

REPORT VII

International Labour Conference

THIRTIETH SESSION

GENEVA, 1947

**FREEDOM OF ASSOCIATION
AND INDUSTRIAL RELATIONS**

Seventh Item on the Agenda

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1954

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¹ See footnote, p. 16.

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INTRODUCTION

At its Fourth Session (February-March 1947), the Economic and Social Council of the United Nations was called upon to examine the question of " guarantees for the exercise and development of trade union rights ", which had been referred to it by the World Federation of Trade Unions.

At the conclusion of its discussions, the Economic and Social Council adopted the following Resolution, which the Secretary-General of the United Nations officially communicated to the Director-General of the International Labour Office on 18 April 1947 :

The Economic and Social Council,

Having taken note of the items regarding trade union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,

Resolves to transmit these documents to the International Labour Organisation with a request that the question may be placed upon the agenda of its next session and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council.

The Economic and Social Council,

Further resolves to transmit the documents to the Commission on Human Rights in order that it may consider those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights.

The Economic and Social Council referred this question to the International Labour Organisation, under the terms of the Agreement between the United Nations and the International Labour Organisation¹, which, as will be remembered, was formally ratified both by the Assembly of the United Nations and by the International Labour Conference.

¹ See text of the Agreement : *Official Bulletin*, Vol. XXIX, No. 4, 15 November 1946, p. 293.

Article III of that Agreement provides that " subject to such preliminary consultation as may be necessary, the International Labour Organisation shall include on the agenda of the Governing Body items proposed to it by the United Nations. Similarly, the Council and its commissions and the Trusteeship Council shall include on their agenda items proposed by the International Labour Organisation ".

Following the communication of this Resolution, the Governing Body, having been consulted by telegraph by the Director-General, decided to place the question of " freedom of association and industrial relations " on the agenda of the 30th Session of the Conference, which opens in Geneva on 19 June 1947. At the same time, it authorised the Director-General to inform the Governments of the States Members that, in accordance with the Constitution of the International Labour Organisation, they had the right to appoint advisers for the discussion of this question.

It appears expedient, for the information of the delegates to the Conference, to recall briefly the circumstances under which the problem of freedom of association came before the Economic and Social Council, and to summarise the discussions to which its consideration gave rise.

The Economic and Social Council had received two memoranda, one from the World Federation of Trade Unions, and one from the American Federation of Labor.

These two texts will be included as an appendix to this report but, as they represent the opinions of two very important trade union organisations, a substantial summary will be given in the following pages.

MEMORANDUM OF THE WORLD FEDERATION OF TRADE UNIONS

The memorandum of the World Federation of Trade Unions¹ begins with an observation that, ever since the end of the Second World War,

Certain interventions tend, in various countries, to destroy the very foundations of trade union rights. The means employed to hinder the progress of the trade union movement are principally as follows : large-scale dismissal of trade unionist workers, the arrest of active trade unionists and trade union leaders, the occupation of trade union premises,

¹ See ECONOMIC AND SOCIAL COUNCIL : E.C. 2/28, 28 February 1947 (original in French), p. 2.

the revocation by the government of bodies democratically chosen by the trade unions, the nomination of trade union leaders by the government, the prohibition of all coloured or native workers from forming occupational organizations, the prohibition on occupational organizations from forming any federal occupational or inter-occupational organizations, whether locally, nationally or internationally, etc.

Such attacks on trade union rights can demonstrate the persistence in certain countries of nefarious ideologies which have placed the world in deadly peril. The respect for trade union rights as an element of peace and co-operation between the peoples should be assured on the international level.

The memorandum then goes on to emphasise the part which trade unionism can play if its development is not systematically impeded.

Trade unionism tends to go further than the particular interests of its members and becomes, in an ever-increasing measure, the spokesman of the general interests. This aspect of the evolution is also clearly illustrated by the programmes of economic reorganization formulated in most countries by the workers' trade unions. Basing itself on the generally accepted idea that the exercise of the right of ownership is a social function, trade unionism, representing the producers, insists on the necessity of bringing the community into still greater participation in the general direction of economic policy.

In the social domain, the role of the trade unions is still more important. They conclude collective agreements which can be extended to embrace all workers in a profession or in a nation, that is to say, even those who are not members of these organizations. In certain cases therefore the trade unions are given the power to make regulations. In many countries also, they share in the control and direction of industrial undertakings and even in the activities of the State; in this way, they take part in the preparation of social legislation through their advisory councils, labour councils and economic councils, and share in the application of social legislation by administering social security institutions, by collaborating with inspecting bodies and also on conciliation and arbitration boards and on labour tribunals by supervising employment, apprenticeships, occupational training, and control of prices, etc.

This evolution, which must be guaranteed and made general, is merely the expression of the democratic principle, according to which those concerned, namely the producers, should have a say in determining economic and social policy. The value of this principle has been increased by the fact that the war for the triumph of democracy and liberty has been brought to a successful issue with the active help of the working class and as a result of its sacrifices. Already the victory of the United Nations has inspired the development of trade unionism in all quarters in close relationship with social progress and the development of popular liberties.

But the role of trade unionism... can be of value for the community only on condition that the trade union movement preserves its independence, its autonomy and its spontaneous character. It is therefore fitting that the State should not obtain a hold over the trade unions and over the workers' movement by means such as: the nomination of administrative bodies and leaders by the public authorities, or the interference of the latter on any other score in the running of trade unions.

Furthermore, any attempt to hinder the federation of trade union organizations on the occupational and inter-occupational level, locally, nationally and internationally, constitutes a very serious infringement of trade union liberty

The memorandum emphasises, moreover, that the evolution of trade unionism extends beyond national frontiers and is manifested with equal intensity at the international level.

Even at the end of the First World War, the Peace Conference insisted on the necessity of organizing the working class. Through its representatives, the working class took part in a series of conferences and in a number of international organizations and in this way the international personality of the workers' organizations became an indisputable reality.

After the Second World War, the evolution which we have demonstrated both on the national and international level became more pronounced.

Attention should be drawn to the work undertaken by the W.F.T.U. after the Second World War in order to assist trade union organization in liberated or defeated countries, an action which constitutes one of the most important factors in the spread of democracy in the political, social and economic domain, and of which the beneficial effect has been recognized by all the governments concerned.

Furthermore, relations of confidence have been established between the Economic and Social Council and the World Federation of Trade Unions.

The memorandum goes on to state that

According to Article 1 (3) of their Charter, the United Nations propose as one of their aims " to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ". The same idea is to be found in Articles 55 c and 62 of the Charter. The attainment of this objective presupposes the general expansion and consolidation of trade unionism on the national and international level.

The memorandum concludes that

Effective respect for trade union rights, apart from guarantees proper to every country, demands a safeguard of an international character whenever the use of these rights results in developments which might affect the international life. From national and international practice there can be established, for trade union rights, a real common international law, for which respect in all States should be assured by the Economic and Social Council.

On the basis of the preceding considerations, the World Federation of Trade Unions submitted to the Economic and Social Council the following Resolution :

I. Trade union rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.

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II. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.

III. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally or internationally.

IV. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.

V. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted.

MEMORANDUM OF THE AMERICAN FEDERATION OF LABOR ¹

In its memorandum the American Federation of Labor begins by recalling that it had circulated, on 20 August 1946, a document (E/CT.2/2) relating to the "International Bill of Rights", which covered, among other questions, the basic points raised by the World Federation of Trade Unions. The document was eventually transmitted for consideration to the Human Rights Commission of the Economic and Social Council.

The memorandum of the American Federation of Labor emphasises, however, that numerous problems affecting workers generally, or labour and trade union organisations more specifically, are outside the framework of reference set forth for the Human Rights Commission, and adds :

The United Nations, under the terms of its Agreement with the International Labour Organization (document A/72) Article I, recognized the latter organization as "a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein". The terms of reference of the International Labour Organization are indicated in its Constitution, Articles 10, 19, 20, 21 and 35. ²

It is therefore quite proper for the Economic and Social Council to request the International Labour Organization to make a survey of labour conditions in the various countries, Members of the United Nations, in order to secure information on the treatment received by the individual workers in the exercise of their rights to form, join or belong to Trade Union organizations without interference or coercion by the

¹ See ECONOMIC AND SOCIAL COUNCIL : E.C. 2/32, 13 March 1947 (original in English), pp. 5-8.

² *International Labour Organisation, Constitution and Rules* (Montreal, 1946).

governmental authorities ; on the extent, if any, of government domination or interference with trade union organizations ; and regarding any coercive acts directed against individual workers in so far as their relations to their trade union organizations are concerned. On the basis of such inquiries, the International Labour Organization should be requested to undertake the necessary steps for the elimination of such practices which deny basic individual rights to workers or collective rights to their organizations.

The American Federation of Labor, after examining in detail the proposals submitted to the Economic and Social Council by the World Federation of Trade Unions, suggests that these proposals be amended to read as follows :

I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the International Labour Organization, that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows :

1. To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the government ?
2. To what extent are trade unions free to operate in accordance with the decisions of their own members, whether on a local, regional or national basis, without interference by governmental authorities ?
3. To what extent are workers free to select, elect or appoint officers of their own trade unions ?
4. To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations, without governmental interference ?
5. To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country ?
6. To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference ?
7. To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation ?
8. To what extent is the right of workers and of their organizations to resort to strikes recognized and protected ?
9. To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers ?
10. To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf ?
11. To what extent are workers free to move from one part of the country to another, within the confines of the national borders, and to what extent are they free to migrate outside the national boundaries ?

12. To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference ?
13. To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language or religion, protected against compulsory, or forced labour ?
14. To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection ?

