisory machinery has given rise to other measures. Ever since 1973 study meetings on international labour standards have been organised on a regular basis for Workers' members participating in the ILO's regional conferences in Africa, the Americas and Asia. Similar meetings have been held just before the sessions of the International Labour Conference for the Workers' delegates and advisers. Arrangements have also been made since 1974 in connection with the study of certain Conventions submitted to the regional conferences: the reports prepared for these occasions have been sent systematically to the national representative organisations of employers and workers in the region, which have been invited to make observations on any implementation problems in their country. Since 1980 regional seminars on national and international labour standards always include a session devoted to the role of employers' and workers' organisations in the implementation of the ILO's standards and to the usefulness of the instruments on

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[1] RCE, 1974, pp. 13-15, paras. 44-51.

[2] RCE, 1980, p. 17, para. 57.

tripartite consultations in this context. Similarly, the second and third of the seminars already organised on a national basis (Indonesia in 1979, Botswana in 1980 and Sri Lanka in 1981) have been attended by representatives of national occupational organisations.

24. In April 1981 a tripartite seminar on international labour standards attended by representatives of governments, employers and workers was organised for the first time at the subregional level for the countries of southern Asia. This differed from previous meetings in that the subjects discussed were looked at from a different standpoint from that of procedural training; they included the special problems of developing countries with regard to labour standards, participation in the various drafting stages of such standards, national machinery for their ratification and implementation, the prospects of implementing a set of Conventions, and possible ILO assistance in these areas. The emphasis was on a tripartite approach such as that advocated in Convention No. 144.

25. At the 67th Session (1981) of the International Labour Conference, a tripartite seminar was held on procedures for national tripartite consultation such as those provided for in Convention No. 144 and Recommendation No. 152.[1] While intended mainly for government, employers' and workers' members of the Committee on the application of Conventions and Recommendations, all other interested delegates or advisers were invited to attend. In addition to providing the occasion for a useful and informative exchange of views and experience between representatives of countries from different parts of the world, the seminar was also intended to provide a stimulus towards further thinking and action in this important field for countries where procedures for tripartite consultations on international labour standards did not yet exist or might not be operating effectively. A large number of persons from all three groups attended the seminar. Many of these described the procedures followed in their countries for tripartite consultations, which in many cases went beyond the subjects covered in the Conventions and Recommendations. Several participants stressed the usefulness of the kind of tripartite consultation provided for in these instruments, both with regard to subjects directly related to ILO matters and concerning broader questions of labour relations and social policy. The Office was able to provide clarifications in reply to questions raised by the participants, who also indicated some of the difficulties they encountered in consultations (in particular with regard to the amount of time needed for effective consultations and the form of consultations).

26. Finally, steps were taken to associate the representatives of occupational organisations systematically in the development of new procedures supplementing the regular supervisory machinery of the Committee of Experts. Although the direct contacts system inaugurated in 1968 was conceived of essentially as a means of permitting a dialogue between the ILO, on the one hand, and governments on the other, since it is the latter which are responsible for taking appropriate measures to give effect to the Conventions, the Conference Committee as a whole, and the Workers' and Employers' members in particular, expressed the view from the start that the representative organisations of employers and workers should be associated with the

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[1] ILO: Record of proceedings, International Labour Conference (ILC), 67th Session, 1981, p. 31/7, para. 33.

discussions in an appropriate manner.[1] In practice, ever since the introduction of this procedure the Director-General's representatives have in each case contacted the most representative organisations of employers and workers with a view to keeping them fully informed of the topics discussed with the government and eliciting their points of view. When it restated its principles in 1973, the Committee accordingly added a new principle to this effect.[2] In some cases direct contacts have been combined with tripartite meetings at which the parties concerned have been able to express their views. Occupational organisations, and especially workers' organisations, have in certain instances been able to use the knowledge of the procedures and objectives of direct contacts that they have acquired in this way to speed up the adoption of the relevant legislative or other measure. A similar desire to associate employers and workers in the questions discussed has attended other missions, such as those which regional advisers have carried out on standards since 1980.

III. Substance of Convention No. 144 and Recommendation No. 152, 1976

27. The standards established by the 1976 instruments are part of the general effort to promote tripartism described above. States ratifying Convention No. 144 undertake to operate procedures which ensure effective consultations between representatives of the government, of employers and of workers on a variety of matters which are listed concerning the activities of the ILO. Additionally, the Recommendation gives examples of possible methods of carrying out these consultations and contains a more detailed list of matters with which consultations concerning international labour standards should deal and a list of other points concerning the ILO's activities which the consultations could also cover.

28. As regards the scope of the consultations, the Convention[3] stipulates that they should concern five matters: government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference; the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation; the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate; questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution; and proposals for the denunciation of ratified Conventions.

29. The Recommendation lists the same provisions as the

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[1] RCE, 1973, p. 15, para. 45, and p. 19, para. 61; 1978, p. 19, para. 61.

[2] RCE, 1973, p. 16, para. 53.

[3] Art. 5, para. 1(a) to (e).

Convention and adds[1] that consultations relating to international labour standards should also be organised on the following two points: the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions; and questions arising out of reports to be made to the International Labour Office under article 19 of the ILO's Constitution.

30. The Recommendation[2] also provides for the possibility of extending these procedures, after consultation with representative organisations, to other matters, such as: the preparation, implementation and evaluation of technical co-operation activities in which the ILO participates; the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference and any other meetings convened by the ILO; and the promotion of a better knowledge of the activities of the Organisation.

31. As to the nature and form of the consultation procedures, the Convention provides that they shall be determined in each country in accordance with national practice, after consultation with the most representative organisations of employers and workers.[3] It requires only that the procedures should ensure effective consultations between representatives of the government, of employers and of workers with respect to the matters covered by the Convention.[4] The Recommendation gives examples of methods of consultation[5] and stipulates that appropriate measures should be taken to ensure co-ordination between these procedures and the activities of national bodies dealing with analogous questions.[6]

32. Two supplementary principles are common to both the Convention and the Recommendation, namely that the representatives of employers and workers should be freely chosen by their representative organisations - which must themselves enjoy the right of freedom of association[7] - and that employers and workers should be represented on an equal footing on any bodies through which consultations are undertaken.[8]

33. The Convention and Recommendation provide that consultations shall be undertaken at appropriate intervals fixed by

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[1] Para. 5(c) and (e).

[2] Para. 6(a) to (c).

[3] Art. 2, para. 2.

[4] Art. 2, para. 1.

[5] Para. 2(3).

[6] Para. 8.

[7] Arts. 1 and 3, para. 1, of the Convention; Paras. 1 and 3(1) of the Recommendation.

[8] Art. 3, para. 2, of the Convention; Para. 3(2) of the Recommendation.

agreement, but at least once a year.[1] They also provide for the issue, where appropriate, of an annual report on the working of the consultative procedures.[2] Finally, both instruments contain provisions concerning administrative support of the procedures and the financing of any necessary training of participants in them.[3]

34. The substantive provisions of the two instruments are reproduced in Appendix I.

IV. Number of ratifications of Convention No. 144

35. At 25 March 1982 Convention No. 144 had been ratified by 27 countries.[4] There is a significant disparity in the geographical distribution of these ratifications. Slightly more than half of them (14) are by European States while in the Asian, American and African regions only 4, 6 and 3 States have ratified the Convention respectively. The member States of these three regions have accordingly been urged by the ILO through its regional tripartite meetings to ratify the Convention.[5]

V. Available information

36. One hundred and eighty-six reports were received (181 from member States and 5 from non-metropolitan territories) from 146 countries, either under article 19 of the ILO's Constitution on Convention No. 144 and Recommendation No. 152 or under article 22 on the Convention if ratified. Appendix III contains detailed information on the countries that sent in their reports. The Committee has also taken into account observations received from employers' and workers' organisations to which the government reports were communicated in accordance with article 23, paragraph 2, of the Constitution.

37. The Committee's main source of information is the government reports, on whose quality the usefulness of the general survey depends. This year barely a third of the reports received contain sufficiently detailed and complete information to indicate to what extent the instruments are implemented in the countries concerned. Many governments merely mentioned the existence of tripartite advisory bodies and of rules of procedure, without saying how active they were

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[1] Art. 5, para. 1, of the Convention; Para. 7 of the Recommendation.

[2] Art. 6 of the Convention; Para. 9 of the Recommendation.

[3] Art. 4 of the Convention; Paras. 3(3) and 4 of the Recommendation.

[4] Australia, Austria, Bahamas, Bangladesh, Costa Rica, Cyprus, Denmark, Ecuador, Egypt, Finland, Federal Republic of Germany, Greece, Iceland, India, Iraq, Ireland, Italy, Mexico, Netherlands, Nicaragua, Norway, Portugal, Suriname, Swaziland, Sweden, United Kingdom, Zambia.

[5] See para. 13 above.

in the areas covered by the Convention and the Recommendation or providing any information on consultations that may have taken place on the subjects which they should have dealt with. Unfortunately, too many reports refer to tripartite consultations outside the precise context envisaged by the two instruments, namely international labour standards and relevant procedures. Finally, several countries supplied no information whatsoever[1], while some of those that have ratified the Convention did not send their report on the application of the Recommendation, under article 19 of the Constitution.[2]

VI. Plan of the survey

38. Chapter I of this survey deals with the nature of tripartite consultation procedures relating to international labour standards and reviews the various types of machinery that exist at the national level. Chapter II considers the various subjects covered by the consultations one by one and Chapter III indicates how often they take place and the way the procedures operate. Finally, in Chapter IV, the Committee outlines the conclusions it has reached from its examination of available information and considers the prospects for ratifying Convention No. 144.

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[1] Afghanistan, Algeria, Bahamas, Bangladesh, Bolivia, Burma, Central African Republic, Chad, China, Costa Rica, Democratic Kampuchea, Democratic Yemen, Djibouti, Ecuador, Ghana, Guinea, Haiti, Honduras, Iceland, Iran, Iraq, Ireland, Ivory Coast, Jordan, Kenya, Lao Pepublic, Libyan Arab Jamahiriya, Malawi, Mauritania, Mozambique, Namibia, Nepal, Niger, Papua New Guinea, Saint Lucia, Seychelles, Sierra Leone, Suriname, Togo, Uganda, United Arab Emirates, Viet Nam, Zambia.

[2] Bahamas, Bangladesh, Ecuador, Iraq, Ireland, Suriname, Zambia.

CHAPTER I

TRIPARTITE CONSULTATION PROCEDURES

39. Article 2, paragraph 2, of the Convention and Paragraph 2(2) of the Recommendation state that "the nature and form of the (consultation) procedures ... shall be determined in each country in accordance with national practice". They also provide for prior consultation with the representative occupational organisations where such procedures have not yet been established.

40. By referring to existing domestic arrangements, the instruments reflect the desire, particularly in the case of the Convention, to provide sufficient flexibility so that governments can adopt procedures that are suited to national conditions and practice.

41. This freedom of action must, however, be exercised by member States within the context of two fundamental requirements relating to the participation of employers and workers: the free choice of the employers' and workers' representatives by their representative organisations[1] enjoying the right of freedom of association,[2] and the representation of the employers and workers on an equal footing on any bodies through which consultations are undertaken.[3]

I. Extent of the obligation to hold consultations

42. Before going on to examine the existing types of consultation procedures, it will be useful to recall the precise meaning of the term "consultation", which has a different connotation both from mere "information" and from "codetermination". In the first place, the views expressed in the course of consultations are not a form of participation in decision making but simply one stage in the process of reaching a decision. During the preliminary work on the instruments concerned, the Office accordingly observed that it was a "generally accepted principle" that "the outcome of the consultations should not be regarded as binding and that the ultimate decisions must

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[1] Art. 3, para. 1, of the Convention; Para. 3(1) of the Recommendation.

[2] Art. 1 of the Convention; Para. 1 of the Recommendation.

[3] Art. 3, para. 2 of the Convention; Para. 3(2) of the Recommendation.

rest with the government or legislature, as the case may be".[1] During the preparatory work, moreover, an amendment requiring the competent authority to give the reasons for any refusal on its part to accept the views of the employers' and workers' representatives was rejected.[2]

43. Although the outcome is not binding, consultation is nonetheless compulsory once the machinery is established. At the international level ratification of Convention No. 144 signifies acceptance of this obligation in respect of consultations relating to the implementation of ILO standards.

44. Finally, if the procedure is not to be a mere formality, the obligation to conduct consultations must logically be fulfilled before the proposed measures are ultimately decided upon; consultation must be able to have some influence on the decision to be taken. However, assuming this condition is fulfilled, the "nature" of the consultation may take one or other of two different points of departure according to national practice; consultation on proposals that have already been put forward or consultation with a view to drawing up a proposal for action on a tripartite basis. The same applies to the "form" of the consultation, which may consist of an exchange of communications, the submission of an opinion or discussions between the interested parties and may take place through established bodies or under some more flexible arrangement. This great variety, accepted in fact, as to the nature and form of consultation is reflected in the national practices examined in the course of this survey. Free to choose the means of conducting the procedures, member States are only obliged to ensure that they are "effective", as required by Article 2, paragraph 1, of the Convention (Paragraph 2(1) of the Recommendation). Effective consultations are consultations which enable employers' and workers' organisations to have a useful say in matters relating to the activities of the ILO referred to in the two instruments.

45. Furthermore, the responsibility for initiating the consultations is not the exclusive prerogative of the government; employers and workers may also request the consultations, inasmuch as no specific reference to the subject appears in the instruments.[3]

II. Participation of employers and workers in the consultations

1. Nature of the organisations taking part in the consultations

46. The word "representative" is employed on several occasions in the Convention and Recommendation to indicate the organisations which should participate in the consultations referred to. Article 1 of the Convention and Paragraph 1 of the Recommendation state that the term "representative organisations" means "the most representative organisations of employers and workers enjoying the right of freedom of association".

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[1] ILC, 60th Session, 1975, Report VII(2), p. 29.

[2] ILO: Record of proceedings, ILC, 61st Session, 1976, p. 136.

[3] ibid., para. 19, p. 117.

A. Determination of the "most representative organisations"

47. During the preparatory work it was initially proposed to refer to article 3, paragraph 5, of the ILO's Constitution[1] to define the meaning of "most representative organisations". However, since the expression is used in a number of existing Conventions and Recommendations, it was finally thought preferable to omit any such reference, which most governments considered both superfluous and liable to suggest that there might have been an intention in the new instruments to introduce a different definition of such organisations.[2] Moreover, the organisations considered to be the most representative for the purposes of article 3, paragraph 5, of the Constitution would obviously also be the most representative in the context of the Convention and Recommendation.

48. Two points must be made here regarding the precise meaning of the word "employers" for the purpose of these instruments. The term was discussed at some length during the drafting of the Convention when several Government members proposed a number of additions designed to take into account the situation in countries having different economic and social systems. These proposals were rejected by the competent committee and by the Conference on the grounds that the word "employers" did not necessarily refer only to private employers but to all persons responsible for managing an undertaking, whether private or public.[3]

49. The Committee of Experts, moreover, had the occasion to clarify the definition of the term "employers" as it relates to the Convention, in response to observations made by the Swedish employers concerning the presence among the Employers' members of the Swedish ILO Committee (a national tripartite body) of representatives of local public administration organisations. It expressed the view that "consideration at the national level of matters on which consultations are required under the Convention would not seem to involve issues which would affect local government authorities in their capacity as such, but questions which might affect them in their capacity as employers of a substantial section of the labour force". It also noted in this regard that "it is through the organisations concerned that the local administrative authorities negotiate with their employees or the employees' organisations, a typical function of an employers' organisation". It was largely in the light of this situation that the Committee of Experts concluded that the composition of the Swedish ILO

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[1] Dealing with the nomination of non-governmental representatives to sessions of the General Conference, which must be undertaken by the member States "in agreement with the industrial organisations ... which are most representative" of the country considered.

[2] ILO: Establishment of tripartite machinery to promote the implementation of international labour standards, International Labour Conference, 61st Session, Geneva, 1976, Report IV(1), pp. 27-28, and Report IV(2), pp. 10-14.

[3] ILC, 61st Session, 1976, Report IV(1), pp. 7-9; ILO: Record of proceedings, ILC, 61st Session, 1976, para. 16, pp. 116-117 and pp. 139-142.

Committee was not incompatible with the terms of Article 3, paragraph 2, of the Convention.[1]

B. Representative organisations and freedom of association

50. Article 1 of the Convention and Paragraph 1 of the Recommendation stipulate that the representative organisations must enjoy "the right of freedom of association".

51. Although the preambles to the two instruments refer to 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),[2] and to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), the body of the text does not specifically mention Convention No. 87 as defining the most representative organisations. Objections were in fact raised during the preparatory work on the instruments, largely because of the difficulties this would pose for States which were not in a position to ratify Convention No. 87 and the fact that there were difficulties in the application of this Convention even in ratifying countries.[3] The reference to the right of freedom of association is nevertheless intended to indicate that, for the consultation procedures to operate effectively, there have to be free employers' and workers' organisations. As stated in the resolution concerning the promotion, protection and strengthening of freedom of association, trade union and other human rights adopted by the International Labour Conference at its 63rd Session (June 1977), the tripartite consultations envisaged in Convention No. 144 and Recommendation No. 152 "would be meaningless unless within member States conditions exist which ensure that employer and worker participants are free to act effectively in accordance with the provisions of" Convention No. 87.

52. Conversely, Recommendation No. 113 stipulates (Paragraph 2) that measures to promote effective tripartite consultation and collaboration "should not derogate from freedom of association or from the rights of employers' and workers' organisations".

53. The exercise of the right of freedom of association provided for in the Convention must in fact be seen in the light of the basic principles of Convention No. 87: the recognised right of all workers and employers, without distinction whatsoever, to establish and to join organisations of their own choosing without previous authorisation, the right of organisations to run their own affairs without interference by the authorities (drafting of constitutions and rules, election of representatives, administration, activities and programmes) and without any threat of dissolution or suspension by administrative authority, the right to establish and join federations

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[1] RCE, 1980, pp. 195-196. See also para. 63 below.

[2] ILC, 61st Session, 1976, Report IV(1), p. 7.

[3] ibid., pp. 9-10 and 26, and ILO: Record of proceedings, ILC, 61st Session, 1976, para. 13, p. 116.

and confederations and the right to affiliate with international organisations.[1]

54. In countries which have ratified Convention No. 87[2] it is easy to verify to what extent the definition of "representative organisations" given here is respected. The comments on the subject addressed by the Committee of Experts to governments in connection with Convention No. 87 should not, however, normally have a bearing on the application of Article 1 of the present Convention except in situations where the basic principles of freedom of association are flouted.

55. Furthermore, as regards the countries parties to Convention No. 144 which have not undertaken the commitments of Convention No. 87, the Committee, in supervising the observance of Article 1 of the Convention, takes into account the organisations to which the governments communicate copies of the information and reports transmitted to the ILO pursuant to articles 19 and 22 of the Constitution, in accordance with article 23, paragraph 2, thereof.

2. Free choice of representatives of employers and workers

56. Article 3, paragraph 1, of the Convention and Paragraph 3(1) of the Recommendation state that, for the purposes of the procedures provided for, the representatives of employers and workers "shall be freely chosen by their representative organisations, where such organisations exist".

57. During the preparatory work on the instruments, the Employers' and Workers' members opposed an amendment designed to give governments greater freedom in appointing employers' and workers' representatives in the proposed consultative machinery, by requiring that they be appointed after consultation with the representative organisations where appropriate; the amendment was subsequently withdrawn.[3]

58. The method of selection provided for in the instruments implies that the representative character of the participants must be fully guaranteed. To have accepted the principle of government interference in the matter would of course have run counter to the fundamental concept of tripartism, which must be respected if there is to be genuine co-operation. It would seem, however, that these provisions are respected whether the representatives are directly chosen by their organisations or whether, having been freely chosen by their organisations, they are appointed by the public authorities on the proposal of these organisations or in agreement with them.

59. On the other hand, if they were appointed by the public authorities merely after consultation with the organisations but without their proposals being binding, the rule of freedom of choice laid down in these provisions would be infringed.

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[1] ILO: General Survey by the Committee of Experts on the Application of Conventions and Recommendations: Freedom of association and collective bargaining, ILC, 58th Session, 1973, Report III (Part 4B).

[2] Ninety-three of the 147 member States are at present bound by Convention No. 87.

[3] ILC, 61st Session, 1976, Report IV(I), para. 32.

60. Apparently, however, this only occurs in exceptional cases and, although some legislation provides for representatives of social partners to be appointed "after consultation" with the occupational organisations[1] (thereby allowing the authorities considerable discretion in the ultimate choice), it is more common for participants in consultative procedures to be appointed, on the proposal of the most representative organisations, by the public authorities which must nominate the representatives proposed.[2] In many countries, finally, the representatives are designated directly by the organisations.[3]

3. Equal representation

61. Article 3, paragraph 2, of the Convention and Paragraph 3(2) of the Recommendation stipulate that "employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken".

62. This provision must be interpreted as implying not strict numerical equality between employers and workers but the attribution of equal weight to the opinions of either side and equal representation of their views and interests.[4] In practice, numerical equality is not always practicable, as when there is a large number of representative occupational organisations. Moreover, one must not forget that the objective of the instruments is consultation, which does not normally require the utilisation of voting procedures.

63. It was largely in view of the flexible wording of the Convention on this point that the Committee of Experts concluded that the composition of the Swedish ILO Committee - which had been criticised by the employers because it included representatives of the local administrations and their employees as well as those of the largest occupational organisations - was not incompatible with this provision of the Convention.[5]

64. The instruments do not specify the proportion to be observed between the two groups of employers and workers, on the one hand, and the government on the other. It was felt that any attempt to impose a rigid proportion would be liable to create problems for governments wishing to consult employers and workers through existing

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[1] Belize, Mauritius and Swaziland.

[2] Burundi, United Republic of Cameroon, Czechoslovakia, Denmark, Finland, Norway, Zaire.

[3] Australia, Austria, Bangladesh, Brazil, Bulgaria, Cyprus, Gabon, German Democratic Republic, Federal Republic of Germany, Guatemala, Hungary, India, Liberia, Mexico, Netherlands, Nigeria, Spain, Sweden, United Kingdom, United Kingdom (Gibraltar and Hong Kong), United States, Uruguay.

[4] ILC, 60th Session, 1975, Report VII(2), p. 24.

[5] The other reason had to do with the local administrations' capacity as employers. See para. 49 above and RCE, 1980, pp. 195-196.

bodies whose composition might vary greatly and not correspond to an established percentage.[1]

III. National tripartite machinery

65. Whereas the Convention indicates that the nature and form of the consultation procedures shall be determined in accordance with national practice, Paragraph 2(3) of the Recommendation gives four examples of possible methods of consultation, as follows: "for instance, consultations may be undertaken:

(a) through a committee specifically constituted for questions concerning the activities of the International Labour Organisation;

(b) through a body with general competence in the economic, social or labour field;

(c) through a number of bodies with special responsibility for particular subject areas; or

(d) through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient."

66. This is not, however, an exhaustive list of possible methods - which may of course be employed simultaneously depending on the purpose of the consultations - of ensuring "effective" tripartite consultations on international labour standards.[2] Other tripartite consultation procedures may be used where appropriate, such as an arrangement for consultation on certain matters to take place in ad hoc committees or meetings specially organised to deal with a particular issue. The different solutions adopted in the various countries are described below.

67. It must first be pointed out, however, that the text of the instruments does not prevent consultation from involving multipartite as well as strictly tripartite bodies. Other parties, such as consumer groups or co-operative movements, may be invited to take part in the consultations, provided that the government, employers and workers, which are the essential elements in tripartite consultations, are present.[3]

1. National committees for ILO matters

68. Some countries[4] have tripartite committees "specifically

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[1] ILC, 61st Session, 1976, Report IV(1), p. 11, para. 34.

[2] ibid., p. 28.

[3] ILO: Record of proceedings, ILC, 61st Session, 1976, pp. 116-117, paras. 10 and 22.

[4] Benin, Canada, Czechoslovakia, Denmark, Finland, German Democratic Republic, Federal Republic of Germany, Guyana, India, Italy, Japan, Norway, Sweden, United States.

constituted for questions concerning the activities of the International Labour Organisation" of the kind referred to in Paragraph 2(3)(a) of the Recommendation. Most of these bodies have already been in existence for a long time and, in their case, consultation with the representative organisations prior to their creation, as provided for in Paragraph 2(2), is therefore not required.

69. The composition of these committees conforms to the aforementioned rule of equal representation of employers and workers,[1] which is in fact generally ensured in practice in numerical terms. They also include representatives of the ministries and public institutions concerned.

70. In India, for example, a Tripartite Committee on Conventions was set up in 1954 consisting of government representatives along with five nominees of the most representative employers' organisations - including one for the public sector - and five of the most representative workers' organisations. Its main function is to review unratified Conventions and suggest measures towards their progressive implementation. In 1978, for instance, the Committee decided that a bipartite committee with an equal number of employers' and workers' representatives should review the unratified Conventions to recommend possible ratifications to the Government.

71. In Sweden, the ILO Committee, which has been operating for over 50 years, has nine members, three (including the chairman) representing the Government, three appointed by the employers' organisations and three by the workers' organisations. This Committee is consulted on all the matters dealt with in the Convention.

72. An ILO Committee was set up in the German Democratic Republic on the occasion of the country's joining of the ILO in 1974 to examine, inter alia, the matters referred to in the Convention and Recommendation. The Committee, which is an advisory body of the Secretary of State for Labour and Wages, comprises representatives of the Confederation of Trade Unions and Industrial and Other Trade Unions and the managers of undertakings in various sectors of economic activity, along with representatives of economic institutes and competent state bodies. Czechoslovakia has a similar structure.

73. In the United States, the President's Committee on the ILO, which was set up in 1980 with a tripartite structure, has a Tripartite Advisory Panel on International Labour Standards, chaired by a member of the Department of Labor and consisting, in addition, of representatives of the Departments of Commerce and State and of the occupational organisations. Its purpose is to examine United States law and practice with a view to considering the possibility of ratification of Conventions.

74. Instead of a committee specialising in ILO matters, the United Kingdom has created a three-member steering committee which oversees the operation of established consultation machinery. In recent years it has become customary in Canada to hold an annual tripartite meeting on ILO affairs which is attended by federal and provincial government officials.

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[1] See para. 61 above.

2. Bodies with general competence in the economic, social or labour field

A. Economic and social councils

75. The economic and social councils operating in certain countries[1] often have extensive advisory functions. They play a major role in determining economic and social policies and in social legislation, a field which is directly concerned with international labour Conventions and Recommendations.

76. They hardly ever seem to be consulted, however, on the matters referred to in the Convention and Recommendation. Only one country[2] mentions the possibility of conducting the tripartite consultations provided for by these instruments through an economic and social council which is to be set up.

B. Labour advisory councils

77. In many of the countries where they exist, tripartite councils or committees responsible for advising the government in all labour and employment matters are consulted on questions relating to international labour standards.[3]

78. These bodies, which usually have a special subcommittee for ILO affairs,[4] generally consist of representatives of the government, employers and workers, the latter categories always being on an equal footing. Provision is also sometimes made for representatives of other sectors to participate in an advisory capacity or as full members: interest groups,[5] economic and social experts,[6] members of Parliament and magistrates[7] and, in general, any person the committee or council

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[1] Algeria, Austria, United Republic of Cameroon, Canada, Congo, France, Italy, Ivory Coast, Japan, Luxembourg, Mali, Mauritania, Mexico, Netherlands, Niger, Senegal, Tunisia, Zaire.

[2] Spain.

[3] Australia, Bangladesh, Belgium, Belize, Botswana, Canada (Quebec), Cyprus, Fiji, Indonesia, Lebanon, Mauritius, Nigeria, Rwanda, Swaziland, Tanzania, Thailand, United Kingdom (Gibraltar, Hong Kong). Other countries have made it known that advisory bodies such as these exist without indicating to what extent they are concerned with the substance of the Convention: Bahrain, Bermuda, Burundi, United Republic of Cameroon, Comoros, Kuwait, Lesotho, Malaysia, Panama, Philippines, Senegal, Zaire. One country (Sri Lanka) indicates however that the matters covered by the Convention are not yet dealt with by the Labour Advisory Committee.

[4] Australia, Botswana, Canada (Quebec), Mauritius, Swaziland, Thailand, United Kingdom (Hong Kong).

[5] Australia.

[6] Belgium, Burundi, United Republic of Cameroon, Rwanda, Senegal.

[7] United Republic of Cameroon, Senegal.

may choose to invite.[1]

79. In Australia, for example, the National Labour Consultative Council, chaired by the Minister for Industrial Relations, has 18 members, 7 representing the employers and 7 the workers and the remainder representatives of the ministries concerned. In 1978 the Council established a tripartite Committee on International Labour Affairs to consider matters of substance relating to the ILO. In Thailand, the National Labour Advisory Council's Ad Hoc Committee for ILO Conventions and Recommendations, created in 1981, is responsible essentially for reviewing unratified Conventions with a view to their ratification.

80. In Mauritius, the Labour Advisory Board, one of whose subcommittees examines international labour instruments and advises about action which is required, consists of an equal number of public officials, employers' representatives and workers' representatives. Finally, the Labour Advisory Board in Swaziland consists of the Labour Commissioner and his deputy, six employers' representatives and six employees' representatives appointed by the Minister after consultation with the relevant organisations; the Board's terms of reference include all the areas for consultation referred to in the Convention.