II. The Economic and Social Council further recommends to the International Labour Organization that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various States, proposals for :

- (a) incorporating the rights universally recognized,
- (b) protecting the workers and their organizations against the violation of basic labour or trade unions' rights, and
- (c) providing proper measures for the enforcement of such rights.

It will be observed that, while the first ten questions relate directly to the problem of freedom of association, the last four are of much more general application.

DISCUSSION OF THE PROBLEM OF ASSOCIATION BY THE ECONOMIC AND SOCIAL COUNCIL

The Council unanimously expressed the view that, because of the extensive nature of the matter, " the consequences of which would be manifold and important ", it was not desirable to embark upon the substance of it at the end of the session.

The only question to be discussed was whether the matter should be postponed for examination at the next session of the Economic and Social Council or whether it would be desirable, in accordance with the Agreement concluded between the United Nations and the International Labour Organisation, to refer the question directly to the International Labour Organisation, as well as to the Human Rights Commission, with regard to those aspects of it which might come within its competence.

A short summary is given of the arguments advanced in support of these respective proposals.¹

In favour of the suggestion to refer the question immediately to the International Labour Organisation, the representative of the United Kingdom argued as follows :

¹ See : UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL E/P.V.79, 24 March 1947, pp. 22-71.

This Council has, on behalf of the United Nations, negotiated an Agreement with the International Labour Organisation, and that Agreement has now been formally ratified by the Assembly and the Conference of the I.L.O. It is binding on us all, no less than on the I.L.O.

Under that Agreement, the United Nations recognises the International Labour Organisation as "a specialised agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein". One of these purposes is the promotion of freedom of association as one of the essential conditions of attaining social justice.

That aim was written into the Constitution when it was framed in 1919, and was re-affirmed at Philadelphia in 1944...

The substance of the item which we are considering relates to one of the essential purposes of the I.L.O. We have recognised the I.L.O. as an agency responsible for taking appropriate action to accomplish such purposes, and it surely follows that for the Council to take the matter into detailed consideration now, and not refer it to the I.L.O. so it may consider what action it could or should take, would be contrary to the letter and certainly to the spirit of the Agreement which we have entered into.

Consequently, the representative of the United Kingdom called the attention of the Economic and Social Council to the fact that the General Conference of the International Labour Organisation was meeting in June 1947, and added :

If we therefore defer this matter until our next session we shall most conclusively and definitely by-pass this Conference of the I.L.O. I would like to see this item at an early stage on the agenda of that full Conference of the I.L.O. To defer this decision until our next session is not a deferment of a decision, because it is in fact a decision not to refer it to the Conference of the I.L.O. It is apparently a decision to discuss the substance of the item at the next session of the Economic and Social Council. I think it is important, therefore, not to feel that by deferring this item to the next Council, we are in any way deferring our decision on this very important point of substance, whether or not this matter should be referred to the International Labour Organisation.

Now I feel that to adopt, therefore, the proposal of our French colleague, would be outside both the letter and spirit of the Agreement which we have arranged with the International Labour Organisation. I think indeed it would be hard to imagine a more startling instance of lack of co-ordination with a specialised agency. And I do feel that our job is to refer this highly important matter, without the additional delay which would be imposed by postponing it to our next session, for early and immediate consideration by the International Labour Organisation.

The United States representative to the Economic and Social Council stated :

The matter squarely falls within the scope of the International Labour Organisation and our Agreement with that Organisation.

The principle of freedom of association has permeated many of the Conventions and Resolutions adopted by the various Sessions of the I.L.O. Conference. The Third Conference of the American States Members of the I.L.O., meeting in Mexico City in April of 1946, adopted a Resolution containing principles that seemed to that Conference to constitute an effective definition of freedom of association as applied to trade unions and employer associations. These principles include, among other things, a statement of the right of workers and employers to form organisations of their own choosing, whether federations or confederations, which should not be subject to dissolution by administrative orders.

The Mexico City I.L.O. Conference, which was attended by the United States and other Member States in the Americas, adopted a Resolution containing these principles that seemed to go to the heart of the matter raised by the World Federation of Trade Unions' document.

The representative of the Netherlands stressed that, in his opinion, the Economic and Social Council did not require to take a preliminary decision on the matter before referring it to the International Labour Organisation. He added :

All we have to do, it seems to me, is to see that this is a matter which, in the first instance, at any rate, should be dealt with by the I.L.O. and then, once the matter has been dealt with by that body, or if that body, which seems to me inconceivable, should fail to deal with it, then this Council will have to decide whether to take action itself and, if so, what action.

In favour of a formal reference of the matter to the next session of the Economic and Social Council, the argument was advanced that, before referring the question to a specialised agency, it was desirable to examine the substance of it in the Council itself.

The French representative declared :

The World Federation of Trade Unions, invoking the principles of the Charter, has urged that the United Nations has a mission, among other functions, to ensure respect for trade union rights.

We have a two-fold solution before us. We can send the whole question to the International Labour Organisation for consideration ; however, to take such a decision would be to prejudge the substance of the problem and, in particular, the facts which the World Federation of Trade Unions might submit to the Council. The other solution (which the speaker supported) is simply to adjourn the consideration of this question until the next session of the Council.

In such a matter, the persons concerned (that is to say, the members of these great international associations) would not understand how the Council could dispose so rapidly at the end of its session of a discussion which it would have to resume at a future date.

The French delegation is of the opinion that the general discussion should take place as soon as possible, in other words, at the next session of the Council. The Council could then decide whether it wished to refer the question to this or that agency or commission, calling its attention to the various points raised in the text submitted to the Council.

He concluded by stating :

If the consideration at the next session could take place with the advantage of certain documents being available, I see no objection to this, and should be glad if a compromise of this kind could be achieved.

The representative of Czechoslovakia pointed out that, before transmitting Resolutions which had been referred to it to another agency for consideration, the Council should obviously discuss the question as a matter of principle.

If we are discussing the substance and if we are to refer it to some other bodies before discussing it here, we must adopt certain principles contained in this Resolution, so that whether it is the Social Commission or whether it is the Commission on Human Rights or the International Labour Organisation, they would know what the opinion of this Council is on this subject. We have to accept or reject the principles contained in it. But I would be of the opinion that it should be deferred and that it be discussed in the next session of the Council.

The representative of the U.S.S.R. began by calling attention to the importance of the Resolution adopted by the General Assembly of the United Nations concerning the right granted to the World Federation of Trade Unions and other organisations to propose items for inclusion on the agenda of the Economic and Social Council. He added :

Because of various reasons, the representative of the World Federation of Trade Unions, who proposed the placing of this particular question on the agenda of the Economic and Social Council, had to leave New York. Under these circumstances, I believe that the Economic and Social Council could only take one decision concerning this whole question ; that is, to postpone its consideration until the next session of the Economic and Social Council and not to start any discussion on the substance of this question . . .

If any other organisation or agency shows interest in one particular aspect of the question, then they can make recommendations and they can proceed in such a manner without any decision to this effect by the Economic and Social Council.

The representative of the U.S.S.R. continued :

The Members of the Economic and Social Council who proposed to transfer the study of the question which has been raised by the World Federation of Trade Unions to another organisation seem, in fact, to desire a change in an organisation, in a specialised agency, and more specifically speaking in the International Labour Organisation. It would grant the International Labour Organisation a sort of monopoly and would extend its rights, contrary to the agreement which has been reached with that organisation.

In addition, it would encourage the World Federation of Trade Unions not to address itself to the Council but to address itself to a specialised agency such as the I.L.O. This would be a great mistake indeed, and the Economic and Social Council would not be right in taking such a decision concerning an organisation whose membership

counts tens of millions of persons. This organisation — in other words the World Federation of Trade Unions — wants to state its opinion directly to the Economic and Social Council. And we would answer to this organisation that before we consider their opinion, we must have it verified by another organisation. If such a decision were taken, we would undermine the authority of the Economic and Social Council; and this would be a great mistake indeed.

The President of the Economic and Social Council summed up the discussion as follows :

... The United Kingdom, Soviet and other delegations have said that this matter can be considered at the next meeting of the Council. The United Kingdom delegation has said that this matter may be first referred to the International Labour Organisation, which meets in June, and that after having its report, the matter may be considered at the next session of the Council. Both the delegations wished that the matter should be considered at the next meeting of the Council, but the United Kingdom interposes a consideration by the I.L.O. and a report by the I.L.O. after such consideration, before the matter is taken up for consideration at the next meeting of the Council...

The Economic and Social Council, when called upon to take a decision on the two proposals, adopted by a majority vote the Resolution previously cited, asking the International Labour Organisation to place the question relating to trade union rights on the agenda of its next session and to send a report to the Economic and Social Council for consideration at its next session.

The Council further resolved to transmit the documents which had been referred to it to the Commission on Human Rights, in order that it might consider those aspects of the subject which might appropriately form part of a Bill or Declaration on Human Rights.

In this connection it may be observed that, by the terms of the Constitution of the International Labour Organisation and of the Declaration of Philadelphia, the question of the *right of occupational association*, conceived as the right of the *employers* and *workers* to form free associations, remains indisputably within the competence of the International Labour Organisation.

The same conclusion naturally follows with regard to the question of industrial relations, since that again is a problem regarding the relations which may be established, either between *occupational organisations* of employers and workers, or between those organisations and the public authorities.

Indeed, freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another, including freedom

of assembly and of meeting, freedom of speech and opinion, freedom of expression and of the press, and so forth.

It was with these various aspects of the question of freedom of association in mind that the Economic and Social Council referred the question of freedom of occupational association to the International Labour Organisation, and that of freedom of association in general to the Commission on Human Rights. In this connection, it should be recalled that the Commission on Human Rights is at present contemplating the drafting of an International Charter on Human Rights.

In taking this decision, the Economic and Social Council rightly considered that only by the combined endeavours of all the various institutions of the United Nations would it be possible to arrive at a comprehensive solution of the problem of guaranteeing the fundamental rights written into the United Nations Charter.

Accordingly, the International Labour Organisation will not have to concern itself with the general right of association, except in so far as the employers and the workers may invoke the principles of common law with regard to association or constitutional provisions concerning freedom of association in general.

It is within these limits that the Office, in the short space of time which has been at its disposal between the communication of the Resolution of the Economic and Social Council to the International Labour Office and the meeting of the Conference, has drawn up a short report on the general question of freedom of association and industrial relations.

The first chapter of the report deals with the history of the problem of freedom of association and industrial relations before the International Labour Organisation.

The second chapter is devoted to an analysis of legislation and practice.

A third chapter, entitled "Conclusions and Observations", includes a number of suggestions with regard to the action which the International Labour Organisation might find it possible to undertake in connection with freedom of association and industrial relations.

The Conference, which will have before it a problem the urgent nature of which was made extremely evident during the discussion which took place in the Economic and Social Council, will, of course, have to decide in full freedom what action it can take with regard to that problem.

CHAPTER I

HISTORY OF THE PROBLEM OF FREEDOM OF ASSOCIATION AND INDUSTRIAL RELATIONS BEFORE THE INTERNATIONAL LABOUR ORGANISATION

Freedom of Association

The problem of freedom of association and industrial relations, which, as is well known, is vital to the very existence and functioning of the International Labour Organisation, has been in the forefront of its activities ever since its foundation. Hence, in order to view the new consideration of this question in its proper perspective, it is desirable to outline the history — a history as long as that of the Organisation itself — of the problem of freedom of association and industrial relations, which is now before the I.L.O.

The reasons which have caused the International Labour Organisation to concern itself from the beginning with the problem of freedom of association are, so to speak, fundamental to its very Constitution.

The part played by the association of workers and employers, both in the settlement of wages and conditions of labour and in the economic and social organisation of modern States, appeared so essential to the authors of Part XIII of the Versailles Peace Treaty that they based the Constitution of the International Labour Organisation not only on the States — in accordance with traditional diplomatic practice — but also on the autonomous organised forces of labour and industry.

Moreover, they took the view that the accomplishment of the task which thus devolved on the employers' and workers' organisations, not only on the national but also on the international plane, required full and complete recognition of freedom of association.

It is for these reasons that the Preamble to the Constitution of the International Labour Organisation expressly declares "recognition of the principle of freedom of association" to be one of the means of improving the conditions of the workers and of securing peace, and that Article 41, paragraph 2 includes among the principles of special and urgent importance "the right of association for all lawful purposes by the employed as well as by the employers".¹

At the Washington Conference, in 1919, certain questions concerning freedom of association were discussed, complaints were made relating to restrictions applied to the right of association for trade purposes, and a demand was made for the whole question to be placed on the agenda of the next Session of the Conference.²

In June 1920, the Governing Body was called upon for the first time to deal directly with this question. A short time previously, the Director of the International Labour Office had received a telegram from the Hungarian Government requesting him to send a mission to Hungary to ascertain on the spot whether the current rumours regarding an alleged "white terror" and persecutions of the workers had any foundation.

In consequence of this request, the Governing Body authorised the Director of the International Labour Office to take steps, on his own responsibility, to verify the facts which were alleged by the Hungarian Government or by the workers' organisations. In the autumn of 1920, three officials of the Office were sent to Hungary and the results of their enquiry were published in a report under the title of "Trade Union Conditions in Hungary".³

This report comprises two parts: the first, entitled "Data of the Inquiry", includes a survey of the actual status of trade unions, and of the existing legislation and its application. The second part — "The Inquiry" — contains the statements made by the workers, employers and Government representatives who were questioned during the enquiry, together with the documents which they produced to confirm their statements.

In December 1920, the International Labour Office received a complaint from the General Federation of Spanish Workers

¹ As will be observed subsequently (see pp. 27-28), the Declaration of Philadelphia reaffirms these same principles with particular emphasis.

² See League of Nations, International Labor Conference, 1st annual meeting, October 29, 1919-November 29, 1919, pp. 52, 140, 143, 160 and 272, Washington, 1920.

³ International Labour Office, Geneva, 1921.

accusing the Spanish Government of having taken measures which were contrary to the principle of freedom of association. On this occasion the Governing Body could not take any action with regard to the complaint, because, in the case in question, it was not the Government but a private organisation which had communicated with the International Labour Organisation, and it was apparent to the Governing Body that no intervention by virtue of Article 23 of the Constitution was possible without the consent of the Government concerned, in the absence of any international Convention governing freedom of association.

Thus it was made evident that a mere affirmation of the principle of freedom of association by the Constitution of the International Labour Organisation was not sufficient to ensure its observance.

It was this consideration which caused the Governing Body to decide to examine, at its 20th Session, in October 1923, the whole problem of freedom of association. Mr. Jouhaux, workers' representative, invoking Articles 1, 10 and 41 of the Constitution, asked that the International Labour Office should undertake an enquiry concerning the application of the principle of freedom of association. The Governing Body gave effect to his request by adopting the following Resolution :

The Governing Body,

Considering that the permanent organisation created by Part XIII of the Treaty is entrusted with the duty of carrying out the programme set forth in the Preamble of that Part of the Treaty,

Considering that this programme affirms *inter alia* the principle of the freedom of association,

Draws the attention of the Director of the International Labour Office to the value of collecting the most complete documentary evidence with reference to the position in all countries which are Members of the International Labour Organisation with regard to the application of this principle.

In pursuance of this decision, the International Labour Office undertook a most comprehensive enquiry into freedom of association, the results of which were published in five volumes.¹

This enquiry was actually being undertaken when the Japanese workers' representative, Mr. Suzuki, put forward, at the 6th Session of the International Labour Conference (1924), a

¹ International Labour Office, Studies and Reports, Series A (Industrial Relations), Nos. 28, 29, 30, 31, 32 : *Freedom of Association*, Geneva, 1927, 1928, 1930.

Resolution which the Conference considered, and referred to the Governing Body in the following terms :

The International Labour Conference,

Considering that respect for the principle of freedom of association is essential to the proper working of the Organisation, which should unite in a common effort the Governments and the most representative associations of employers and workers,

That the development of international social legislation, the object for which the Organisation exists, cannot be fully realised unless this right is fully recognised and conceded,

Recalls the fact that amongst the principles enumerated in the Labour Portion of the Treaties of Peace, the right of association of the workers is expressly affirmed,

Instructs the Governing Body of the International Labour Office to continue the documentary enquiry regarding liberty of association and to enlarge its scope so as to deal with the actual application of the principle in different countries,

And requests the Governing Body, when this enquiry is completed, to consider the advisability of placing the question on the Agenda of a future Session of the Conference, with a view to determining measures to ensure full respect for the principle of freedom of association.

The Governing Body shortly afterwards gave effect to the request contained in this Resolution and, at its 30th Session (January 1926), placed the question of freedom of association on the agenda of the 1927 Session of the Conference.

It should be recalled that as far back as 1921 the International Labour Conference adopted a Convention concerning the rights of association and combination of agricultural workers, requiring that " each Member who ratifies the Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture ".

DISCUSSION OF THE PROBLEM OF FREEDOM OF ASSOCIATION AT THE 1927 SESSION OF THE CONFERENCE

Without going into all the details of the discussions which took place at the 1927 Session of the Conference, it is necessary to recall the chief reasons for the failure of this first attempt to deal with the question, if only to apprehend the lesson taught by that failure.

The documentary enquiry on freedom of association had disclosed the fact that the legislation concerning trade associations¹

¹ This expression is used throughout the report as the equivalent of the French word *syndicats*, to include both employers' and workers' organisations.

differed considerably in detail and in form from country to country, but that the fundamental questions were dealt with on a fairly uniform basis.

The Office therefore preferred, instead of submitting to the Conference a draft scheme of detailed regulations which would have obliged the majority of countries to amend their legislation, to frame the essential elements of the problem in a number of precise formulae, the adoption of which would have constituted a sufficient guarantee for the free functioning of employers' and workers' associations.

The draft submitted to the Conference was limited to a guarantee, on the one hand, of the freedom of workers and employers to organise for the collective defence of their occupational interests and, on the other hand, of the freedom of trade associations to pursue their objects by all means not contrary to law or to the regulations enacted for the maintenance of public order.

As is well known, the scope of the draft submitted by the Office was considerably modified by the adoption of a whole series of amendments, two of which in particular helped to decide the fate of the Convention.

The first of these amendments proposed the extension of the guarantee of freedom of association to the freedom not to associate.

The authors of the amendment appear to have feared that the guarantee of the single right of association might lead to an obligation to organise, a question which, in fact, was quite irrelevant to the issue. It was a logical inference that the mere affirmation of the right of association fully safeguarded the right not to associate because, on the one hand, the individual naturally remained free to make use of his right or not and, on the other hand, the legislature remained free to prohibit or suppress any abuse of this right and to protect the freedom of the wage-earner against any unlawful pressure or constraint.

The second amendment, on the plea of safeguarding the prerogatives of the State in this connection, was designed to make the establishment of trade associations dependent on "the observing of the legal formalities".

Such a general formula, with no definitive limitation, would, in fact, have given States the right to regulate the status of associations just as they pleased. It would, for instance, have enabled the legislator, in accordance moreover with the practice followed in certain countries, to make the very existence of trade associations

subject to previous authorisation. Such a provision was clearly contrary to the whole object of a proposed guarantee of freedom of association.

Furthermore, a Convention which did not include any precise undertaking and which, therefore, would have left the States free to interpret it as they chose, had evidently lost its purpose. For these reasons, the workers' members united with the employers' members in opposing the placing of the question of freedom of association on the agenda of the 1928 Session of the Conference.