3. Special bodies

81. Many countries have "a number of bodies with special responsibility for particular subject areas", as specified in Paragraph 2(3)(c) of the Recommendation. The terms of reference of these bodies include subjects relating to the ILO's standard-setting activities. For example, specialised bodies of this kind exist for labour legislation,[2] maritime affairs,[3] wages and incomes,[4] vocational training,[5] employment,[6] problems of specific categories of workers,[7] freedom of association,[8] discrimination in employment and occupation,[9] industrial relations,[10] social security[11] and occupational safety and

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[1] Bangladesh, Kuwait, Swaziland.

[2] Brazil (however, occupational organisations are not entitled to vote in meetings of the Labour Legislation Committee).

[3] New Zealand, Panama, United Kingdom.

[4] El Salvador, Gabon, Lebanon, Panama, Portugal.

[5] El Salvador, Israel, Nicaragua, Panama, Tunisia.

[6] Israel, Lebanon.

[7] Such as dockers (Portugal) or handicapped persons (Lebanon).

[8] Panama.

[9] Portugal, United Kingdom.

[10] Israel, Trinidad and Tobago.

[11] El Salvador, Israel, Lebanon, Pakistan, Trinidad and Tobago, Tunisia.

health.[1]

82. There is, however, little information on the extent to which these bodies are in practice used for the kind of consultations covered by the instruments in question. Nevertheless, as specialised bodies they are presumably consulted in conjunction with other procedures. Only matters relating to their specific mandate are taken up by these bodies. In New Zealand, for instance, the Marine Council, which is a tripartite body, from time to time considers unratified Conventions and may recommend action towards their ratification; the Equal Pay Review Committee, also tripartite, has considered and recommended ratification of the Equal Remuneration Convention, 1951 (No. 100). In Cyprus, the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), adopted in 1978, were discussed by the official advisory body in the civil service prior to the examination of these instruments by the Labour Advisory Board; some of the comments of the ILO's Committee of Experts on provisions of the Public Service Law were also discussed by this body.

4. Written communications

83. The fourth consultation procedure provided for by the Recommendation is "through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient" (Paragraph 2(3)(d)).

84. At the drafting stage of the Convention it was generally agreed that the consultations envisaged encompassed all manner of consultations, including written, and Article 2, paragraph 1, of the Convention was therefore couched in general terms without specifying what constitutes "effective consultations", which may be oral or written.[2] The Recommendation, in citing written communications as an example, adds the proviso that the procedure must be agreed to by the occupational organisations.

85. Written communications are utilised in a large number of countries,[3] often in conjunction with other procedures. Few countries specify whether the participants concerned accept these communications as "appropriate and sufficient",[4] though since they are for the most part long-established practices whose principle is unquestioned there is no reason to suppose the contrary to be the case.

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[1] Israel, United Kingdom.

[2] ILO, Record of proceedings, ILC, 61st Session, 1976, p. 117, para. 18.

[3] The following countries mentioned written consultations in their reports: Austria, Barbados, Brazil, United Republic of Cameroon, Canada, Colombia, Congo, Cyprus, Czechoslovakia, Egypt, Federal Republic of Germany, Greece, Guatemala, India, Jamaica, Japan, Lebanon, Liberia, Luxembourg, Madagascar, Mali, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Pakistan, Panama, Portugal, Spain, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, Uruguay, Venezuela.

[4] This is mentioned by Austria, Cyprus, Mexico and Spain.

5. Ad hoc bodies

86. In some countries[1] matters relating to international labour standards may be discussed in bodies that are set up for a specific task, generally in conjunction with other procedures.

87. An ad hoc body may be created by another advisory body, such as the tripartite technical committee appointed in Cyprus by the Labour Advisory Board to study the possibility of ratifying the Workers' Representatives Convention, 1971 (No. 135), and the Paid Educational Leave Convention, 1974 (No. 140).

88. In New Zealand, consultations concerning the possible denunciation of the Night Work (Women) Convention (Revised), 1948 (No. 89), were carried out through a specially established tripartite Steering Committee on Night Work. Lastly, in Uruguay matters relating to international labour standards have been discussed in tripartite ad hoc bodies set up for certain sectors of activity such as plantations and the metal, graphic and wood industries.

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[1] Cyprus, Egypt, Federal Republic of Germany, Liberia, New Zealand, Uruguay, United Kingdom (Montserrat).

CHAPTER II

PURPOSE OF TRIPARTITE CONSULTATIONS

89. The Convention[1] states that the purpose of the procedures provided for shall be consultations on:

(a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions or Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;

(c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(d) questions arising out of reports to the International Labour Office under article 22 of the Constitution of the International Labour Organisation;

(e) proposals for the denunciation of ratified Conventions.

90. To these five subjects for consultation, the Recommendation adds two more:

- the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions;[2]

- questions arising out of reports to the International Labour Office under article 19 of the Constitution of the ILO.[3]

91. Paragraph 6 of the Recommendation further provides that the competent authority, after consultation with the representative organisations, should determine[4] the extent to which these procedures should be used for the purpose of consultations "on other matters of mutual concern, such as -

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[1] Art. 5, para. 1.

[2] Para. 5(c).

[3] Para. 5(e).

[4] It was agreed during the preparatory work that the competent authority "should" take a decision on the subject, and the wording of the provision was therefore made more imperative than had been previously suggested by the word "may". See ILC, 61st Session, 1976, Report IV(1), p. 14, para. 48.

(a) the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates;

(b) the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, Industrial Committees and other meetings convened by the International Labour Organisation;

(c) the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes".

1. Items on the Conference agenda

92. Article 5, paragraph 1(a), of the Convention and Paragraph 5(a) of the Recommendation provide for consultations on "government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference".

93. The reports on law and practice prepared by the Office in connection with items on the agenda of the Conference draw the governments' attention to the recommendation made to them by the Governing Body at its 183rd Session (June 1971), which is based on the resolution concerning the strengthening of tripartism in the over-all activities of the International Labour Organisation, adopted by the Conference at its 56th Session; this resolution invites governments to "consult the most representative organisations of employers and workers before they finalise replies to ILO questionnaires relating to items on the agenda of sessions of the General Conference". The governments are requested to indicate in their replies which organisations they have consulted. They are also informed that the results of these consultations should be reflected in their replies which, according to the Standing Orders of the Conference, are the only comments taken into account in the preparation of the subsequent report.

94. Under the terms of the above-mentioned provisions of the Convention, this practice is compulsory. Naturally, once the consultations have taken place, the governments are free to reply as they think fit[1] and are in no way bound by the views expressed by the organisations on the substance of the texts prepared.

95. These provisions do not specify - and therefore do not determine - the actual procedure to be followed in practice. The consultations may take the form of recommendations by a tripartite body to the government.[2] They may be concerned with the government's draft replies and comments themselves[3] or with co-ordinating the government's replies and the replies of the representative organisations to the

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[1] ILC, 61st Session, 1976, Report IV(1), p. 16, para. 60, and Report IV(2), p. 23.

[2] Norway.

[3] Botswana.

ILO's questionnaires[1] or, again, they may be a combination of both.[2] The essential point is that there should be tripartite discussion, in other words that the governments should take the comments of the organisations into consideration before finalising their reports and not, for example, merely attach the comments to their own reply. One useful practice, though it is not compulsory,[3] is that the procedure should involve the consultation of the organisations on the actual wording of the government's replies. This however does not mean that the government has to take account of the opinions of the organisations or that there has to be agreement on all points.[4]

96. A large number of governments indicated in their reports that they carry out the kind of consultations provided for in this provision of the Convention and Recommendation.[5]

97. In Canada, the Department of Labour sends the occupational organisations the ILO's questionnaires with a covering letter stating that the draft reply is being prepared and will be sent to them subsequently for their comments; on receipt of these comments, the Minister may make changes to his draft reply and, finally, copies of the definitive reply are sent to the organisations for their information. In Canada, too, the tripartite meetings that are held on matters concerning the ILO help in the drafting of the Government's final position on draft texts to be discussed by the International Labour Conference; the organisations also receive copies of the texts that are proposed during the first discussion by the Conference and their views are taken into consideration when the Government drafts its final comments. The latter are again sent to the organisations for their information.

98. In Cyprus consultation on these matters is normally carried out by written communication; if necessary, however, or if one of the two parties so requests, the Labour Advisory Board or an ad hoc tripartite meeting is convened to study the matter further.

99. In Denmark, the questionnaires are sent to the organisations whose replies, along with those of the Government, are collated and combined in a single national reply. Only when the replies from

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[1] Denmark.

[2] Canada, United Kingdom.

[3] Contrary to the comments of the New Zealand Employers' Federation on the procedure followed in that country.

[4] ILO: Record of proceedings, ILC, 61st Session, 1976, p. 124, para. 26.

[5] Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Benin, Botswana, Brazil, Bulgaria, Byelorussian SSR, Canada, Congo, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, German Democratic Republic, Federal Republic of Germany, Greece, Guatemala, Guyana, Hungary, India, Italy, Japan, Kuwait, Lebanon, Lesotho, Luxembourg, Madagascar, Mali, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Singapore, Spain, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Ukrainian SSR, USSR, United Kingdom, United States, Venezuela, Yugoslavia.

the organisations reveal major differences, either between each other or with the reply of the Government itself, is special reference made to the fact in the national reply.

100. In Finland, Norway and Sweden, a special ILO Committee adopts the draft replies to ILO questionnaires, which are then submitted in writing to the competent ministry.

101. In Botswana a reply is drafted and communicated to the representative organisations with the Office questionnaires; a meeting of the Tripartite Subcommittee on International Labour Matters is then convened to discuss the Government's draft reply, after which a final reply is sent to the ILO with copies to the occupational organisations.

102. The quality of the member States' contribution to the drafting of the ILO's standard-setting instruments is fundamental to their success. It is the stage at which the government's viewpoint, based on tripartite consultation, may have a major bearing on the substance of the standards, provided the replies to ILO questionnaires are in sufficient detail and reach the Office in time. The drafting stage is in fact the only point at which national economic and social conditions can be taken into consideration so as to devise a standard that is sufficiently flexible to be universally relevant. Only detailed replies from governments, therefore, can enable the International Labour Conference to fulfil its commitment under article 19, paragraph 3, of the Constitution to have due regard to the special circumstances prevailing in certain countries and, accordingly, "suggest the modifications, if any, which it considers may be required to meet the case of such countries". Once the instrument has been adopted, the ILO's supervisory bodies, and specifically the Committee of Experts, can do no more than evaluate the implementation of the standard in a uniform manner for all the countries concerned.[1] The discussion preceding the ultimate adoption of a Convention or Recommendation should consequently be as comprehensive as possible and, in particular, be well informed of the views of the occupational organisations.

103. Available figures point to some improvement in the consultation of representative organisations by governments before they draft the final version of their replies. In 1974[2] 13 governments were cited as having indicated that their replies had been prepared after consultation of the employers' and workers' organisations or as having incorporated the views expressed by these organisations on certain points in their replies; this figure rose to 23 in 1975,[3] 43 in 1977[4] and 37 in 1980.[5] Moreover, a number of governments communicated the organisations' opinions separately so that they were not reproduced in the Office reports which only take into account the substance of the reports from governments.

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[1] RCE, 1977, para. 31.

[2] ILC, 59th Session, 1974, Report VII(2), Introduction.

[3] ILC, 60th Session, 1975, Report VII(2), Introduction.

[4] ILC, 63rd Session, 1977, Report V(2) and Report VII(2), Introduction.

[5] ILC, 66th Session, 1980, Report V(2) and Report VII(2), Introduction.

104. The ILO's reports also mention the governments which state that they have consulted the occupational organisations on the proposed instruments adopted during the first discussion by the International Labour Conference. Without counting the numerous countries which simply transmit the views of their organisations on the subject, there were 13 such governments in 1975,[1] 16 in 1976,[2] 20 in 1977,[3] 28 in 1978,[4] 22 in 1979[5], 18 in 1980,[6] and 32 in 1981.[7]

105. Thus, to the list (see paragraph 96) of 60 countries which indicated in their report under article 19 of the Constitution that they carry out consultations can be added certain other countries cited in ILO reports that have also done so, at least on occasion.

2. Submission of Conventions and Recommendations

106. Article 5, paragraph 1(b), of the Convention and Paragraph 5(b) of the Recommendation provide for consultations on "the proposals to be made to the competent authority or authorities in relation with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution".

107. According to article 23, paragraph 2, of the Constitution, each Member must communicate to the representative organisations of employers and workers copies of the information and reports communicated to the Director-General in pursuance of article 19 of the Constitution. At the beginning of the 1970s the Committee noted that a large number of governments did not communicate information regarding submission to the occupational organisations, or did so only irregularly. In 1972, only some 40 per cent of the countries which transmitted information on submission to the Office referred to the communication of copies of this information to the representative organisations.[8] Based on a general review of the situation conducted the same year by the Committee of Experts[9] and on the discussions that took place at the time during the Conference, certain measures were taken in the course of 1972. The result was an improvement, with the

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[1] ILC, 60th Session, 1975, Report IV(2), p. 3, Report V(2), p. 3, and Report VI(2), p. 3.

[2] ILC, 61st Session, 1976, Report IV(2), p. 3.

[3] ILC, 63rd Session, 1977, Report VI(2), p. 3.

[4] ILC, 64th Session, 1978, Report IV(2), p. 3, and Report V(2), p. 3.

[5] ILC, 65th Session, 1979, Report V(2), p. 3.

[6] ILC, 66th Session, 1980, Report IV(2), p. 3.

[7] ILC, 67th Session, 1981, Report IV(2), p. 3, and Report V(2), p. 3.

[8] RCE, 1972, pp. 18-19, para. 67.

[9] ibid., pp. 10-25.

proportion rising to 65 per cent in 1973.[1] By 1974 only 12 per cent of the governments failed to communicate copies of information regarding submission to the organisations.[2] Since then the Committee has regularly observed that "almost all governments" have fulfilled this obligation.[3]

108. The current memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities refers to paragraph 2 of article 23 of the Constitution and requests governments to indicate, on the one hand, "the representative organisations of employers and workers to which the information submitted to the Director-General has been communicated" and, on the other, if they have received "from the organisations of employers and workers concerned any observations concerning the effect given, or to be given, to the instrument (or instruments) to which this information relates".

109. The Convention and Recommendation go beyond the obligation stipulated in article 19 of the Constitution and request governments to consult the representative organisations before submitting the instruments to the competent authorities. However, they do not specify - and therefore do not determine - the actual procedure to be followed in practice. The consultations may therefore have to do with the actual substance of the proposals to be made by the government or may involve the representative organisations in expressing an opinion on the usefulness of the instruments concerned before the government adopts its own position on the subject. What is essential is that the organisations consulted should have an opportunity to express an opinion on the measures to be taken in connection with the instruments submitted to the competent authority and to influence the proposals that the government makes on the subject. An exchange of views or information after the instruments have been submitted to the competent authority[4] would therefore not meet the purpose of the Convention and Recommendation.

110. A large number of governments indicated in their reports that they carry out the kind of consultations referred to here.[5]

111. In Canada, for instance, the special tripartite body on ILO questions has been discussing newly adopted instruments for some years and the views expressed are taken into account when preparing the documents for submission to the competent authorities. In Denmark, the instruments adopted are transmitted by the Ministry of Labour to the

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[1] RCE, 1973, p. 19, para. 64.