But in fact, as was stated by the Director in his closing address, these apparent divergencies concealed more serious divergencies of opinion. He added that perhaps it was external circumstances, influencing the Conference and passing beyond its control, which had caused the temporary failure of the plan.

By his remark concerning external circumstances which were influencing the Conference, the Director of the International Labour Office was no doubt referring to the totalitarian regimes which had been set up in a considerable number of European countries and in other continents, and which had resulted either in the suppression or in the domestication of both employers' and workers' organisations.

It was this obstacle — plainly political in character — which was to prove insurmountable when further attempts were made to regulate the question of freedom of association.

GUARANTEE OF THE PRINCIPLE OF FREEDOM OF ASSOCIATION

Since the unsuccessful attempt to solve the problem in 1927, not a session of the International Labour Conference has been held without reference being made to the problem of freedom of association and Resolutions adopted requesting the Governing Body to reconsider the question with a view to its subsequent settlement.

Hence the Governing Body, yielding to the requests of a large number of delegates to the Conference but warned of the difficulties in the way of a solution, decided, at its 50th Session (October 1930), to take up the problem again, but to follow a new procedure.

Unanimously adopting a Resolution proposed by Mr. Cantilo, Government representative of the Argentine Republic, the Governing Body decided to deal with the international regulation of the problem of freedom of association by successive stages, the first consisting simply of the guarantee of the principle of freedom

of association ; moreover, it instructed the Office to study the question on these lines.

In accordance with this decision, the Office submitted to the Governing Body, at its 55th Session (October 1931), a study¹ supporting in its conclusions, both on theoretical and practical grounds, the preparation of a proposed Convention based on Article 41, paragraph 2, of the Constitution of the International Labour Organisation.

The Governing Body accepted this proposal and instructed the Committee on Freedom of Association, specially set up for this purpose, to submit to it a report on the scope of a Convention drawn up on this basis.

The report of the Committee on Freedom of Association was submitted to the Governing Body at its 61st Session, and was adopted by a large majority. Following logically on the result of this first vote, the Governing Body also decided to retain the question of freedom of association among those which it would consider when it was drawing up the agenda for the next session of the Conference.

It will be remembered that this second attempt also had to be abandoned. What were the reasons ? Before considering them, it is necessary to summarise in a few words the contents and implications of the report which the Committee on Freedom of Association had submitted to the Governing Body and which the latter had adopted.

The Committee on Freedom of Association, basing the prospective proposed Convention on the text of Article 41, paragraph 2 of the Constitution, suggested in the first place that the States should be asked to renew, in the form of a definite legal undertaking, the moral undertaking into which they had entered by the mere fact of joining the International Labour Organisation.

Secondly, the Committee, by submitting for the approval of the Conference a formula already approved in the Constitution and sufficiently precise to be adequate in itself, hoped to be able to avoid the series of amendments which had compromised the first effort to obtain regulation.

Finally, the report of the Committee on Freedom of Association, which served, so to speak, as an exposé of the reasons for the future proposed Convention, defined with the greatest possible

¹ Minutes of the 55th Session of the Governing Body of the I.L.O., Geneva, October 1931, pp. 716-723 : *Appendix IX, Annex A, Note on Freedom of Association.*

precision the obligation which would devolve upon the States from the adoption of the principle of freedom of association as expressed in Article 41, paragraph 2.

According to the report, any State ratifying the Convention would undertake to recognise the principle of freedom of association as being one of the fundamental principles of the State, the observance of which was incumbent on the legislature. The consequence of this would be that a trade association would have the right to establish itself freely without previous authorisation and to function secure from any interference or control by the administrative authority.

Furthermore — the report went on to say — that right necessarily implies that organisations of employers and workers may draw up their statutes, their regulations and their programme as they please. It is of course, understood that such measures of publicity as the requirement to register and the publication of statutes do not run counter to the principle thus defined, for the State has obviously the right to require associations of employers and workers to signify their existence if only to enable it to verify their identity.

On the other hand, any “legal formality” which would require preliminary authorisation for the creation and working of organisations of employers or workers or subject them to any administrative control would obviously be contrary both to the letter and the spirit of the Convention.

As for the limits imposed on the exercise of the right so guaranteed, they would result from the definition of the objects of trade associations contained in the formula: “any objects not contrary to the law”.

It was indeed apparent to the Committee on Freedom of Association — in the light of the discussions which had been held on this matter in the Committee entrusted with the preparation of the Constitution of the International Labour Organisation — that this formula implied in fact that trade associations, like all other organised collectivities or individual citizens, are bound, when exercising their rights, to respect the general laws concerning public order which are imperative and inherently obligatory for everyone.

In other words, any reservation with regard to “legality” or “public order”, even if it was not expressly stipulated, would nevertheless be contained by implication in any text guaranteeing a right or freedom. The report added that, whatever might be the actual meaning of this conception — a very complicated conception the interpretation of which varies from one political regime to another, and even from one Government to another —

it was sufficient to state that by virtue of any Convention based on the terms of Article 41, paragraph 2, the maintenance of public order within the State must be compatible with the principle of freedom of occupational association, just as it must be compatible with any other measure of social welfare or protection.

The Governing Body, having adopted the report of the Committee on Freedom of Association, then adopted a proposal put forward by the representative of the Italian Government for the purpose of supplementing the report of the Committee on certain points. This proposal clearly demonstrated the fundamental conflict between the conceptions of democratic States and those of totalitarian States with regard to freedom of association.

When explaining the object of his proposal, the representative of the Italian Government declared that the Office had studied the question of freedom of association particularly from the point of view of the freedom enjoyed by trade associations. He added that it would be equally desirable to study the regulation of the activities of trade associations in those cases in which they were not only private agencies but agencies of public policy. He explained that in certain countries there existed a system of trade associations under which such associations were not only private associations, able to exercise functions which were either tolerated or suppressed by the law, but were also recognised as agencies of public policy, endowed by the State with powers which, in certain cases, even included functions of a legislative kind.

Following the adoption of this proposal, the Governing Body decided to postpone for the time being the international regulation of the problem of freedom of association.

PROTECTION OF THE FREEDOM OF OCCUPATIONAL ASSOCIATION IN RELATION TO THE OTHER PARTY TO THE LABOUR CONTRACT

If it thus appeared to be demonstrated that it was impossible, in view of the political circumstances prevailing at the time, to obtain the guarantee of freedom of association in relation to the State, might it not be possible to attempt the solution of a second problem: the guarantee of freedom of association in relation to the other party to the labour contract?

It is evident, indeed, that any trade union action for the purpose of establishing or maintaining a collective regime of conditions of employment would be paralysed if it was open to

the other party to the labour contract to undertake reprisals, either against organised workers or against the trade unions.

Two Resolutions, the first of which submitted by Mr. Yagi, Japanese workers' delegate, was adopted by the Conference at its 19th Session¹, while the second, submitted by the Government delegates of the United States of America, was adopted by the Conference at its 20th Session², were intended to enable the Committee on Freedom of Association to consider the question along these lines.

The Committee on Freedom of Association submitted a unanimous report to the Governing Body, recommending the placing of the question of safeguarding the right of association of the workers on the agenda of an early session of the Conference.³

The Governing Body adopted the report of the Committee by 19 votes to 7, but nevertheless refrained from placing the question on the agenda of the Conference.

* * *

¹ The text of this Resolution is as follows :

"Whereas workers' trade union right is incorporated in the Preamble of Part XIII of the Peace Treaty, and whereas a resolution concerning freedom of association was voted by the Fifteenth Session (1931) of the International Labour Conference :

"The Conference requests the Governing Body to consider the desirability of placing on the Agenda of one of its early Sessions the question of the workers' right of association, in order to prevent the dismissal of, or imposition of unfair treatment on, workers on account of their joining or receiving help from trade unions."

² The text of this Resolution is as follows :

"Whereas the Constitution of the International Labour Organisation truly declares that 'conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled ; and an improvement of those conditions is urgently required as, for example, by the recognition of the principle of freedom of association' ; and

"Whereas the Governing Body, pursuant to a resolution adopted by the Conference at its Nineteenth Session and to a report of the Committee of the Governing Body on Freedom of Association, has decided that it would be desirable to include in the Agenda of an early Session of the Conference 'the question of safeguarding the right of association of individual workers' ; and

"Whereas the Conference desires soon to enter upon the consideration of this subject with a view to taking some formal decision ;

"Therefore, the Conference requests the Governing Body to consider including in the Agenda of an early Session of the Conference the item of the safeguarding of individual workers in the exercise of their freedom of association from pressure by private employers on account of their joint participation in labour activities which are lawful for individuals acting singly."

³ I.L.O. Governing Body, 75th Session, Geneva, April 1936 : *Report of the Committee on Freedom of Association*, and Annex : *Study on the Protection of the Right of Association*. (G.B.75/17/77.)

It will be clear from this brief historical survey, that, in the interval between the two world wars, the International Labour Organisations has concerned itself continuously with the various aspects of the problem of freedom of association and has spared no effort to ensure international regulation of this matter.

It will be equally clear that, if in spite of these efforts it has not been possible to reach agreement, this has been due solely to political reasons which, as the Director of the International Labour Office declared in 1927, have paralysed the action of the Governing Body and of the International Labour Conference. It would appear that at the present time these political difficulties have considerably diminished as the result of the defeat of the totalitarian countries ; the present moment, therefore, appears to be particularly auspicious for attempting, with a maximum chance of success, the international regulation of the problem of freedom of association.

Industrial Relations and Co-operation between Public Authorities and Employers' and Workers' Organisations

In addition to the problem of freedom of association, the closely related problems of industrial relations and of co-operation between public authorities and employers' and workers' organisations have engaged the attention of the International Labour Organisation from the earliest days of its existence.