[2] RCE, 1974, p. 14, para. 47.

[3] RCE, 1981, pp. 16-17, para. 60.

[4] As in Greece, New Zealand and Trinidad and Tobago, for example.

[5] Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Benin, Botswana, Brazil, Bulgaria, Burundi, United Republic of Cameroon, Canada, Congo, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, Finland, German Democratic Republic, Federal Republic of Germany, Guatemala, Guyana, Hungary, India, Italy, Lebanon, Lesotho, Luxembourg, Madagascar, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Peru, Poland, Singapore, Somalia, Sudan, Swaziland, Sweden, Syrian Arab Republic, Tanzania, Tunisia, Turkey, Ukrainian SSR, United Kingdom, Uruguay, Venezuela, Yugoslavia.

organisations, which are invited to express their views on the desirability of ratification. In the Netherlands, the explanatory notes prepared for Parliament are submitted to the social partners for their suggestions, which are then taken into consideration by the Government in its deliberations. In the United Kingdom, the representative organisations are notified of draft government proposals and any observations made by them are communicated in writing unless one of the parties requests a tripartite meeting; the views expressed by the organisations are considered before the final form of the document of submission is approved. In India, consultations on submission take place in the Tripartite Committee on Conventions.

112. In Portugal there are no consultations on submission but, generally speaking, the comments of the social partners on the usefulness of a Convention are considered prior to its submission for ratification. This, however, does not quite meet the requirements of the Convention and Recommendation, under which consultations should take place even if there are no plans for ratification and even in the case of a Recommendation.

113. The Swiss Government questions the grounds for holding consultations on proposals for submission in so far as it considers, on the one hand, that a political element is involved which it is essentially for the Government and Parliament to evaluate and, on the other, that tripartite consultations would raise more problems than they would settle since the views of the employers' and workers' representatives would in all likelihood often be different. The Committee would like to point out in this connection, first, that the right of appreciation and decision of the political authorities of the State is not in question since, by definition, the procedure is one of consultations which are not binding and, secondly, that even if the views of the social partners differ it is still useful for the government to be aware of them so that it can submit proposals to the competent authorities which are as well founded as possible.

3. Re-examination of unratified Conventions and of Recommendations

114. Article 5, paragraph 1(c), of the Convention and Paragraph 5(d) of the Recommendation provide for consultations on "the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate".

115. Once the Conventions and Recommendations have been submitted to the competent authority, subsequent changes in national law and practice may permit the ratification of a Convention or the implementation of a Recommendation to which it was not possible to give effect at the time of their submission.

116. The original wording of the above provision referred to re-examination "at appropriate intervals, but at least once a year", but this raised the fears of several governments that it might be interpreted as requiring a re-examination every year of all unratified Conventions and of all Recommendations to which effect had not yet been given. The qualification was therefore deleted so as to bring to the fore the intention of this subparagraph, namely, that a continuous process of review should be established with a programme spread over a

period of time.[1] The object, then, is to permit a systematic re-examination, for instance by group, of the instruments that may be relevant to the country concerned and not to have them all considered at one time.[2]

117. At its 209th Session (February-March 1979) the Governing Body requested member States, in giving effect to this provision of the Convention and Recommendation, to concentrate their re-examination process on the instruments which the Governing Body's classification of international labour standards indicates "should be promoted on a priority basis".[3] The implementation and ratification of these instruments, which represent the major modern standards in each field, should be a goal of social policy for governments and occupational organisations.

118. Certain governments indicated in their reports that they carry out the consultations referred to here.[4]

119. In Norway, a survey is made of unratified Conventions which is discussed from time to time in the special ILO Committee. In Canada, the Department of Labour periodically prepares comparative studies on selected unratified Conventions and on Canadian law and practice which are circulated to provincial governments and to employers' and workers' organisations for their comments; the Tripartite Meetings on ILO Questions have at times also included in their agendas the Canadian position with respect to the requirements of various ILO Conventions and Recommendations and the corresponding action required. As has already been mentioned, the specific purpose of the United States Tripartite Advisory Panel on International Labour Standards is to examine United States law and practice to consider the possibility of ratifying ILO Conventions.

120. In Czechoslovakia, the tripartite advisory body for the ILO requested a Ministry of Labour working group to investigate the possibility of ratifying all ILO Conventions not yet ratified by the country in 1976; it adopted the conclusions of the working group whose recommendations concerning ratification have been progressively implemented since then. Similarly, India has a Tripartite Committee on Conventions whose principal task is to examine unratified Conventions and propose measures for their gradual implementation; in 1978 the Committee decided that a bipartite committee should make recommendations concerning possible ratifications. In Mexico, the Government has requested the views of the representative organisations

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[1] ILO: Record of proceedings, ILC, 61st Session, 1976, p. 118, para. 29.

[2] ILC, 61st Session, 1976, Report IV(2), pp. 23-24.

[3] ILO: Official Bulletin, special issue, Vol. LXII, 1979, Series A, p. 12 and p. 2, paras. 4-6.

[4] Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Botswana, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, Finland, German Democratic Republic, Federal Republic of Germany, Guatemala, Guyana, Hungary, India, Italy, Japan, Lesotho, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Peru, Poland, Portugal, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Turkey, United Kingdom, United Kingdom (Hong Kong), United States, Venezuela.

on a number of instruments whose possible ratification or implementation it is studying. These instruments all belong to the category of instruments "which should be promoted on a priority basis", according to the classification established by the ILO's Governing Body.

121. In Cyprus it was at the request of the workers' representatives on the Labour Advisory Board that the possibility was considered of ratifying two Conventions or, at least, of taking steps for their implementation;[1] the Board appointed a tripartite technical committee to submit recommendations on the subject.

122. Trinidad and Tobago is planning in due course to re-examine the unratified Conventions and the Recommendations to which effect has not yet been given and to determine what steps can be taken with a view to their possible ratification and implementation.

4. Reports on ratified Conventions, unratified Conventions and Recommendations

123. Article 5, paragraph 1(d), of the Convention calls for consultations on "questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution", to which Paragraph 5(e) of the Recommendation adds reports to be made under article 19 of the Constitution (unratified Conventions and Recommendations).

124. These provisions go beyond the obligation for member States to communicate reports that is stipulated in article 23, paragraph 2, of the Constitution,[2] inasmuch as they call for consultations on the problems that may arise out of the reports due to the ILO either in connection with the implementation of unratified Conventions and Recommendations (under article 19 of the Constitution) or in connection with the application of ratified Conventions (article 22). In the latter case, the consultations are often concerned essentially with the substance of the reply to comments by the supervisory bodies.

125. A number of governments stated that they carry out consultations on questions arising out of reports made under articles 19 and 22 of the Constitution,[3] or under article 22 alone.[4]

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[1] The Workers' Representatives Convention, 1971 (No. 135), and the Paid Educational Leave Convention, 1974 (No. 140).

[2] Which is as far as certain governments seem to go; for example, Canada, Greece, Madagascar, New Zealand, Syrian Arab Republic.

[3] Australia, Belize, Botswana, Brazil, Byelorussian SSR, Cyprus, Czechoslovakia, Denmark, Finland, German Democratic Republic, Federal Republic of Germany, Hungary, Italy, Kuwait, Mali, Mexico, Netherlands, Norway, Switzerland, Turkey, United Kingdom (Hong Kong), United States, USSR, Yugoslavia.

[4] Austria, Bangladesh, Barbados, Belgium, Benin, Bulgaria, United Republic of Cameroon, Congo, Cuba, Egypt, Guatemala, Guyana, India, Lebanon, Lesotho, Luxembourg, Nicaragua, Peru, Poland, Portugal, Singapore, Sudan, Swaziland, Sweden, Tanzania, Trinidad and Tobago, Ukrainian SSR, United Kingdom, Venezuela.

126. The prior communication to the representative organisations of the draft report prepared by the government[1] may provide an opportunity for the consultations referred to here. In the Netherlands, for instance, the social partners are informed of the reports due to the ILO and invited to submit any observations they wish on the implementation of the instruments concerned; the draft reports are sent to them for their comments which are then incorporated in the report or attached to it, sometimes with the remarks of the government. In India, the comments made by the organisations are taken into consideration by the Government in drafting its reports.

127. In Norway, copies of the reports sent to the ILO are transmitted to the representative organisations, which are asked to communicate their comments by a given date so that they can, if necessary, be discussed in the special tripartite body; although this procedure does not correspond exactly to the concept of prior consultation, it nevertheless ensures that the relevant matters are considered by the representative organisations.

5. Proposals for the denunciation of ratified Conventions

128. Article 5, paragraph 1(e), of the Convention and Paragraph 5(f) of the Recommendation provide for consultations on "proposals for the denunciation of ratified Conventions".

129. The inclusion of this provision in the Convention followed the approval by the Governing Body in November 1971 (184th Session)[2] of the principle that, in any case in which the denunciation of a Convention might be contemplated, the Government should, before taking a decision on the matter, consult the representative organisations of employers and workers fully on the problems encountered and the measures to be taken to resolve them. The Governing Body further requested the Director-General, in any case in which a government communicated to him the denunciation of an international labour Convention without an indication of the reasons which had led to its decision, to request the government concerned to provide such indications for the information of the Governing Body.

130. The principle of consultations on the denunciation of ratified Conventions is accepted in a substantial number of countries.[3]

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[1] As in the Netherlands and Switzerland.

[2] ILO: Official Bulletin, Vol. LV, 1972, Nos. 2, 3 and 4, pp. 12-13.

[3] Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Bulgaria, Canada, Cuba, Cyprus, Czechoslovakia, Denmark, Egypt, Finland, German Democratic Republic, Federal Republic of Germany, Guatemala, Guyana, Hungary, India, Italy, Lesotho, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Peru, Poland, Singapore, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Ukrainian SSR, United Kingdom, United States, Uruguay, Venezuela.

131. However, only seven[1] of the 15 countries that have denounced Conventions since the aforementioned principle was laid down by the Governing Body stated that they consulted the representative organisations concerned about the denunciations. Several countries whose governments indicated in their report that they accepted the principle of consultation in the event of a denunciation made no reference to such consultations in their statement of denunciation,[2] which does not of course mean that they did not take place. In Canada, for instance, the question of the denunciation of the Underground Workers (Women) Convention, 1935 (No. 45), was discussed at the first Tripartite Meeting on ILO Questions in 1975.

132. In New Zealand the Government set up a special tripartite Steering Committee on Night Work to study the denunciation of the Night Work (Women) Convention (Revised), 1948 (No. 89). The practice of carrying out consultations on the subject is in fact very well established in some countries, such as Sweden, where the denunciation in 1967 of Convention No. 45 mentioned above and that of the Night Work (Bakeries) Convention, 1925 (No. 20), in 1970 were preceded by consultation in the tripartite Swedish ILO Committee.

6. Measures to give effect to Conventions and Recommendations

133. Paragraph 5(c) of the Recommendation provides for consultations, "subject to national practice", on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives).

134. This important provision includes a reference to national practice which is designed to take into account the wide variety of existing systems of consultation.[3] It must be seen in the light of a corresponding provision in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which stipulates that effective consultation and co-operation between the public authorities and occupational organisations should aim, inter alia, at ensuring that the former "seek the views, advice and assistance" of the latter, particularly in respect of such matters as "the preparation and implementation of laws and regulations affecting their interests".[4] The present provision, however, concerns only procedures specifically designed to give effect to ILO standards.[5]

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[1] Argentina, Hungary, Ireland, Luxembourg, New Zealand, Singapore and Uruguay.

[2] Canada, Czechoslovakia, Netherlands, Poland, Uruguay.

[3] ILC, 61st Session, 1976, Report IV(1), p. 12, para. 40, and Report IV(2), p. 33.

[4] Para. 5(b)(i) of Recommendation No. 113.

[5] Consequently, no reference is made here to tripartite consultations on draft social legislation in general, which several governments mentioned.

135. A number of governments indicated in their reports that they carry out the kind of consultations described in this provision.[1]

136. Canada's Tripartite Meetings on ILO Questions have at times included in their agendas an item of the action that would be required to bring labour legislation into conformity with the international labour standards. Similarly, the trade unions in Bulgaria and the USSR have the constitutional right to initiate legislation which enables them, for example, to propose the adoption in domestic legislation of principles contained in international labour standards. In India, legislative proposals are generally discussed in the national tripartite Labour Conference or in other bodies where employers and workers are represented.

7. Technical co-operation activities

137. Paragraph 6(a) of the Recommendation provides for the possible extension of consultations to "the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates".

138. The Conference and Governing Body have stressed the importance they attach to this matter on several occasions. At its 1967 Session the Conference adopted a resolution concerning the ILO and technical co-operation which states that, "in view of the Constitution and tripartite character of the ILO, the participation of employers and workers in the preparation, implementation and evaluation of its technical co-operation programmes is fundamental". In 1968 it adopted a resolution concerning the promotion of adequate national institutional arrangements, particularly the association of workers' and employers' organisations, in relation to technical co-operation activities of the ILO at national, regional and international levels. The 1971 resolution concerning the strengthening of tripartism, to which reference has already been made, invited the Governing Body to consider measures "for ensuring that the tripartite structure is fully effective in respect of the entire range of the activities of the ILO, including ... technical co-operation work [and] the World Employment Programme" and to "give particular attention to the need for fully integrating all types of activities of the International Labour Organisation so as to achieve, inter alia, that standard-setting activities and technical co-operation be mutually reinforcing, on the basis of tripartite collaboration, implementation and control, for attaining the social objectives of the Organisation". This resolution further requested the Director-General of the ILO "to see to it that employers' and workers' organisations are fully associated with the recruitment of experts" and "to invite beneficiary countries under the World Employment Programme and under all technical co-operation programmes in general to make arrangements for the fullest consultation and association of employers' and workers' organisations in the implementation of ILO projects in these countries".

139. In the light of these resolutions the Governing Body adopted in November 1972 (188th Session) a number of conclusions and recommendations designed to secure more effective tripartite

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[1] Australia, Austria, Belize, Brazil, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, German Democratic Republic, Federal Republic of Germany, Guatemala, Hungary, India, Italy, Liberia, Madagascar, Mali, Netherlands, Syrian Arab Republic, Tanzania, Ukrainian SSR, United Kingdom, United Kingdom (Hong Kong), Uruguay, Venezuela, Yugoslavia.

participation in the technical co-operation programme of the ILO[1] and, specifically, a recommendation that governments be urged to arrange, in accordance with national practice, periodic tripartite meetings or seminars to discuss the position, problems and prospects of the ILO's technical co-operation activities in the country concerned, in co-operation with the resident representative of the UNDP and appropriate ILO staff.

140. The 1977 Conference resolution already referred to, concerning the strengthening of tripartism in ILO supervisory procedures of international standards and technical co-operation programmes, further welcomed the fact "that the tripartite element is gradually becoming reflected in the ILO's technical co-operation activities as exemplified by the positive results achieved through visits of tripartite evaluation teams on technical co-operation programmes of the ILO". The Conference invited the Governing Body "to make every effort to ensure that technical assistance provided to labour departments and employers' and workers' organisations of member States - with special emphasis on assistance to developing countries in fields within the specific competence of the ILO - is increased where possible and drawing to the maximum extent upon the UNDP and other sources of financing, so as to promote the adequate institutional arrangements for continuous and co-ordinated genuine tripartite co-operation at the national level and, where appropriate, at other levels of administration"; it also invited the Governing Body "to urge in the strongest fashion that the UNDP/ILO programme planning and execution have the full benefit of tripartite consultation at every stage". Finally, the Conference invited the Governing Body to urge governments of member States "to associate more closely and to the fullest extent possible employers' and workers' organisations in the elaboration, implementation and control of all technical co-operation activities at the national level and, where appropriate, at other levels of administration, including particularly UNDP/ILO joint programming" and "to co-operate fully with the tripartite evaluation teams on technical co-operation programmes of the ILO and to give effect to the recommendations made by these teams".

141. The Recommendation lists three stages of technical co-operation at which the consultation procedures could take place, in both the beneficiary and donor countries. The first stage, the preparation of projects, can be seen as comprising the examination of the over-all technical co-operation requirements of the beneficiary country in the light of its development programme, the preparation of the country programme and the selection of the various projects in accordance with the country programming procedures of the UNDP. Obviously responsibilities of this nature should be entrusted to a body which is acquainted with and understands the country's economic and social plans and problems. In several countries the Economic and Social Council already has a special planning section that takes part in the preparation of over-all development plans.

142. During the preparatory work in 1975 it was noted that little seemed to have been done so far to associate employers' and

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[1] Governing Body, Report of the Committee on Operational Programmes, GB.188/18/35, Annex, pp. 23-24, and ILO: Official Bulletin, Vol. LVI, 1973, Nos. 2, 3 and 4, p. 60. The Governing Body examines the state of tripartite participation in technical co-operation each year within the context of its general survey of technical co-operation programmes.

workers' organisations, through their participation in tripartite bodies, in the planning or preparation of technical co-operation projects.[1] As has been pointed out, however, the 1977 Conference resolution registered some improvement in this respect.

143. In several donor countries[2] technical co-operation matters are discussed in special tripartite bodies on ILO affairs which sometimes have a panel of development co-operation experts.[3]

144. Elsewhere, consultation on the subject takes place in the Labour Advisory Board,[4] at ad hoc meetings[5] or through written communications.[6]

145. Elsewhere again,[7] the presence of representatives of occupational organisations on the boards of expert bodies on employment, training and social security provides such organisations with a source of information on technical co-operation projects in which the ILO participates.

146. There is little information on the precise purpose of these consultations which, in certain beneficiary countries,[8] deal specifically with the preparation of co-operation programmes.

147. However, some donor countries[9] state that this provision of the Recommendation has not yet been implemented. One country[10] has expressed its intention to consult the representative organisations to determine to what extent consultations on this subject are desirable. Elsewhere, it is a matter on which it is intended to begin consultations[11] or which is being looked into.[12]

148. In addition, some of these countries expressed the view that technical co-operation comes solely within the purview of the Government[13] or is not really appropriate for tripartite consultations

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[1] ILC, 60th Session, 1975, Report VII(1), p. 22.

[2] Czechoslovakia, Denmark, Finland, Japan, Norway, United States.

[3] Finland.

[4] Cyprus, Lebanon.

[5] Cyprus, Pakistan, Trinidad and Tobago.

[6] Cyprus, Mali, Trinidad and Tobago.

[7] For example, in Tunisia.

[8] For example, in Trinidad and Tobago.

[9] Austria, Netherlands, New Zealand, Spain.

[10] Netherlands.

[11] New Zealand, Spain.

[12] India.

[13] Australia.

because of the specialised knowledge it requires, particularly for the evaluation of technical co-operation activities.[1]

149. On the other hand, one country[2] states that its National Labour Council is in favour of promoting consultation and information in this field.

8. Resolutions and conclusions adopted by conferences and other meetings

150. Paragraph 6(b) of the Recommendation provides for the possible extension of consultations to "the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, Industrial Committees and other meetings convened by the International Labour Organisation".

151. Certain governments[3] indicated in their reports that they carry out consultations on these subjects.

152. In the Netherlands, resolutions and other conclusions adopted by the International Labour Conference and regional conferences are communicated to the representative organisations, which have not so far expressed the desire for further consultations on the subject; the Government is in fact planning to consult them to determine to what extent such consultations are necessary. On the other hand, official texts of resolutions and conclusions adopted by the Industrial Committees are sent to the representative organisations in the Netherlands with a request for suggestions for their implementation; the organisations are also consulted on the preparation of reports on the follow-up to be given to these instruments, so that they can comment both on the instruments themselves and on the Government's draft report.

153. Other countries[4] have expressed the desire to introduce consultations on this subject.

154. It must also be borne in mind that, in the case of the Industrial Committees, the results of their work are used in the collective bargaining process at the national level, when they are referred to and may, for example, be used to determine the scope of negotiations. Furthermore, the texts adopted at industrial meetings - resolutions, codes of practice, declarations of principles - may have an influence when governments conduct consultations on social policy and legislation.

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[1] Switzerland.

[2] Belgium.

[3] Australia, Austria, Cyprus, Czechoslovakia, Congo, Denmark, Finland, Federal Republic of Germany, Hungary, India, Italy, Japan, Mali, Netherlands, Norway, Panama, United States.

[4] New Zealand, Spain.

9. Promotional activities

155. Paragraph 6(c) of the Recommendation provides for the possible extension of consultations to "the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes".

156. Some governments indicated in their reports that they carry out consultations on this subject.[1]

157. In Canada, for example, a study prepared by a consultant on the nature of Canada's obligations vis-à-vis the ILO was submitted to the Department of Labour, which distributed it to workers' and employers' organisations; it will form the basis of future consultations on several matters pertaining to the country's role in the ILO.

158. The Netherlands stated its intention to consult the representative organisations to decide to what extent consultations should be held on this subject. Elsewhere,[2] this is an area on which the government would like to have consultations.

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[1] Australia, Austria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Hungary, India, Italy, Japan, United States.

[2] New Zealand, Spain.

CHAPTER III

OPERATION OF THE PROCEDURES

I. Frequency of consultations

159. Article 5(2) of the Convention and Paragraph 7 of the Recommendation provide that consultations should take place "at appropriate intervals fixed by agreement, but at least once a year".

160. When the instruments were being drawn up, it was agreed that these provisions meant that there should be contacts between the parties at least once a year to carry out the consultations provided for, but did not mean that all the points in Article 5(1) of the Convention (or Paragraph 5 of the Recommendation) had to be covered every year.[1] The re-examination of unratified Conventions, in turn, is to be made "at appropriate intervals".

161. The wording adopted is therefore intended to allow governments themselves or the organisations concerned to decide the frequency of consultations in the light of national circumstances and needs. It is clear that consultations should be held often enough for ensuring that each matter listed can be discussed when it requires discussion, in accordance with the principle of "effective consultations" laid down in Article 2 of the Convention. While certain matters (replies to questionnaires, submission to the competent authorities, reports to the ILO) will require an annual consultation, others (especially proposals concerning the denunciation of ratified Conventions) may not have to be discussed each year. On the other hand, there may be matters which, owing to national circumstances, call for several consultations in the course of the year. The purpose of the reference to annual frequency is to lay down an absolute minimum and thus avoid situations where no consultations are held for years at a time.[2]

162. On the other hand, the phrase "fixed by agreement", originally proposed by a member State instead of the phrase "at least once a year", was retained despite the maintenance of the second phrase[3] to indicate the latitude allowed to the parties concerned to proceed as they consider appropriate, subject to holding the annual discussion mentioned above.

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[1] ILO: Record of proceedings, ILC, 61st Session, 1976, para. 30, p. 118.

[2] ILC, 61st Session, 1976, Report IV(2), p. 36.

[3] ibid., pp. 20-24.

163. Although only relatively few countries have supplied information about the frequency of the consultations, it appears that the rule thus laid down by the instruments is widely observed in their case. The actual frequency of the consultations varies according to the nature of the system applied.

164. In countries where these matters are entrusted, wholly or partly, to organisations with general competence, the latter normally meet once,[1] three times,[2] or four times[3] annually, though their committees or subcommittees responsible for ILO matters, where such exist, may meet according to their own timetable. In one country,[4] for example, the competent committee of the national labour consultative council holds as many meetings as the council considers necessary. Besides the normal meetings, it is often provided that additional meetings may be called where necessary, on the initiative of the chairman of the body concerned,[5] its members,[6] or even the occupational organisations concerned.[7]

165. In the case of bodies specialised in ILO matters, the frequency is often variable,[8] and various meetings - in some instances as many as 10 or 12 - may be held in the course of the year.

166. Lastly, where the consultations are held wholly or partly by written communications, they may take place whenever communications are received from the ILO relating to matters subject to consultations[9] or "in case of need"[10] or "regularly",[11] which may mean several times

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[1] Belgium.

[2] Bangladesh, Botswana.

[3] Australia, Malaysia.

[4] Australia.

[5] Australia, Bangladesh.

[6] Australia, Cyprus.

[7] Cyprus.

[8] Canada (once a year), Czechoslovakia (at least twice a year), Denmark (approximately three times each year, prior to the sessions of the Governing Body of the ILO), Finland (six times a year on average), German Democratic Republic (normally once a year, but a smaller committee meets every four to six weeks), Guyana (once a month), India (twice a year beginning in 1981, previously once a year), Italy (as a rule three times a year), Japan (at least twice a year or more often in the case of the competent ad hoc committee), Norway (seven meetings in 1978, eight in 1979, nine in 1980), Sweden (nine meetings in 1978-79, eight in 1979-80), United States (at least every two months).

[9] India.

[10] Japan.

[11] Netherlands, Trinidad and Tobago, Ukrainian SSR, United Kingdom.

monthly.[1]

II. Administrative arrangements

167. In accordance with Article 4(1) of the Convention and Paragraph 4 of the Recommendation, the competent authority must "assume responsibility for the administrative support of the procedures" of consultation. Such administrative support is intended to cover such technical services as the provision of meeting places, calling of meetings and the financing of the necessary correspondence.[2] Responsibility for the technical administration clearly covers responsibility for the financing involved in it.[3]

168. In their reports, a large number of governments state that their administrative arrangements are consistent with these provisions.[4]

III. Training of participants in the procedures

169. Article 4(2) of the Convention provides that "appropriate arrangements shall be made between the competent authority and the representative organisations ... for the financing of the necessary training of participants" in the consultation procedures. The Recommendation, for its part, provides that "measures shall be taken, in co-operation with the employers' and workers' organisations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively". Unlike the Convention, it provides that the responsibility for financing any training programmes should be assumed by the competent authority (Paragraphs 3(3) and 4).

170. Thus, the Convention mentions the financing of training subject to an agreement between the competent authority and the representative organisations, whereas the provisions of the Recommendation relating to the financing of consultative procedures and any necessary training activities go further, making such financing the responsibility of the competent authority.[5] The risk that a particular type of training for the participants might be dictated through

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[1] Austria.

[2] ILC, 61st Session, 1976, Report IV(1), para. 36, p. 11.

[3] ibid., para. 58, p. 16.

[4] Australia, Austria, Bangladesh, Belgium, Belize, Bulgaria, Cyprus, Denmark, Finland, Federal Republic of Germany, Guatemala, Guyana, Hungary, India, Italy, Japan, Lebanon, Liberia, Mexico, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom, United Kingdom (Hong Kong), United States.

[5] ILC, 61st Session, 1976, Report IV(1), para. 36, p. 11, and Report IV(2), pp. 19 and 31.

government financing is obviated by Paragraph 3(3) of the Recommendation, providing for the co-operation of occupational organisations on the matter. The wording of the Convention, for its part, does not lay the responsibility for the financing of training on any party to the procedures but requires merely that appropriate arrangements be adopted;[1] in particular, it could not be interpreted as requiring the competent authority to assume these expenses to the extent that they are not covered by the organisations concerned.

171. Obviously such arrangements are required only when the training is necessary, which may not be the case in a country where a system of consultations is already in operation.[2]

172. In fact, a number of countries stated that specific formal training in these procedures is not necessary,[3] primarily because the participants in the procedures already have sufficient qualifications for the purpose. However, if such training were required, it could be given by the occupational organisations themselves[4] and financed either by them[5] or by the government.[6] Some countries reported workers' educational and trade union programmes,[7] activities of a Labour Relations Institute,[8] or practical measures for facilitating the training, such as the provision of a manual on the ILO procedures.[9]

173. Furthermore, several countries recognise the importance of such training for a proper application of the instruments and the need to introduce it in this context.[10]

174. Some training activities provided by or with ILO assistance are also mentioned here,[11] in particular national courses in international labour standards.[12]

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[1] ILO: Record of proceedings, ILC, 61st Session, 1976, para. 24, p. 117.

[2] ibid.

[3] Australia, Bangladesh, Cyprus, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom (Hong Kong), United States.

[4] Australia, Austria, Cyprus, Denmark, Mexico, Sweden, United Kingdom.

[5] Austria, Mexico.

[6] Australia, Bulgaria, India, Sweden.

[7] Belize, India, Lebanon.

[8] Israel.

[9] New Zealand.

[10] Bahrain, United Republic of Cameroon, Rwanda.

[11] Bangladesh, Bulgaria.

[12] Bangladesh.

IV. Co-ordination with other national bodies

175. Paragraph 8 of the Recommendation provides that "measures appropriate to national conditions and practice should be taken to ensure co-ordination between the procedures [provided for] and the activities of national bodies dealing with analogous questions". This provision is intended to ensure that existing national systems and procedures are not affected.[1]

176. Only a few countries reported the situation in this respect,[2] without indicating however what national bodies were referred to. In two cases,[3] reference was made to the activities of the administrations themselves, and not to bodies competent for matters dealt with by the Recommendation. One country[4] specified that the public authorities and the parties concerned with ILO matters take part in the work of a specialised national body, which is a particularly appropriate means of ensuring the co-ordination desired. Another country[5] stated its intention of studying ways and means of implementing this principle of co-ordination.

V. Issuing of an annual report

177. Article 6 of the Convention and Paragraph 9 of the Recommendation provide that an annual report should be issued on the working of the procedures "when this is considered appropriate after consultation with the representative organisations". Several observations should be made regarding the scope of these provisions.

178. The flexible wording indicates, first of all, that a certain amount of discretion has been left to governments in deciding whether it is necessary to issue such a report, it being understood however that the representative organisations should be consulted about the need for a report. The wording was intended to make allowance for certain objections raised during the preparation of the instruments, to the effect that the proposed annual reports would involve a considerable workload and would duplicate information available elsewhere.[6]

179. Concerning the form of the reports, it appears that the use in the instruments of the term "to issue" (a report) should be

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[1] ILC, 60th Session, 1975, Report VII(2), p. 38. It was not considered necessary to include a corresponding provision in the Convention: see: ILC, 61st Session, 1976, Report IV(1), para. 65, p. 17.