The factors which, during the period between the two wars, frustrated the efforts of the International Labour Organisation in the field of freedom of association, have also prevented any results being achieved in the field of industrial relations. The role of the International Labour Office was limited, therefore, by force of circumstances, to matters of information and study.

A brief survey will be made of the principal events in their chronological sequence.

CONCILIATION AND ARBITRATION

At its Session in 1924, the International Labour Conference instructed the Office to give particular attention to the question of the settlement of industrial disputes, and to study the methods adopted in the various countries to ensure the establishment of an adequate system of conciliation and arbitration.

In pursuance of this decision, the Office undertook an enquiry, the results of which were published in its study: *Conciliation and Arbitration in Industrial Disputes*.¹

This study consists of two parts. The first part, under the title: "General Problems of Conciliation and Arbitration", gives a systematic international summary of conciliation and arbitration for the settlement of industrial disputes. The intention was to demonstrate, by the method of comparing different legal systems, the variations between the legislation in one country and another, ranging from ordinary conciliation and enquiry to compulsory arbitration and the compulsory enforcement of awards.

The second part, entitled "Conciliation and Arbitration in the different Countries", consists of a series of descriptive monographs on the legal position with regard to conciliation and arbitration in 50 different States. These various monographs were prepared on as uniform a basis as possible considering the special nature of the legislation analysed in the case of each country. In each case, in an opening chapter, a survey is made of the economic background and the development of the legislation governing conciliation and arbitration. A second chapter is devoted to the system in force. A third chapter contains a summary of the opinions of the parties concerned and statistical information regarding industrial disputes and their settlement.

COLLECTIVE AGREEMENTS

The problem of collective agreements has engaged the attention of the International Labour Organisation, viewed both as a particularly appropriate method of fixing wages and other conditions of employment and as a means of applying national legislation and international labour Conventions.

In this latter connection, it should be remembered that many international Conventions refer to collective agreements for the purpose of applying certain of their provisions within the limits of national legislation. Moreover, the Maritime Conference, held in Seattle in 1946, conceded for the first time that effect might be given to the provisions of an international labour Convention not only by means of legislation, but also, in certain circumstances and with certain safeguards, by means of collective agreements.

¹ International Labour Office, Studies and Reports, Series A (Industrial Relations), No. 34, Geneva, 1933.

The report on collective agreements published by the Office in 1936¹ took into account all the various aspects of the problem of collective agreements.

The first part deals with the practical problem ; consideration is there given to the *de facto* scope of collective agreements or the like in various countries and in different industries.

The second part is concerned with the legal aspect of the problem ; in that part, the various methods of regulating working conditions and the effects of such regulation are examined.

The third part contains an analysis of the social and economic problem ; a study is made of the incorporation of collective agreements in the national economic structure.

In the fourth part the possibilities are considered of using collective agreements, together with national labour legislation, as a means of ratifying and applying international labour Conventions.

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

In the early part of the war (February 1940) — at a time when the totalitarian States had withdrawn from membership of the International Labour Organisation — the Governing Body, feeling that the time had come to take up again the whole problem of industrial relations, decided to place the question of “ methods of collaboration between the public authorities, workers' organisations and employers' organisations ” on the agenda of the Conference which was to be held in June 1940.

Anticipating to a certain extent the tremendous role which employers' and workers' organisations would have to play in the mobilisation of all national resources, it considered that well-organised collaboration between Governments and employers' and workers' organisations would be calculated to increase the capacity for resistance of the democratic countries against the aggression of the totalitarian States.

The Office prepared a general report² on the question of industrial relations and collaboration, but the Conference could not be held owing to circumstances over which it had no control.

¹ International Labour Office, Studies and Reports, Series A (Industrial Relations), No. 39, Geneva, 1936.

² International Labour Conference, 26th Session, Geneva, 1940 : *Methods of Collaboration between the Public Authorities, Workers' Organisations and Employers' Organisations* (Geneva, 1940).

The report reviews the principal problems involved in the organisation of relations between the parties, in the first place as between themselves, and, secondly, as between the State and trade associations.

The first part is concerned with the position of industrial organisations within the State, as the establishment of a relationship of collaboration naturally depends, in the first instance, on the recognition accorded to associations by the State.

The second part deals with collaboration between the authorities and the employers' and workers' organisations in determining wages and other conditions of employment, either by means of direct negotiation in the form of collective agreements, or by means of joint agencies in which the parties, and sometimes the State, are represented, or by means of conciliation and arbitration.

The third part is concerned with collaboration between public authorities, workers' organisations and employers' organisations, in regard to social legislation, a collaboration both in the framing and the application of social enactments.

The fourth part deals with collaboration between the public authorities, workers' organisations and employers' organisations in the economic field.

During the war, the question of collaboration assumed increased importance because, in the majority of countries, trade associations were closely associated in the direction of the war economy as a whole.

Hence, when it was decided to convene the New York Conference for October 1941, it was agreed that the question of methods of collaboration should be placed on its agenda. The Office submitted to the delegates a supplementary report, concerned particularly with recent developments which had taken place in the various countries during the early part of the war.¹

The New York Conference, after discussing the methods and practice as to collaboration followed in the different countries, adopted several Resolutions. The following passages in those Resolutions may be quoted :

The Conference,

Recognises the universal and permanent importance for all nations of effective collaboration between the public authorities and workers' organisations and employers' organisations, which occupy a place of increasing prominence in economic and social development ;

¹ Conference of the International Labour Organisation, New York, October 1941 : *Wartime Developments in Government — Employer — Worker Collaboration* (Montreal, 1941).

Underlines the special importance of such collaboration —

- (a) during the present war, because the success of the military operations largely depends on the result of the battle of production which will be won by the democracies only by the complete collaboration between the workers and the employers in the work of national defence ;
- (b) after victory, for the transition from war economy to peace economy and for the economic and social reconstruction of the world, which will be of interest to all countries, belligerent and neutral, and which will call for a gigantic and co-ordinated effort on the part of the public authorities, workers and employers ;

Declares that real collaboration is possible only within the framework of democratic political institutions which guarantee the freedom of association of workers and employers ;

Affirms that the application of the principle of collaboration requires that in law and in fact —

- (a) the right of industrial organisations to represent workers and employers should be recognised by the State ;
- (b) the workers' and employers' organisations should recognise each other's right to represent workers and employers respectively ;

Recognises that methods of collaboration vary... from country to country and within the experience of a single nation... and that positive results can best be assured by development along the lines of national experience, always provided that collaboration is based on the principles enunciated above and subject to the fundamental necessity for full participation of employers' and workers' organisations through representatives of their own designation being fully assured ;

Desires to express its conviction that the International Labour Organisation can render the greatest possible service in extending the practice of collaboration, both in emergency organisation and in the field of permanent industrial and economic organisation ;

Requests the Governing Body of the International Labour Office to take steps to ensure the fullest use of the resources of the Organisation for —

- (a) the exchange between Governments and organisations of workers and employers of information concerning both wartime and permanent machinery of collaboration so as to facilitate its widest developments, and
- (b) aiding interested countries to make use in their machinery for emergency industrial and economic organisation of the most suitable methods of collaboration in the field under consideration ;

¶ Urges the Governments to provide the Office not only with a record of structural developments, but with adequate information on the operation of the machinery of collaboration, both where it is successful and where it falls short of achieving its purpose, so as to permit comparative analysis.

The Conference requested the Governing Body of the International Labour Office to place the question on the agenda of the next Session of the Conference.

DECLARATION OF PHILADELPHIA

In 1944, again during the full tide of war, the Conference met for its 26th Session in Philadelphia. The "Declaration of Philadelphia", by which the Conference intended to define the aims and purposes of the International Labour Organisation and the principles which should inspire the policy of its Members, declared in its first Article, as one of the fundamental principles on which the International Labour Office is based, that "freedom of expression and of association are essential to sustained progress".

And among the programmes which it is the solemn obligation of the International Labour Organisation to further, the Declaration refers, in Article III, paragraph (*e*), to "the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".

In these concise terms, the Declaration defines the essential elements in the policy of the International Labour Organisation with regard to industrial relations and collaboration.

As soon as hostilities came to an end the International Labour Organisation endeavoured to give practical effect to the programme formulated by the Declaration of Philadelphia.

CONFERENCE OF MEXICO CITY

The Third Regional Conference of the American States Members of the International Labour Organisation, which was held in Mexico City in April 1946, adopted several Resolutions relating to industrial relations. These Resolutions were not confined to a mere affirmation of principle, but laid down in precise terms a number of rules to which the American States ought to conform when preparing legislation concerning industrial relations.

Conscious of the fact that the problem of industrial relations is a general problem which cannot be treated from various separate aspects, the Conference of Mexico City endeavoured to trace the broad outline of a "charter of industrial relations", embracing at the same time the guarantee of freedom of association, the protection of the right to organise and the right of collective bargaining, voluntary conciliation and arbitration and collective agreements.

In view of the importance of the principles accepted by the States represented at the Conference, the text of the principal Resolutions adopted is given below :

Resolution concerning Freedom of Association

(1) Employers and workers, whether public or private, without distinction of occupation, sex, colour, race, creed or nationality should be entitled to form organisations of their own choosing without previous authorisation ;

(2) Organisations of employers and workers should be granted full autonomy in organising their administration and activity, in drawing up their constitution and administrative rules, and in framing their policies ;

(3) Organisations of employers and workers should not be subject to dissolution by administrative orders ; in those countries where forced dissolution is imposed by way of penalty for certain acts deemed illegal, the trade unions should be entitled to the full protection of the appropriate procedure ;

(4) Organisations should have the right to constitute federations and confederations of trade organisation ; the formation, operation and dissolution of federations and confederations should not be subject to formalities other than those prescribed for employers' and workers' organisations ;

(5) Where the acquisition of special privileges by organisations is subordinated to certain conditions of substance and of form, these conditions should not be such as to imperil freedom of association as defined above.