[2] Australia, Austria, Liberia, Netherlands, New Zealand, Norway, Spain, United Kingdon (Hong Kong), United States.

[3] Austria, United Kingdom (Hong Kong).

[4] Norway.

[5] Spain.

[6] See ILO: Record of proceedings, ILC, 61st Session, 1976, para. 34, p. 118.

understood as meaning that it does not necessarily have to be a printed publication. This wording was adopted in view of the strong feeling expressed during the preparatory work that the burden on national administrations should be kept to a minimum.[1] It was also recalled that the Committee of Experts and the Conference Committee had accepted, under Convention No. 81, that the annual report required under that Convention could take the form of a section of a more general report dealing, for example, with the whole system of labour administration: a section of the annual report of a Ministry of Labour devoted to the working of the consultation procedures would therefore suffice.[2] Lastly, the report can be written in the language of the country concerned and does not need to be translated by the Government into one of the official ILO languages.[3]

180. It is clear from this that the reports are intended primarily for distribution within the country. In this connection, it should be recalled that these reports and the reports transmitted to the Office on the application of Convention No. 144 under article 22 of the ILO Constitution serve different purposes. The latter are designed to enable the ILO Committee of Experts and the Conference Committee to assess the degree of compliance with obligations under ratified Conventions, and their frequency is determined accordingly. The annual reports of the type provided for by the instruments on tripartite consultations, for their part, are intended primarily to permit the dissemination within the country of information concerning their activities. They may also constitute an important source of exchange of information among member States on the procedures adopted,[4] and also permit the continuing review of the effectiveness of the procedures and their adaptation if necessary.

181. The contents of the reports may cover the composition of any bodies established, the number of meetings, their agenda, the proposals made and the conclusions reached. If no bodies have been established, the reports may deal with the consultations which have taken place even if they have not been institutionalised.[4] It was also agreed during the preparatory work that the application of the provisions in question would not require the disclosure of confidential information.[3] Lastly, these provisions are to be understood as meaning that the representative organisations to which they refer should be consulted only on the need for a report and not on its contents.[5]

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[1] ILC, 61st Session, 1976, Report IV(2), p. 26.

[2] ibid.

[3] ILO: Record of proceedings, ILC, 61st Session, 1976, para. 32, p. 118.

[4] ibid., para. 33, p. 118.

[5] ibid., para. 58, p. 120.

182. A certain number of countries issue such an annual report, either separately[1] or as a part of a broader report, such as the annual report of a Ministry of Labour.[2] Other countries intend to draw up such a report in future.[3]

183. Elsewhere,[4] though there is no formal annual report, the competent body regularly issues public statements - for example, press releases - relating to the working of the tripartite procedures.

184. On the other hand, for various reasons many countries[5] do not consider it necessary to issue an annual report, either because detailed minutes are already sent to the participants in the meetings[6] or because such a report is rendered unnecessary by the features of the existing system of consultations.[7]

185. In this connection, some governments mentioned other reasons for their decision not to issue a report: additional administrative work;[8] uncertainty about the body or bodies for which is intended;[8] duplication with the reports made under article 22 of the Constitution on the application of Convention No. 144 by a country having ratified it;[9] lack of interest of such a report for anyone but the participants in the procedures;[9] concern to ensure frank debates and thus their confidential nature.[9] Each of these objections would seem to be answered, in fact, by the principles mentioned earlier for interpreting the Convention and Recommendation on this point.

186. Several countries stated that they had consulted the representative organisations concerning the desirability of issuing a report,[10] while others did not supply information in this respect.[11]

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[1] Finland, Norway, Sweden.

[2] India.

[3] Belgium, Spain.

[4] United States.

[5] Australia, Austria, Bulgaria, Cyprus, Federal Republic of Germany, Liberia, Mexico, Netherlands, New Zealand, United Kingdom.

[6] Denmark.

[7] United Kingdom, United Kingdom (Hong Kong).

[8] Switzerland.

[9] Australia.

[10] Austria, Netherlands, United Kingdom.

[11] Australia, Bangladesh, Bulgaria, Cyprus, Federal Republic of Germany, Liberia, Mexico, New Zealand.

CONCLUSIONS

I. Difficulties involved in ratifying the Convention

187. Apparent impediments to the implementation of the two instruments, and especially to the ratification of the Convention, were mentioned by a number of governments.

188. First of all, several countries[1] mentioned the absence of national legislation in line with the requirements of the Convention, or the inadequacy of existing provisions. It will be noted however that, since implementation of the procedures in question is basically a matter of practical measures, the procedures can be established without the need for legislation, provided they are in fact embodied in national practice. Countries do not have to adopt legislation in order to be able to apply the Convention.

189. As regards the types of arrangements for ensuring the "effective consultations" referred to by the instruments, the interpretation given by several governments to the exact scope of the obligation or recommendation to "operate procedures" for these purposes would seem to be too strict.

190. In this connection, it should be recalled, first of all, that the establishment of a special body competent for ILO questions is in no case necessary for the purposes of applying the Convention.[2] The existence of a national labour council or a consultative labour board provides, as indicated in Paragraph 2(3)(b) of the Recommendation, a wholly suitable framework, subject possibly to spelling out certain functions in such bodies' terms of reference. The same holds true, in accordance with Paragraph 2(3)(c) of the Recommendation, of bodies "with special responsibility for particular subject areas" which one country[3] considers insufficient for applying the Convention. Therefore, given the full latitude left to governments by Article 2 of the Convention, the institutionalisation of the procedures of consultation, mentioned at times as a difficulty,[4] should not cause any problems. Furthermore, it should be repeated that no change is required in existing procedures that ensure such consultations,[5] though it should be borne in mind that these procedures, even where they

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[1] Burundi, Chile, Ethiopia, Guinea-Bissau, Peru.

[2] This answers the comments made by Singapore and Upper Volta in particular.

[3] Thailand.

[4] For example, by Luxembourg.

[5] ILO: Record of proceedings, ILC, 61st Session, 1976, para. 11, p. 116.

exist, may not always cover all the matters set out in the Convention, which however is another problem.

191. Some countries consider that the provisions of Article 1 of the Convention are an obstacle to ratification. Referring to the Preamble to the Convention - which recalls the terms of Conventions Nos. 87 and 98 and Recommendation No. 113 - one country,[1] in particular, concludes that the ratification and implementation of these instruments should precede the ratification of Convention No. 144. Although such a step is not required by Convention No. 144, it is true, as mentioned earlier,[2] that its spirit would not be respected in the absence of freedom of association in all its essential aspects.

192. In another country,[3] ratification of the Convention is delayed by the absence of active employers' and workers' organisations. Elsewhere, competition within the trade union movement,[4] the difficulties encountered by trade unions in forming a representative national organisation,[5] or the fact that the occupational organisations are not yet actually operational,[6] are mentioned as obstacles to ratification. In this connection, however, it will be recalled that the lack of representative organisations does not necessarily rule out the implementations of tripartite consultations since care has been taken in the Convention to refer to representative organisations only "where such organisations exist".[7]

193. One country[8] mentions as a prerequisite for ratification the need to carry out a thorough review of the consultative procedures adopted in order to determine whether they are the most suitable for the purpose set out in Article 5(1) of the Convention.

194. Some of the obligations under Article 4 of the Convention apparently give rise to reservations.[9] Several governments have expressed concern about the expenses involved in assuming, under the Convention, responsibility for the administrative support for the consultative procedures. They are reluctant to recruit the administrative staff required,[10] especially where this runs counter to

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[1] Brazil.

[2] See para. 51 above.

[3] Comoros.

[4] Philippines.

[5] Zimbabwe.

[6] Qatar, Rwanda.

[7] See Arts. 2(2), 3(1), 4(2) and 6 of the Convention.

[8] Canada.

[9] The exact nature of which is not always specified, as in the case of Luxembourg.

[10] New Zealand, Switzerland.

the general policy to reduce administrative costs.[1]

195. Similarly, the training of participants in the procedures may be a source of difficulty. In some cases, it is the absence of training which obstructs the working of the procedures,[2] as in one country[3] where the labour advisory board, the body competent for the matters covered by the Convention, has not yet been able to deal with them owing to the lack of qualified staff. The financing of such training, however, may also be regarded as a difficulty, as in the case of one country[4] which, considering that the occupational organisations should contribute financially to the training of their representatives, apparently believes that under the Convention these expenses are payable by the competent authority to the extent that they are not covered by these organisations. It has already been seen,[5] however, that this is not the solution adopted by the Convention.

196. In some cases, the purpose of the consultations, described in detail in Article 5(1) of the Convention, gives rise to problems. On the one hand, some of the matters referred to may not be the subject of consultations.[6] On the other hand, their inclusion as a matter for consultation may run up against objections of principle, as has been noted for one country[7] regarding submission to the competent authorities.

197. Various other impediments were mentioned by the governments: current reorganisation of the competent national consultative body;[8] practical measures that would have to be initiated in several jurisdictions of a federal State;[9] problems of timing of consultation;[10] lack of priority assigned to the matters dealt with by the Convention;[11] risk that the procedures might bring pressure to bear on the government to ratify Conventions prematurely, contrary to the policy of proceeding to ratification only when full compliance with the provisions of the Conventions exist,[12] insufficient infrastructure[11] and general administrative problems.[12]

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[1] New Zealand.

[2] Fiji, Grenada.

[3] Fiji.

[4] Switzerland.

[5] See para. 170 above.

[6] For example, in Japan, where consultations are limited to the matters provided for in subparagraphs (a) and (c) of Article 5(1) of the Convention.

[7] Switzerland. See para. 113 above.

[8] Nigeria.

[9] Canada.

[10] Colombia.

[11] Peru.

[12] Somalia.

198. One government[1] mentioned the possibility of entrusting the Committee of Experts and the Conference Committee with examining differences between the government and trade unions regarding measures on which they are in disagreement after the consultations; the assumption here is that repeated refusal on the part of the government to take into consideration the views of the organisations concerned would in itself constitute a violation of Convention No. 144. In this connection, however, it should be recalled that the supervision which the ILO bodies exercise over the application of the provisions of the Convention is intended only to ensure that the consultations are actually held and not to examine their results, since the very nature of consultative procedures implies that the competent authority is left free to take the decisions it wishes.

199. Some ideological objections were raised by one government[1] concerning the very principle of tripartite consultations, the place of workers' organisations in society and the political organisation of the State. However, it would seem difficult to agree with this government that tripartite consultations of the type envisaged by Convention No. 144 may in themselves involve serious consequences for the political development of countries having ratified the Convention, apart from a confirmation of their adherence to the fundamental principles of tripartism to which every ILO Member subscribes in accepting the obligations of the Constitution of the Organisation.

200. Certain governments[2] recalled the position[3] which they had taken when Convention No. 144 and Recommendation No. 152 were adopted. In their opinion, instruments of this type would attempt to impose internally a principle - tripartism - which they consider to be specific to the International Labour Organisation and limit to its framework and the proposal to establish national tripartite structures is incompatible with the sovereign right of each member State to determine its own procedures of consultation on matters relating to ILO activities. These governments stress that it is for each member State to decide in full independence whether it is necessary or not to establish special bodies or procedures for dealing with the matters covered by these instruments. In this respect, attention should be drawn once again to the flexible nature of the Convention and the Recommendation, which allow a wide variety of procedures for their implementation provided that effective consultations are ensured, and do not require the establishment of new procedures where satisfactory ones already exist.[4] Moreover, tripartism not only is a valid principle within the ILO but also appears to be a principle applicable at the national level; in both cases it is intended to ensure the effective participation of the productive forces in society in the formulation and implementation of policies affecting them. It would appear

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[1] Brazil.

[2] Byelorussian SSR, Mongolia and USSR.

[3] ILC, 60th Session, 1975, Report VII(2), pp. 4-6.

[4] See paras. 40 and 190 above.

therefore normal that the standards resulting from a tripartite discussion within the ILO should also be the subject of tripartite discussion when it is proposed to give them force of law or to adopt other measures at the national level for their implementation.

201. Lastly, the position of federal States regarding the implementation of these instruments does not appear to raise any particular difficulty in that all of the federal States having supplied replies[1] apparently consider that federal action is appropriate in connection with the Convention and the Recommendation. The Government of Canada, however, states that, while the matters contemplated by the instruments fall within the federal jurisdiction, this does not mean that a province could not establish consultation machinery and that, while federal action is sufficient for their implementation, it would be necessary to establish consultative procedures at the provincial level in order to give full effect to the two instruments.

II. Ratification prospects

202. A number of countries stated that they intend to ratify Convention No. 144[2] or that no obstacles exist to its ratification.[3] Other countries stated their intention to consider ratifying the Convention in due course.[4]

203. A number of countries also stated that existing national practice is consistent, at least as regards the essential points, with the requirements of the Convention.[5]

204. Lastly, several countries[6] stated their intention of setting up a special body for tripartite consultations whose terms of reference would include the examination of the questions referred to in Article 5(1) of the Convention, and other countries[7] stated their intention of considering the possibility of taking measures to apply, at least partly, the provisions of the Convention and the

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[1] Argentina, Australia, Austria, United Republic of Cameroon, Canada, Federal Republic of Germany, India, Malaysia, Mexico, Nigeria, Pakistan, Switzerland, USSR, United States, Yugoslavia.

[2] Belgium, Colombia, El Salvador, France, Guyana, Kuwait, Lebanon, Panama, Spain, Swaziland, Syrian Arab Republic, Yemen, Zaire.

[3] Liberia, Tanzania, Venezuela.

[4] Burundi, Guinea-Bissau, Rwanda.

[5] Benin, Bulgaria, Cuba, Ethiopia, Gabon, German Democratic Republic, Malaysia.

[6] Angola, Barbados, Cape Verde, Congo, Greece, Italy, Nicaragua, Peru.

[7] For example, Belize, Brazil, Guatemala, Kuwait, Morocco, Spain, Trinidad and Tobago.

Recommendation. One country[1] mentioned a proposed amendment of provisions relating to the National Labour Council, in order to lay down its functions as to consultations on international labour standards.

III. Final remarks

205. The fundamental purpose in preparing the two instruments considered throughout this study was to suggest methods for ensuring a correct, full and concrete implementation of international labour standards. To that end, the International Labour Conference, after discussions on the most suitable form of achieving this objective, finally decided to adopt both a Convention and a Recommendation, it being understood that the Convention was to be regarded as a promotional instrument which would not necessarily require legislation but would define goals and demand an active effort for encouraging and promoting the establishment of tripartite consultations if they did not exist or their maintenance if they already existed.[2]

206. The attitude of member States towards these standards, as it appears from the majority of the reports, shows that they see a close relation between the national and international spheres in respect of tripartism, and that a satisfactory application of this principle at the international level depends on how effectively it is applied at the national level. It is also worth recalling the interest shown by most of the member States in the item on the agenda of the 60th Session (1975) and the 61st Session (1976) of the Conference, which was to make some member States sufficiently alive to the question to proceed to the early establishment of machinery for standard-setting consultations.[3] The number of ratifications registered five years after the adoption of the Convention - one of the highest recorded in recent years - and the apparently good prospects for further ratifications reveal a definite interest on the part of member States in an instrument of use to them in complying with the various requirements laid down by the ILO Constitution in the field of standards.