*Resolution concerning Protection of the Right to Organise
and to Bargain Collectively*

I. Protection of the Exercise of the Right to Organise.

(1) In view of the fact that the individual worker's right to organise may be placed in jeopardy by discriminatory measures directed against him at the time of hiring or during tenure of employment, the law should particularly prohibit on the part of the employer or his agents all acts designed to —

- (a) make the hiring of the worker subject to the express condition that he does not join a certain trade union or withdraws from a trade union of which he is already a member ;
- (b) prejudice or injure in any manner whatsoever a worker on account of his being a member, agent or official of a certain trade union ;
- (c) dismiss a worker for the sole reason that he is a member, agent or official of a certain trade union ;
- (d) in general, exert any kind of pressure upon a worker with the object of compelling him to join or not to join a certain trade union.

(2) With a view to ensuring that collective bargaining be undertaken in good faith, the law should particularly prohibit on the part of the employer or of the employers' organisations or their agents all acts designed to —

- (a) promote the formation of trade unions controlled by the employer ;
- (b) interfere in the formation or administration of a trade union, or support it by financial means or otherwise except that an employer should not be prohibited from permitting workers to confer with him during working hours without loss of time or pay, and further that nothing in these provisions should prohibit the collection of dues ;
- (c) hamper the exercise of the workers' right to form organisations, conclude collective agreements and take concerted action for the defence and protection of their interests ;
- (d) refuse to recognise trade unions and to negotiate with them with a view to the conclusion of collective agreements.

It should however be understood that a clause in a collective agreement requiring compulsory membership in a certain trade union, not only as a condition precedent to employment but also as a condition of continued employment, is not barred by this resolution.

(3) Appropriate legislative measures should safeguard in each country the exercise of labour union rights and the activities of the labour leaders, particularly during the preparation and the period of strikes so that labour leaders may not be dismissed, prosecuted or deprived of their liberties because of their legitimate union activities.

II. Collective Bargaining Machinery.

(1) The State should undertake to place at the disposal of the parties agencies to secure the due observance of the right to organise as defined above.

(2) These agencies should be given exclusive power, in so far as the judicial system permits, to take cognisance of and impose penalties for violations of the exercise of the right to organise.

(3) The agencies should be entrusted with the authority to determine which labour organisation represents a majority of the workers for collective bargaining purposes ; in case of disagreement they should hold a secret-ballot election and certify the union which represents the majority of those voting in the appropriate collective bargaining unit as the exclusive representative of all the employees in that unit for the purposes of collective bargaining.

Resolution concerning Voluntary Conciliation and Arbitration

I. Voluntary Conciliation.

(1) Conciliation agencies should be established on a permanent basis in all parts of the country and should be in sufficiently large number to assist the parties whenever a labour dispute becomes imminent.

(2) In those countries which have a formal conciliation machinery and in which the agencies operate on a group basis they should be tripartite in character ; labour organisations concerned in a dispute should be permitted to intervene in all stages of the proceedings.

(3) Conciliation procedures should be free of charge and expeditious ; the time limits for the appearance of the parties and the hearing of the evidence should be fixed in advance and reduced to a minimum.

(4) Recourse to conciliation procedures should be voluntary, but once a dispute has been submitted to a conciliation agency by consent of all the parties concerned the parties should agree to refrain from strike or lockout while conciliation is in progress.

(5) The parties should be free to accept or reject the recommendations of the conciliation agencies ; but once a recommendation has been accepted it should be binding on the parties.

(6) Agreements arrived at by the parties in the course of the proceedings as well as recommendations of the conciliation agencies that are accepted by the parties should legally have the same force as voluntarily concluded collective agreements.

II. Voluntary Arbitration.

(1) There should be instituted voluntary arbitration machinery which may be resorted to either before or after conciliation procedures.

(2) Recourse to arbitration should be voluntary ; but once a dispute has been submitted to arbitration by consent of all the parties concerned the parties should agree to accept the award.

Resolution concerning the Validity of Collective Agreements

The provisions of the collective agreement should be applicable to all the workers in the appropriate collective bargaining unit in the undertaking or undertakings even though they are not members of the organisation which concluded the agreement.

Moreover, the Mexico City Conference, considering that the problem of industrial relations was of equal importance in all parts of the world, adopted a Resolution requesting the Governing Body to place this question on the agenda of early sessions of other Regional Conferences and of early sessions of the International Labour Conferences.

It may be mentioned in this connection that the problem of industrial relations is to be discussed both by the Preparatory Asian Conference, which is to be held in New Delhi in the autumn of 1947, and by the Regional Conference for the Near and Middle East which is to meet in Cairo at the end of 1947.

INDUSTRIAL COMMITTEES

In the meantime, the International Labour Organisation has approached the problem on another front. By virtue of a decision taken by the Governing Body in January 1945, international industrial committees have been set up for the following eight industries : inland transport ; coal mining ; the iron and steel industry ; the metal trades ; the textile industry ; building, civil

engineering and public works ; petroleum production and refining ; and the chemical industry.

By setting up the international industrial committees, the Governing Body did not intend merely to endow the International Labour Organisation with agencies particularly competent — by virtue of the technical qualifications of their members — to cope with the existing situation in the industrial life of each country, but also, and above all, to correlate the methods of negotiation and collaboration in the various industries on the national plan with the methods of negotiation and collaboration on the international plan.

The industrial committees have so fully realised that the effectiveness of their activities is to a large extent dependent on the stability of the system of industrial relations and methods of collaboration established in each country, that they adopted at their first sessions Resolutions emphasising the need to guarantee the right of association and of collective bargaining and to establish machinery for collaboration, both at the level of the nation-wide industry and at the level of the undertaking. Accordingly, they instructed the Office to submit reports on these questions to them at their next sessions.

In order to permit the industrial committees to make a thorough examination of the problem, the Governing Body, when determining the agendas for the second sessions of several of the Committees, decided to place on them the questions of industrial relations and of labour-management co-operation.

In pursuance of this decision, the Committee on Inland Transport, which met in Geneva in May 1947, adopted a Resolution on industrial relations and collaboration in the following terms :

Resolution on Industrial Relations in Inland Transport

I. Freedom of Association.

1. Employers and workers, whether in public or private inland transport undertakings, should be entitled to form, without previous authorisation and without restriction of occupation, sex, colour, race creed or nationality, organisations of their own choosing.

2. Such organisations should be granted full autonomy in drawing up their constitution and administrative rules, in organising their administration and activity, and in framing their policies.

3. Where full and effective protection is not already afforded, appropriate legislation should be enacted to protect the individual worker —

(a) from discriminatory or punitive measures directed against him at the time of engagement or during tenure of employment for the reason that he is a member, agent or official of a trade union ;

(b) against coercion with respect to his right to join a trade union.

4. Where full and effective protection is not already afforded, appropriate legislation should be enacted to prohibit on the part of the employer or of the employers' organisations or their agents, all acts designed to

- (a) promote the formation of trade unions controlled by the employer ;
- (b) interfere in the formation or administration of a trade union, or support it by financial means or otherwise interfere in its control ;
- (c) refuse to give practical effect to the principles of trade union recognition and collective bargaining.

II. Determination of Conditions of Employment.

5. The negotiation of collective agreements should be developed both in private and publicly owned transport undertakings.

Collective Bargaining.

6. (1) The State should, through the appropriate agencies, make available to the parties facilities for the development of collective bargaining.

(2) These agencies should be entrusted with the authority where necessary to determine the representative workers' organisations entitled to enter into collective agreements with employers or employers' organisations.

7. (1) Collective agreements freely entered into should be observed in good faith, and employers' and workers' organisations should do all in their power to ensure the observance by their members of the agreements to which they are parties.

(2) All individual or collective disputes arising out of the interpretation or application of collective agreements should be referred for settlement to a procedure accepted by the parties. There should be effective and expeditious means for reaching a final determination of all such issues.

(3) Employers, employers' organisations and trade unions which are parties to collective agreements should be entitled to institute legal proceedings to secure the observance of such agreements enforceable at law.

8. Immediate attention should be paid to the practice obtaining in certain countries whereby the provisions of collective agreements covering substantial proportions of employers and workers in a trade or industry are extended to include other such employers and workers who would not otherwise be covered by such agreements, in view of the fact that, in the conditions obtaining in the countries in question, arrangements of this nature have had the effect of strengthening the authority of the collective bargaining system.

Minimum Working Standards.

9. Governments should set up machinery whereby minimum wage rates, hours of work and other conditions of employment can be fixed in branches or sections of the inland transport services where there are no arrangements for the effective regulation of such matters by collective agreements or otherwise.

10. For this purpose account should be taken of the necessity of enabling the workers to maintain a suitable standard of living.

11. Whatever method is applied for fixing such minimum wages and conditions of employment, employers' and workers' organisations concerned should be directly associated in the framing of all necessary provisions.

12. An adequate system of inspection should be provided with power to make investigations with a view to ascertaining whether such wages and conditions of employment are in fact being applied and to take such steps as may be authorised to deal with infringements.

III. Adjustment of Labour Disputes.

13. (1) A free society cannot coerce any section of its population into working under conditions which are not freely and generally acceptable.

(2) Having regard to the vital position which transport occupies in the national economy, employers and workers, with due regard to their responsibility to society, should consider lockouts and strikes as an extreme and ultimate means of bringing pressure to bear upon one another. Consequently, they should undertake to utilise to the full extent all existing facilities for the expeditious and effective settlement of disputes before considering recourse to a lockout or a strike.

Voluntary Conciliation and Arbitration.

14. (1) The State should place at the disposal of the parties conciliation machinery with a view to helping them to adjust differences arising out of the negotiation and application of collective agreements.

(2) Once a dispute has been submitted to a conciliation agency by consent of all the parties concerned, the parties should agree to refrain from strike or lockout while conciliation is in progress.

(3) Agreements arrived at by the parties in the course of the proceedings, as well as recommendations of the conciliation agencies that are accepted by the parties, should have the same validity as normal collective agreements.

15. There should be instituted machinery for voluntary arbitration, and when a dispute has been submitted to arbitration by consent of the parties concerned this should imply acceptance of the award and the intention to abstain from strikes and lockouts while arbitration is in progress.

16. In the event of a serious labour dispute threatening to cause a stoppage of work in any essential transport service, and if there is no more effective and appropriate means of securing a settlement, the Government should be able to cause a public investigation to be made into the origin and terms of the controversy. The results of the investigation, together with the recommendations of the investigating agency as to the just solution of the dispute, should be made public without delay.

Right to Lockout and Strike.

17. While the right to lockout and strike applies in inland transport as in other industries, in the event of a dispute arising during the operation of temporary restrictions placed by legislation upon the normal exercise of the right to lockout or strike, effective guarantees should be provided for the maintenance of wages and conditions of employment while negotiations are in progress.

IV. Labour-Management Co-operative Machinery.

18. Suitable machinery should be established at all appropriate levels for promoting the application and observance of collective agreements in particular establishments and the prompt handling of grievances affecting individuals or small groups of workers.

19. Suitable machinery should be established at all appropriate levels for promoting joint consultation between accredited representatives of employers and workers on all matters in which they have a common interest, with a view to improving both the wellbeing of the workers and the prosperity of the industry. All necessary information should be placed at the disposal of joint committees established for the above purposes.

20. Committee members should be compensated at normal wage rates for loss of working time incurred in attending committee meetings and other necessary activities authorised by their committee. This compensation should be paid by the employer or by the trade unions as the case may be.

21. Employers' and workers' organisations should, so far as it is reasonable and practicable, having regard to national practice, be associated with the framing and application of any special official schemes, as for example training schemes, instituted for the benefit of the inland transport industry.

22. In the appointment of members of policy-making bodies of publicly owned inland transport undertakings regard should be paid to the opinion of the trade unions as to the need to include persons with knowledge and experience of trade union organisation and the needs and interests of the worker.

INTERNATIONAL LABOUR CONFERENCE

The problem of industrial relations and of collaboration has also, on many occasions, come before the General Conference of the International Labour Organisation. At its 28th Session, in Seattle, it adopted a Resolution concerning the recognition of seafarers' organisations, the text of which is as follows :

The Conference,

Affirms the principle that shipowners and seafarers of all ranks and grades in all countries have a right to organise themselves in voluntary, self-governing associations, free from compulsion or improper influence from outside, and subject only to the observance of such formalities as may be required by national laws or regulations, which formalities should be consistent with the principle of freedom of association ;

Emphasises the need for mutual recognition as between organisations of shipowners and seafarers and the value of collective bargaining between stable and representative organisations as a means of achieving satisfactory regulation of hours of work, wages, holidays and other conditions of employment ;

Urges Governments to consult such stable and representative organisations on the drafting of all laws and regulations affecting

their members and to collaborate with the organisations, so far as may be reasonable and practicable, in securing the effective application of such laws and regulations ; and

Recognises that it is desirable that such organisations should, so far as may be reasonable and practicable, having regard to national practice, be associated with the organisation and administration of institutions (such as, for example, employment offices, social insurance systems, conciliation and arbitration machinery and training schemes) in which both shipowners and seafarers have a common concern.

At its coming Session, the Conference will have before it a proposed Convention concerning the right of association and the settlement of labour disputes in non-metropolitan territories.¹

Finally, at its 101st Session (March 1947), the Governing Body instructed the Office to undertake an extensive international enquiry into the methods of collaboration between the public authorities and employers' and workers' organisations — which enquiry should be concerned equally with freedom of association and industrial relations — with a view to this question being placed on the agenda of an early session of the Conference.

Thus, during the three years which have passed since the Conference of Philadelphia, the implementation of the programme prescribed by that Conference has been tirelessly pursued by the International Labour Organisation. In concluding this historical chapter on the activities of the International Labour Organisation in the field of the right of association and industrial relations, it is only fair to mention that, in spite of the temporary set-back to the attempts at regulation in 1927, the many efforts made in every sphere of its activities by the International Labour Organisation have played a large part in extending the right of association and improving industrial relations throughout the world. The ground is thus prepared for the problem to be dealt with as a whole.

The programme which the Office submits to the Conference is a natural sequence, so to speak, of the decisions taken by the International Labour Organisation, which have been briefly reviewed above. It is concerned with : (1) freedom of association ; (2) protection of the right to organise and the right of collective bargaining ; (3) collective agreements ; (4) conciliation and arbitration ; (5) co-operation between the public authorities, employers' organisations and workers' organisations.

¹ International Labour Conference, 30th Session, Geneva 1947, Report III (2) : *Non-Metropolitan Territories. Proposed Conventions* (Geneva, 1947).

CHAPTER II

SURVEY OF LEGISLATION AND PRACTICE

Reference was made in the preceding chapter to the fact that the problems of "freedom of association", "collective agreements", "conciliation and arbitration" and "methods of collaboration between the public authorities, workers' organisations and employers' organisations" have been the subject of numerous studies by the Office and of extensive discussions in the Governing Body and at General Conferences of the International Labour Organisation.

The subject, then, is not a new one for the Conference and it will suffice, therefore, to give in the following pages a brief survey of the position prevailing at the present time in the various countries of the world.

Freedom of Association

Under the influence of the totalitarian Governments, the history of the right of association in the period between the two wars was marked, as is well known, by a progressive seizure of control of the employers' associations and of the trade unions by the State, not only in European countries but also in a number of Asiatic and Latin-American countries.

Thus, freedom of association was suppressed, first of all in those countries which were the earliest to adopt totalitarian régimes, and then in the countries which became dominated by their political influence. Finally, similar régimes were imposed on the numerous countries occupied during the war by the Axis powers.

RESTORATION OF FREEDOM OF ASSOCIATION THROUGHOUT
THE WORLD

The end of the Second World War involved the collapse of the totalitarian States and marked a decisive turning point in this evolution.

The first act on the part of the Governments of the liberated countries was to restore freedom of association and to re-establish the employers' associations and trade union movements. In France, the right of occupational association was re-established by an Ordinance of 27 July 1944.¹ Immediately after their liberation, Belgium and Luxembourg followed this example and restored the employers' and workers' organisations to their full rights. In the Netherlands, an Order of 8 September 1944² pronounced the dissolution of the Netherlands Labour Front and re-established the free trade associations of employers and workers. Similar measures were taken by Norway and Denmark as soon as those countries were liberated.

It should be stressed that the Governments were able to take such measures all the more easily and rapidly when agreements had been made regarding these matters, while the war was still raging, between the exiled Governments and the associations which had been re-established secretly and were engaged in the struggle against the occupying power.

A slightly different situation arose in those countries of Central and Eastern Europe in which trade associations had already lost their liberties before the war under the totalitarian régimes prevailing at the time.

After the liberation, therefore, it was necessary not only to re-establish the employers' and workers' associations with full rights, but also to create new organisations founded on a firmer basis than had been the case in the past.

Thus, in Czechoslovakia and in Poland, for example, the trade union movement was reconstituted on a single unified basis (following the example of the powerful single central organisations existing in the United Kingdom and in the Scandinavian countries). Experience gained before the war had revealed the weakness of a trade union movement divided into many rival organisations. The Governments of these countries, while fully recognising the

¹ Cf. I.L.O. : *Legislative Series*, 1944 — Fr. 5. (Later references to the Series are given as "L.S. ...")

² L.S. 1944 — Neth. 3.

representative character of these unified organisations, have refrained from interfering in their formation and from restricting in any way their purely voluntary character and autonomy.

In the ex-enemy countries, the Allied occupying authorities, or the national Governments in agreement with those authorities, have abolished the laws and institutions of the defunct totalitarian régimes and have restored freedom of association.

In Italy, the Fascist trade unions and corporations were abolished by a Decree of 23 November 1944. Similar measures were enacted in Austria, Hungary, Bulgaria, Rumania and Finland; in these countries also, the free trade unions are grouped together in single central organisations, which include all workers without distinction as to their political and religious beliefs.

In Germany, the representatives of the occupying authorities (United States, United Kingdom and U.S.S.R.) took the decision, at the Berlin Conference, to dissolve the National Socialist organisations, associations and institutions and to authorise the establishment of free trade associations, subject only to the maintenance of military security. In accordance with this decision, measures were taken in the different zones of occupation to ensure the free formation of workers' and employers' organisations. Moreover, the new Constitutions adopted in certain parts of Germany, for instance, in Wurttemberg, Baden and Hesse, expressly guaranteed freedom of association as had been done by the Weimar Constitution.

In Japan, the Far East Commission, in December 1946, precisely defined the principles which should govern legislation and practice concerning trade associations. By the terms of these decisions, the right of association is to be guaranteed by law. Workers are to be encouraged to form trade unions and all legislation or regulations impeding the free development of trade unions is to be repealed. The police force must no longer be used for the purposes of supervising trade union demonstrations, breaking strikes or impeding lawful trade union activities. Finally, no organisation of a military or despotic character is to be authorised in the future and all non-democratic organisations will have to be dissolved.

In the Latin-American countries, Constitutions, Labour Codes, general labour legislation or special laws concerning occupational associations, promulgated either during the war or following the cessation of hostilities, all include provisions guaranteeing freedom of association. Thus, the evolution towards the emancipation of

trade associations, which had already begun in Mexico during the first World War, has finally extended to the whole continent.