207. Moreover, it is a source of satisfaction to the Committee to note that procedures of the type contemplated by the Convention and the Recommendation are applied in a large number of countries, including many which do not yet plan, for one reason or another, to ratify the Convention. In this connection, the Committee expresses the hope that the information contained in the preceding pages may encourage them to consider ratifying the Convention later.

208. Lastly, the Committee trusts that the Office, in connection with its activities to promote international labour standards, will continue to pay special attention to fostering an awareness on the part of the governments and employers' and workers' organisations of member States of the usefulness afforded by the two instruments for promoting the concrete application of the substantive standards adopted each year by the International Labour Organisation.

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[1] Lebanon.

[2] ILO: Record of proceedings, ILC, 61st Session, 1976, para. 41, p. 119.

[3] Canada, for instance, was already to hold in September 1975 the first "tripartite meeting on ILO questions" at the federal level.

APPENDICES

APPENDIX I

TEXTS OF THE SUBSTANTIVE PROVISIONS OF CONVENTION No. 144 AND RECOMMENDATION No. 152, 1976

Tripartite Consultation (International Labour Standards) Convention, 1976

Article 1

In this Convention the term "representative organisations" means the most representative organisations of employers and workers enjoying the right of freedom of association.

Article 2

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to operate procedures which ensure effective consultations, with respect to the matters concerning the activities of the International Labour Organisation set out in Article 5, paragraph 1, below, between representatives of the government, of employers and of workers.

2. The nature and form of the procedures provided for in paragraph 1 of this Article shall be determined in each country in accordance with national practice, after consultation with the representative organisations, where such organisations exist and such procedures have not yet been established.

Article 3

1. The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.

2. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4

1. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.

2. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

Article 5

1. The purpose of the procedures provided for in this Convention shall be consultations on -

(a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;

(c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organisation;

(e) proposals for the denunciation of ratified Conventions.

2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultations shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

Article 6

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976

1. In this Recommendation the term "representative organisations" means the most representative organisation of employers and workers enjoying the right of freedom of association.

2. (1) Each Member of the International Labour Organisation should operate procedures which ensure effective consultations with respect to matters concerning the activities of the International Labour Organisation, in accordance with Paragraphs 5 to 7 of this Recommendation, between representatives of the government, of employers and of workers.

(2) The nature and form of the procedures provided for in subparagraph (1) of this Paragraph should be determined in each country in accordance with national practice, after consultation with the representative organisations where such procedures have not yet been established.

(3) For instance, consultations may be undertaken -

(a) through a committee specifically constituted for questions concerning the activities of the International Labour Organisation;

(b) through a body with general competence in the economic, social or labour field;

(c) through a number of bodies with special responsibility for particular subject areas; or

(d) through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient.

3. (1) The representatives of employers and workers for the purposes of the procedures provided for in this Recommendation should be freely chosen by their representative organisations.

(2) Employers and workers should be represented on an equal footing on any bodies through which consultations are undertaken.

(3) Measures should be taken, in co-operation with the employers' and workers' organisations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.

4. The competent authority should assume responsibility for the administrative support and financing of the procedures provided for in this Recommendation, including the financing of training programmes where necessary.

5. The purpose of the procedures provided for in this Recommendation should be consultations -

(a) on government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) on the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;

(c) subject to national practice, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in

particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives);

(d) on the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(e) on questions arising out of reports to be made to the International Labour Office under articles 19 and 22 of the Constitution of the International Labour Organisation;

(f) on proposals for the denunciation of ratified Conventions.

6. The competent authority, after consultation with the representative organisations, should determine the extent to which these procedures should be used for the purpose of consultations on other matters of mutual concern, such as -

(a) the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates;

(b) the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, industrial committees and other meetings convened by the International Labour Organisation;

(c) the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes.

7. In order to ensure adequate consideration of the matters referred to in the preceding Paragraphs, consultations should be undertaken at appropriate intervals fixed by agreement, but at least once a year.

8. Measures appropriate to national conditions and practice should be taken to ensure co-ordination between the procedures provided for in this Recommendation and the activities of national bodies dealing with analogous questions.

9. When this is considered appropriate after consultation with the representative organisations, the competent authority should issue an annual report on the working of the procedures provided for in this Recommendation.

APPENDIX II

List of ratifications of Convention No. 144

AUSTRALIA
AUSTRIA
BAHAMAS
BANGLADESH
COSTA RICA
CYPRUS
DENMARK
ECUADOR
EGYPT
FINLAND
GERMANY, FEDERAL REPUBLIC OF
GREECE
ICELAND
INDIA
IRAQ
IRELAND
ITALY
MEXICO
NETHERLANDS
NICARAGUA
NORWAY
PORTUGAL
SURINAME
SWAZILAND
SWEDEN
UNITED KINGDOM
ZAMBIA

APPENDIX III

Reports received on Convention No. 144 and on Recommendation No. 152

Countries	Convention No. 144	Recommendation No. 152
Afghanistan	-	-
Algeria	-	-
Angola	x	x
Argentina	x	-
Australia	R	x
Austria	R	x
Bahamas	R	-
Bahrain	x	x
Bangladesh	R	-
Barbados	x	x
Belgium	x	x
Belize	-	x
Benin	x	-
Bolivia	-	-
Botswana	x	x
Brazil	x	-
Bulgaria	x	x
Burma	-	-
Burundi	x	x
Byelorussian SSR	x	x
United Republic of Cameroon	x	x
Canada	x	x
Cape Verde	x	x
Central African Republic	-	-
Chad	-	-
Chile	x	x
China	-	-
Colombia	x	x
Comoros	x	-
Congo	x	x
Costa Rica	-	-
Cuba	x	x
Cyprus	R	x
Czechoslovakia	x	x
Democratic Yemen	-	-
Denmark	R	x
Djibouti	-	-
Dominican Republic	x	x
Ecuador	R	-
Egypt	x	x
El Salvador	x	x
Equatorial Guinea	x	-
Ethiopia	x	x
Fiji	x	x

Countries	Convention No. 144	Recommendation No. 152
Finland	R	x
France	x	x
Gabon	x	x
German Democratic Republic	x	x
Federal Republic of Germany	R	x
Ghana	-	-
Greece	x	x
Grenada	x	x
Guatemala	x	x
Guinea	-	-
Guinea-Bissau	x	x
Guyana	x	x
Haiti	-	-
Honduras	-	-
Hungary	x	x
Iceland	-	-
India	R	x
Indonesia	x	x
Iran	-	-
Iraq	R	-
Ireland	R	-
Israel	x	x
Italy	R	x
Ivory Coast	-	-
Jamaica	x	x
Japan	x	x
Jordan	-	-
Democratic Kampuchea	-	-
Kenya	-	-
Kuwait	x	-
Lao Republic	-	-
Lebanon	x	x
Lesotho	x	x
Liberia	x	x
Libyan Arab Jamahiriya	-	-
Luxembourg	x	x
Madagascar	x	x
Malawi	-	-
Malaysia	x	x
Mali	x	x
Malta	x	x
Mauritania	-	-
Mauritius	x	x
Mexico	R	x
Mongolia	x	x
Morocco	x	x
Mozambique	-	-
Namibia	-	-
Nepal	-	-
Netherlands	R	x
New Zealand	x	x
Nicaragua	x	x
Niger	-	-
Nigeria	x	x

Countries	Convention No. 144	Recommendation No. 152
Norway	R	x
Pakistan	x	x
Panama	x	x
Papua New Guinea	-	-
Paraguay	x	x
Peru	x	x
Philippines	x	x
Poland	x	x
Portugal	x	x
Qatar	x	-
Romania	x	x
Rwanda	x	x
Saint Lucia	-	-
Saudia Arabia	x	x
Senegal	x	x
Seychelles	-	-
Sierra Leone	-	-
Singapore	x	x
Somalia	x	-
Spain	x	x
Sri Lanka	x	-
Sudan	x	-
Suriname	R	-
Swaziland	x	-
Sweden	R	x
Switzerland	x	x
Syrian Arab Republic	x	x
Tanzania	x	x
Thailand	x	x
Togo	-	-
Trinidad and Tobago	x	x
Tunisia	x	-
Turkey	x	x
Uganda	-	-
Ukrainian SSR	x	x
USSR	x	x
United Arab Emirates	-	-
United Kingdom	R	x
United States	x	x
Upper Volta	x	x
Uruguay	x	x
Venezuela	x	x
Viet Nam	-	-
Yemen	x	x
Yugoslavia	x	x
Zaire	x	x
Zambia	R	-
Zimbabwe	x	x

Note: A total of five reports on Recommendation No. 152 has also been received in respect of the following non-metropolitan territories: United Kingdom (Bermuda, British Virgin Islands, Gibraltar, Hong Kong, Montserrat).

R = Countries having ratified Convention No. 144.
x = Report received.
- = Report not received.

APPENDIX IV

Legislation cited in the Governments' reports[1]

ARGENTINA

Act No. 22105 of 15 November 1979 respecting workers' occupational associations (Boletin oficial (BO), 20 November 1979, No. 24296) (LS 1979 - Arg.1).

Decree No. 640 of 28 March 1980 to make regulations under Act No. 22105 (BO, 8 April 1980, No. 24392).

Act No. 22125 of 1979 respecting associations with legal personality exclusively (BO, 31 December 1979, No. 24324).

Decree No. 2562 of 1979 respecting the registration of employers' occupational associations.

Decree No. 825 of 1973 to provide for the functional organic structure of the Ministry of Labour.

Act No. 22450 of 27 March 1981 relating to ministries (BO, 1 April 1981, No. 24640).

Decree No. 42 of 29 March 1981 (ibid.).

AUSTRALIA

National Labour Consultative Council Act, No. 65 of 1977, as amended by Act No. 125 of 1979.

BAHRAIN

Amiri Decree-Law No. 23 of 16 June 1976 to promulgate the Labour Law for the private sector (Official Gazette, 15 July 1976, No. 1184, Supplement) (LS 1976 - Bah.1).

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[1] The Committee calls attention to the fact that the texts referred to do not necessarily represent all the relevant national legislation. It points out, moreover, that Convention No. 144 and Recommendation No. 152 can be implemented without recourse to legislation.

BANGLADESH

Notification by the Ministry of Labour and Industrial Welfare, to constitute the Tripartite Consultative Committee (Bangladesh Gazette, Extra., 23 August 1980, p. 3013).

BELGIUM

Act of 29 May 1952 to establish a National Labour Council (Moniteur belge, 31 May 1952, p. 4207), as amended by Act of 5 December 1958.

BELIZE

Labour Ordinance, No. 15 of 31 December 1959, as amended.

Trade Unions Ordinance, No. 1 of 14 March 1941, as amended.

BENIN

Fundamental Law (Constitution) of the People's Republic of Benin (Journal officiel (JO), 19 September 1977, No. 23, Special issue).

Ordinance No. 33 P.R./M.F.P.T.T. to promulgate a Labour Code. Dated 28 September 1967 (JO, 15 December 1967, No. 27) (LS 1967 - Dah.1).

Decree No. 80-95 of 26 April 1980 to set up a National Committee to bring the draft Labour Code up to date (JO, 15 May 1980, No. 10).

Ordinance No. 75-21 of 24 March 1975 to set up Management Committees in production units.

BOTSWANA

Trade Unions Act, No. 24 of 28 July 1969 (Government Gazette, 1 August 1969, No. 34, Suppl.).

BRAZIL

Orders Nos. 3080 and 3081 of 7 May 1981 (Diario oficial, 8 May 1981, No. 85, pp. 8402-4).

BULGARIA

Constitution dated 16 May 1971 (D'rjaven vestnik, 18 May 1971, No. 39).

Labour Code, Ukase No. 544 of 13 November 1951 (Izvestiya (Izv.), 13 November 1951, No. 91) (LS 1951 - Bul.2), as amended.

Order No. 55 of the Central Committee of the Bulgarian Communist Party, the Council of Ministers and the Central Council of Bulgarian Trade Unions dated 29 March 1958 to extend the rights of heads of undertakings and trade union bodies and organisations with a view to a more active participation of the workers in production management (Izv., 4 April 1958, No. 27; 16 September 1958, No. 74).

Rules of the Bulgarian Trade Unions, approved by the Fourth Congress of Bulgarian Trade Unions (April 1977).

Labour Rules of the Section of Undertakings, Administrations and Organisations in Bulgaria.

BURUNDI

Labour Code, Legislative Order No. 001/31 of 2 June 1966 (Bulletin officiel (BO), 15 September 1966, No. 9bis).

Legislative Decree No. 501/67 of 5 April 1972, to establish a general system of social security (BO, 25 May 1972, No. 5ter) (LS 1972 - Buru.1).

BYELORUSSIAN SSR

Constitution of the Byelorussian SSR, adopted on 14 April 1978.

Regulations governing the Supreme Soviet of the BSSR, adopted by the Supreme Soviet of the BSSR on 13 March 1980.

Regulations governing the permanent committees of the Supreme Soviet of the BSSR, as amended and supplemented by the Supreme Soviet of the BSSR on 13 March 1980.

Act respecting the procedure to be followed in concluding, implementing and denouncing international agreements of the USSR, dated 6 July 1978 (Vedomosti Verkhovnogo Soveta SSR, No. 28, 12 July 1978, Text 636).

Act respecting the Council of Ministers of the BSSR, dated 21 June 1979.

Labour Code of the BSSR, approved by Act of the Supreme Soviet of the BSSR on 23 June 1972.

Regulations governing socialist state production undertakings, approved by decree of the USSR Council of Ministers on 4 October 1965 (Ekonomicheskaya Gazeta, 20 October 1965).

Regulations governing the rights of the factory, works or local trade union committees, approved by Decree No. 2151-VIII of the Presidium of the Supreme Soviet of the USSR on 27 September 1971 (Vedomosti, Text 382) (LS 1971 - USSR 2).

Statutes of the Trade Unions of the USSR, ratified by the 13th Trade Union Congress of the USSR, as amended up to 1977.

UNITED REPUBLIC OF CAMEROON

Law No. 74-14 of 27 November 1974 instituting the Labour Code (Journal officiel, 5 December 1974, No. 4, Suppl., p. 113) (LS 1974 - Cam.1).

CANADA

Quebec

Advisory Council on Labour and Manpower Act (Revised Statutes of Quebec, Cap. C-55).

COLOMBIA

Political Constitution of Colombia.

Labour Code.

COMOROS

Law No. 52-1322 of 15 December 1952 instituting a Labour Code in the Overseas Territories (Journal officiel de la République française, 15-16 December 1952, No. 298, p. 11541) (LS 1952 - Fr.5).

Order No. 53-142/C of 8 July 1953 instituting a Central Labour Advisory Committee (Journal officiel du Madagascar et dépendances, 18 July 1953).

CUBA

Act No. 1323 of 30 November 1976 on the organisation of the State Central Administration (Gaceta oficial, 1 December 1976, No. 15, Extra.).

CYPRUS

Law No. 37 of 1977 ratifying the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Law No. 17 of 1966 ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Decision No. 684 of the Ministry of Labour on consultative labour organisation.

CZECHOSLOVAKIA

Constitution of the Czechoslovak Socialist Republic of 11 July 1960 (Sbirka Zákonu (SZ), 1960, Text 100) (LS 1960 - Cze.2 [Extracts]).

Statute of the Consultative Committee for Co-operation with the International Labour Organisation, of 15 June 1972.

Statute of the Revolutionary Trade Union Movement, adopted by the 8th All-Union Congress in 1972.

Decree by the Minister of Foreign Trade relating to the activities of the Czechoslovak Chamber of Commerce (SZ, 1960, Text 103), as amended (SZ, 1961, Text 32 and 1968, Text 69).

Statute of the Czechoslovak Chamber of Commerce and Industry, of 24 February 1981.

Statute of the CCCI Section concerning labour matters, endorsed by the CCCI Executive on 26 June 1981.

FIJI

Employment Act (Laws of Fiji, rev. ed., Cap. 75).

FINLAND

Decree dated 24 November 1977 on the Finnish Advisory ILO Committee (Finlands Författningssamling, 851/77).

GABON

Decree No. 795/PR/MTE of 4 July 1980 to fix the composition of the National Commission on Wage Studies.

GERMAN DEMOCRATIC REPUBLIC

Constitution of the GDR of 6 April 1968, as amended by Act of 7 October 1974 (Gesetzblatt (GBl.), Part I, No. 47, p. 432).

Order of the Council of Ministers dated 13 June 1973 on the Statute of the Secretary of State for Labour and Wages (GBl., Part I, No. 35, p. 369).

GUATEMALA

Constitution of the Republic of Guatemala.

Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended (El Guatemalteco, 16 June 1961, No. 14) (LS 1961 - Gua.1).

GUINEA-BISSAU

Decree No. 44309 to approve a Rural Labour Code (LS 1962 - Por.1).

INDONESIA

Decision of the Minister of Manpower, Transmigration and Co-operatives No. 382/MEN/1974 to set up a Joint Secretariat for Tripartite Consultation.

Decision of the Minister of Manpower, Transmigration and Co-operatives No. 35/1979 to regulate the structure and the practical implementation of the function of the Joint Secretariat for Tripartite Consultation.

ISRAEL

Hours of Work and Rest Law, 5711-1951 (LS 1951 - Isr.2).

Night Baking (Prohibition) Law, 5711-1951 (LS 1951 - Isr.1).

Annual Leave Law, 5711-1951 (LS 1951 - Isr.3).

Employment of Women Law, 5724-1964.

Wage Protection Law, 5718-1958.

Severance Pay Law, 5723-1963 (LS 1963 - Isr.1).

Settlement of Labour Disputes Law, 5717-1957 (LS 1957 - Isr.1).

Collective Agreements Law, 5717-1957 (LS 1957 - Isr.2).

Employment Service Law, 5719-1959 (LS 1959 - Isr.1).

Youth Labour Law, 5713-1953 (LS 1953 - Isr.2).

Apprenticeship Law, 5713-1953 (LS 1953 - Isr.1).

Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949.

Labour Inspection (Organisation) Law, 5714-1954.

KUWAIT

Act No. 38 of 1964 respecting employment in the private sector.

Ministerial Decision No. 6 of 1965 relating to the organisation of the Advisory Committee on Labour Matters, as well as the measures of application.

LEBANON

Decree No. 6304 of 5 December 1966 to establish and organise a National Labour Council (Al-Jarida al-Rasmiya, 19 December 1966, No. 101) (LS 1966 - Leb.1).

Legislative Decree No. 80 of 27 June 1977 setting up the National Employment Service.

Decree No. 13955 of 26 September 1963 to promulgate a Social Security Act (Al-Jarida al-Rasmiya, 30 September 1963).

Act No. 11 of 31 January 1973.

LESOTHO

Trade Unions and Trade Disputes Law, No. 11 of 1964 (Basutoland Government Gazette, Extra., 21 April 1965).

LUXEMBOURG

Act of 4 April 1924 respecting the establishment of elective trade chambers (LS 1924 - Lux.1).

MALI

Act No. 62-67 A.N.-R.M. of 9 August 1962 to promulgate a Labour Code (Journal officiel, 15 October 1962, No. 128, p. 708).

MAURITIUS

Act No. 50 of 24 December 1975 to amend and consolidate the law relating to labour (Government Gazette, 27 December 1975, No. 90, Legal Supplement, p. 165) (LS 1975 - Maur.1).

MEXICO

Political Constitution.

MONGOLIA

Constitution of the Mongolian People's Republic.

Regulation of the Great People's Khural of the MPR, dated 29 June 1981.

General Regulations governing state socialist enterprises, approved by Decree of the Council of Ministers of the MPR, dated 16 April 1980.

Decree of 1974 of the Great People's Khural of the MPR on the rights of the Trade Union Committee.

The statutes of the MPR trade unions.

NEW ZEALAND

Industrial Relations Act, No. 19 of 14 September 1973 (LS 1973 - NZl).

PANAMA

Ministerial Decree No. 252 of 30 December 1971, to approve the Labour Code (Gaceta oficial (GO), 18 February 1972, No. 17040, Extraordinary) (LS 1972 - Pan.1).

Decree No. 249 of the Council of Ministers dated 16 July 1970, to issue the Basic Act for the organisation of the Ministry of Labour and Social Welfare (GO, 27 July 1970, No. 16655).

PARAGUAY

Resolutions of the Directorate of Labour Nos. 649 and 650 dated 2 May 1980.

PERU

Act No. 23235 of 7 January 1981 respecting an industrial amnesty in the private sector (El Peruano (El P.), 8 January 1981, No. 12239).

Resolution No. 002/81/TP of 15 January 1981.

Legislative Decree No. 140 of 1981 to issue the Act respecting the organisation of the labour and social promotion sectors.

Act No. 23282 of 4 September 1981 (El P., 5 September 1981, No. 263, Supplement "Normas legales").

PHILIPPINES

Labour Code.

PORTUGAL

Political Constitution (Diario da República (DR), 10 April 1976, No. 16).

Decree 63/80 to approve ratification of Convention No. 144 (DR, 2 August 1980, No. 177).

Act 16/79 on the participation of workers' organisations in drawing up labour legislation (DR, 26 May 1979, No. 121).

Act No. 46/79 respecting Workers' Committees (DR, 12 September 1979, No. 211) (LS 1979 - Por. 2A).

Legislative Decree No. 646/76 to establish the National Council for Prices and Incomes (DR, 31 July 1976, No. 178).

Legislative Decree No. 392/79 to establish the Committee on Equality in Work and Employment (DR, 20 September 1979, No. 218).

Legislative Decree No. 145-B/78 to establish the Dockwork Institute (DR, 17 June 1978, No. 137).

Order No. 218/75 and 88/78 respecting the National Committee on the study of the problems of seafarers (DR, 31 March 1975, No. 75 and 15 February 1978, No. 38).

RWANDA

Act of 28 February 1967 to establish a Labour Code (Journal officiel (JO), 1 March 1967, No. 5, p. 107) (LS 1967 - Rwa.1).

Legislative Decree No. 15/77 of 7 June 1977 to set up the National Staff Board for the Public Administrations and the Private Sector (JO, 15 June 1977, No. 12).

SENEGAL

Act No. 61-34 of 15 June 1961 to establish a Labour Code (Journal officiel (JO), 3 July 1961, No. 3462, Special Issue) (LS 1962 - Sen.2B), as amended (LS 1971 - Sen.1, 1975 - Sen.1, 1976 - Sen.1, 1977 - Sen.1).

Decree No. 61-452 of 29 November 1961 respecting the National Advisory Council on Labour and Social Security (JO, 16 December 1961, No. 3493).

SPAIN

Constitution approved on 31 October 1978 (Boletin oficial del Estado (BOE), 29 December 1978, No. 311).

Act No. 51 of 8 October 1980 respecting employment (BOE, 17 October 1980, No. 250) (LS 1980 - Sp.2).

Act No. 8 of 10 March 1980, to promulgate a Workers' Charter (BOE, 14 March 1980, No. 64) (LS 1980 - Sp.1).

SUDAN

Industrial Relations Act, No. 4 of 7 January 1976 (The Democratic Republic of Sudan Gazette, 15 February 1976, No. 1188, Legislative Suppl. No. 1).

Wages and Conditions of Employment Tribunals Act, 1976.

Individual Labour Relations Act, 1981.

SWAZILAND

Employment Act, No. 5 of 26 September 1980 (Government Gazette, 10 October 1980, No. 55, Extraordinary).

SWEDEN

Ordinance of 8 December 1977 containing standing instructions for the ILO Committtee (Svensk Författningssamling, 1977:987).

TANZANIA

Employment Ordinance (Laws of Tanzania, Cap. 366).

THAILAND

Order of 1 May 1980 to establish the National Labour Advisory Council.

TURKEY

Labour Act, No. 1475 of 25 August 1971 (Resmi Gazete (RG), 1 September 1971, No. 13943).

Act No. 2364 concerning the reinstatement of collective labour agreements, the terms of which have expired, in cases of social necessity (RG, 27 December 1980).

Regulations concerning Minimum Wages (RG, 11 August 1964, No. 11777).

Regulations concerning occupational health and safety boards (RG, 19 February 1973, No. 14453 and 6 April 1973, No. 14499).

Decree No. 7/5736 of 31 January 1973: Regulations concerning the cessation of work or the closing of the establishments.

Decree No. 7/5733 of 31 January 1973: Regulations concerning the rules for the establishment and operation of the committees competent to manage the funds collected from the wages as fines.

Decree No. 7/7907 of 25 February 1974: Regulations concerning the local boards for the employment of former convicts or those on probation.

Regulations concerning annual leave with pay (RG, 25 July 1972, No. 14256).

UKRAINIAN SSR

Constitution of the Ukrainian SSR, adopted in April 1978.

Labour Code dated 10 December 1971 (Vedomosti Verkhovnogo Soveta Oukrainskoi SSR, 1971, No. 50, Text 375).

USSR

Constitution of the USSR and Constitutions of the federate and autonomous republics.

Standing Orders of the Supreme Soviet of the USSR, adopted by the Supreme Soviet of the USSR on 19 April 1979 (Vedomosti Verkhovnogo Soveta SSR, 25 April 1979, Text 272).

Regulations governing the standing committee of the Soviet of the Union and the Soviet of nationalities of the Supreme Soviet of the USSR, approved by Act dated 12 October 1967.

Act of 6 July 1978 respecting the procedure for concluding, fulfilling and denouncing treaties of the USSR (Vedomosti, 12 July 1978, Text 439).

Act of 5 July 1978 respecting the Council of Ministers of the USSR (Vedomosti, 12 July 1978, Text 436).

General Regulations governing Ministries of the USSR, approved by Order No. 640 of the Council of Ministers of the USSR, dated 10 July 1967 (Ekonomicheskaya Gazeta, August 1967, No. 34).

Regulations governing state socialist production enterprises, approved by a resolution of the Council of Ministers of the USSR, dated 4 October 1965 (ibid., 20 October 1965, No. 42).

Regulations governing the rights of Factory, Plant and Local Trade Union Committees, approved by Decree 2151-VIII of the Presidium of the Supreme Soviet of the USSR, dated 27 September 1971 (Vedomosti, 29 September 1971, Text 382) (LS 1971 - USSR 2).

Statutes of the trade unions of the USSR, ratified by the 13th Trade Unions Congress of the USSR, as amended up to 1977.

UNITED KINGDOM

Bermuda

Trade Union Act, No. 171 of 31 July 1965 (LS 1965 - Ber.1).

Guide to the conduct of labour relations in Bermuda.

UNITED STATES

Federal Advisory Committee Act (Public Laws, 92-463, 6 October 1972, 86 Stat. 770), as amended (ibid., 94-409, 13 September 1976, 90 Stat. 1247).

Executive Order 12216 of 18 June 1980 establishing the President's Committee on the International Labour Organisation (Federal Register (FR), 20 June 1980, 45 Fed. Reg. 41619).

Executive Order 12258 of 31 December 1980 to entitle continuance of certain Federal Advisory Committees (FR, 6 January 1981, 46 Fed. Reg. 1251).

Charter of the President's Committee on the ILO, signed by the Secretary of Labor on 3 July 1980.

UPPER VOLTA

Act No. 26-62-AN of 7 July 1962 to establish a Labour Code (Journal officiel (JO), 18 August 1962, No. 33 bis, Special Issue), as amended by Act No. 9-73-AN of 7 June 1973 (JO, 26 July 1973, No. 31).

Order No. 152/FPT/DGTLS of 6 March 1974 to establish a Labour Advisory Committee.

Interoccupational collective agreement of 9 July 1974.

Order No. 384/FPT/DGTLS of 6 April 1979 to reorganise the Ministry of Civil Service and Labour.

URUGUAY

Act No. 14489 of 23 December 1975 to amend the budgetary programmes and subprogrammes of the Ministry of Labour and Social Security (Diario Oficial (DO), 31 December 1975, No. 19675).

Decree No. 224/977 of 27 April 1977 to empower the Minister of Labour and Social Security to obtain from the appropriate bodies all the necessary information on the application and supervision of the international standards adopted by the International Labour Organisation (DO, 4 May 1977, No. 19998).

Resolution of the Ministry of Labour and Social Security of 29 August 1978 setting up a Working Party to study the standardisation and bringing up to date of the international legislation in force in Uruguay.

Resolution of 19 December 1979 laying down the functions of the International Relations Advisory Service.

Resolution of 26 February 1980 prescribing that the International Relations Advisory Service shall report directly to the Minister in respect of everything relating to its specific functions.

YUGOSLAVIA

Constitution of the SFR of Yugoslavia, dated 21 February 1974 (Sluzbeni list (Sl.) of 21 February 1974, No. 9, Text 53) (LS 1974 - Yug.1 [Extracts]).

Constitutions of socialist republics and socialist autonomous provinces.

Associated Labour Act, dated 25 November 1976 (Sl., No. 53, Text 764).

Law on the fundamentals of the system of government administration and on the Federal Executive Council and federal bodies of administration, dated 19 April 1978 (Sl., No. 23, Text 405 of 1978 and No. 58 of 1979).

Law on organisation and sphere of work of federal bodies of administration and federal organisations (Sl., No. 22 of 1978).

ZAIRE

Labour Code, Ordinance No. 67/310, as amended.

Departmental Order No. 70/0010 of 27 July 1970 to appoint the members of the National Labour Council.

Departmental Order No. 73/0027 of 28 August 1973 to establish the working of the National Labour Council (Journal officiel, 1 May 1974, No. 9).