Among recent legislation particularly characteristic of this tendency, reference may be made, for instance, to the new Constitutions of Cuba (1940)¹, Guatemala (1945)², Brazil (1946)³, the Labour Codes of Costa Rica (1943)⁴, Nicaragua (1945)⁵, the Bolivian Decree of 7 February 1944⁶ and Law VI of 1945 in Colombia.⁷

In Argentina, a Decree of 2 October 1945⁸, respecting the legal status of industrial associations of employees, while according certain privileges to the most representative trade unions, is designed to ensure to all wage-earners the right to form occupational associations freely and without previous authorisation.

It should be remembered that in some cases earlier legislation, as for instance the Mexican Labour Code⁹, the Constitution of Uruguay, the labour laws of Ecuador¹⁰, Venezuela¹¹ and other countries, place the trade unions under the particular protection of the State and make it a duty on the part of the public authorities to encourage the development of the trade union movement.

Similar tendencies are also manifested in Asiatic countries. In India and China the development of the trade union movement has been particularly pronounced during the recent war and the new regulations which are at present in course of preparation are intended to give legal sanction to the *de facto* position acquired by the trade unions. It should further be noted that in India the Government has associated the representatives of employers' and workers' organisations in the preparation of the new legislation.

In the countries of the Near and Middle East, freedom of association has been formally recognised by several recent laws, as, for example, the Egyptian law concerning trade unions of 6 December 1942¹², the Labour Codes of Iraq¹³ and Iran¹⁴, the

¹ L.S. 1940 — Cuba 1.

² Cf. *International Labour Review*, Vol. LII, No. 1, July 1945, p. 57.

³ *Idem.*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947, p. 283.

⁴ L.S. 1943 — C.R. 1.

⁵ L.S. 1945 — Nic. 1.

⁶ L.S. 1944 — Bol. 2.

⁷ L.S. 1945 — Col. 1.

⁸ Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 677.

⁹ L.S. 1931 — Mex. 1.

¹⁰ L.S. 1938 — Ecuad. 1.

¹¹ L.S. 1945 — Ven. 1.

¹² L.S. 1942 — Eg. 1.

¹³ L.S. 1936 — Iraq 2.

¹⁴ Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 81.

Palestine Ordinances on labour relations, the Labour Code of 1946 in the Lebanon and the Turkish law of 20 February 1947 concerning associations.

It is not necessary here to make more than a passing reference to the numerous enactments concerning the right of occupational association in non-autonomous territories, as they are analysed at length in the special studies devoted by the Office to such territories. It is also superfluous to dwell at length on the prevailing situation in the democratic countries which, during the war, have not only been able to preserve their free institutions, but have also, as will be observed subsequently, very closely associated the free organisations of employers and workers with the organisation of economic and social life.

It may be mentioned, however, that in the United Kingdom the Trade Disputes and Trade Unions Act of 1927¹ has been repealed by the Trade Disputes and Trade Unions Act of 22 May 1946.² The Act of 1927 made certain kinds of strikes and lock-outs illegal, prohibited certain forms of picketing considered not to be peaceful, required the explicit consent of the members of a trade union in respect of the payment of contributions allocated to a political fund and prohibited civil servants from belonging to any organisation "which is not confined to persons employed by or under the Crown", and which has "political objectives" or is "associated directly or indirectly with any political party or organisation". All these provisions were repealed by the Act of 22 May 1946.

In the United States, Congress is at present considering several draft laws designed to regulate certain aspects of industrial relations. At the time of drafting this report, it is not known whether and to what extent these drafts will become law.

But, without attempting to anticipate the new legal régime of trade unions which may finally be established, it is reasonable to observe, even at this juncture, that, though it may impose certain limitations on the freedom of action of trade union organisation, the proposed legislation will not prejudice the principle of freedom of association recognised by the Federal Constitution and the State Constitutions.

This brief description of the recent enactments concerning trade unions, incomplete as it may appear, seems to show clearly that, at the present time, the principle of freedom of association

¹ L.S. 1927 — G.B. 3.

² Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 85.

is almost universally recognised. There is no doubt that a prompt affirmation of this principle by the International Labour Conference would contribute greatly towards the prevention of any return to a restrictive régime.

THE LEGAL REGULATION OF FREEDOM OF ASSOCIATION

The guarantee of freedom of association may result either from the application of constitutional principles to employers' and workers' organisations or from a special régime.

Constitutional Guarantees of the Right of Occupational Association

In many democratic countries the political Constitution now guarantees to the individual certain fundamental rights, including the right of association. Such is the case, for instance, in the following countries : Argentina, Belgium, Brazil, Chile, China, Colombia, Cuba, Denmark, Ecuador, Greece, Guatemala, Honduras, Ireland, Japan, Luxembourg, Mexico, the Netherlands, Panama, Peru, Switzerland, Uruguay, Venezuela, etc.¹

Moreover, an increasing number of Constitutions promulgated in recent years include clauses expressly guaranteeing freedom of association, e.g. the Constitutions of Mexico (1917), Brazil (1946), Cuba (1940), France (Preamble to the Constitution of 1946)², Italy (Draft Constitution), etc.

The formal constitutional recognition of freedom of association involves the following triple guarantee :

1. It affords in the first place a guarantee against any arbitrary act by the legislative authority ; in fact, in view of the authoritative precedence of different legal sources, the right of association, as a constitutional right, could not be questioned by the ordinary law. To make this guarantee fully effective, the Supreme Courts or tribunals instituted especially for that purpose have, in certain countries, been endowed with the power to decide whether laws are in conformity with constitutional principles and to declare void any law which does not so conform.

¹ Cf. I.L.O. : *Constitutional Provisions concerning Social and Economic Policy* (Montreal, 1944).

² Cf. *International Labour Review*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1946, p. 364.

But even in those countries where there is no judicial control with regard to the conformity of laws with the Constitution, the legislature could not act in a manner contrary to the Constitution without thereby contravening the fundamental principles governing social relations.

2. The constitutional guarantee of the right of association also protects occupational organisations against arbitrary acts on the part of executive authority.

The ordinary courts or administrative tribunals, as the case may be, have the right to declare void any regulations, orders or administrative decisions which may be contrary to the fundamental law.

3. Finally, the constitutional guarantee of the right of association applies to all social categories without distinction, to workers as well as to employers, to persons carrying on a liberal profession as well as to civil servants, to women as well as to men, to foreigners as well as to nationals.

Special Régime Governing Trade Associations

In a number of countries it has been found necessary to pass special legislation to exempt trade associations from the application of the common law with regard to combinations or associations. Thus, for instance, in the United Kingdom, it was necessary to exempt trade associations from the application of the common law restrictions concerning combinations which were in restraint of trade or work. In France, the Act of 1884 concerning trade associations was enacted almost 20 years earlier than that on the general right of association, which dated only from 1901. Thus, freedom of association for trade purposes had been decreed in France before the general right of association was formally recognised by the law.

But, more generally, the purpose of any special legislation is to endow trade associations with a status which is more appropriate to the part which they have to play in the economic and social field. Special laws concerning trade associations have been enacted in the great majority of countries, for example, Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, France, India, Iran, Iraq, Mexico, New Zealand, Nicaragua, Peru, the Union of South Africa, the United Kingdom, the United States, Venezuela, etc.

The object of such special legislation concerning trade associations is to give precise definition to the rights of those associations, which the administrative and judicial authorities are thereby bound to respect.

In the following pages a brief description will be given of the scope of the provisions relating to the constitution, functioning and dissolution of trade associations and of federations and confederations of such associations.

Constitution of Trade Associations.

The provisions concerning the constitution of trade associations relate particularly to the objects which such associations may legally pursue, to the scope of application of the regulations concerning trade associations and to certain formalities which must be satisfied by trade associations at the time when they are established.

The objects of trade associations. The definition of the objects of trade associations varies considerably from one country to another and reflects, to a certain degree, the actual stage reached in the evolution of syndicalism.

In certain countries employers and workers have the right to form associations which have "exclusively" for their object "the study and defence of their economic and social interests". In other countries, the law does not limit the objects of trade associations to the economic and social field, but provides in general terms that employers and workers may establish associations for the protection of their interests.

In the United States, the National Labor Relations Act (Wagner Act) 1935¹, defines a labour organisation merely in the following general terms: "Any organisation of any kind, or any agency or employee, representation, committee or plan... which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, etc..."

In the United Kingdom, the law refers simply to its constitution when giving the trade union "power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its Constitution".

In France, the object of industrial associations is limited to that of "studying and defending economic, industrial, commercial

¹ L.S. 1935 — U.S.A. 1.

and agricultural interests", but the recognition of the right of the industrial association to represent the entire occupation or industry has become established jurisprudence.

This representative character of the trade association is particularly demonstrated by the Czechoslovak law concerning the single trade union organisation. Under that law, the single trade union organisation has the duty of collaborating in the construction of the popular democratic Republic to ensure the rights of the workers and to protect their social, economic and cultural interests.

But, as a general rule, it is left to the trade associations themselves, inasmuch as they are associations voluntarily formed, to define their objects in the constitutions and rules which they prescribe for themselves in full autonomy. Naturally, freedom of association — like any other freedom — must exist within the limits of the law and of public order. In other words, any association having the object of committing unlawful or immoral acts or seeking to endanger the integrity of the national territory or use illegal means to alter the constitutional forms of Government, would be unlawful and could not, therefore, invoke the principle of freedom of association. This limitation, implicit in any law guaranteeing a liberty, is, in general, expressly referred to in the laws governing trade associations. However, according to the new Brazilian Constitution, any association is prohibited which is contrary to the democratic régime established by the fundamental law.

In several countries the political activities of trade associations are subjected to certain restrictions (for instance, in Colombia, Cuba, Ecuador, Egypt and the Lebanon). In Argentina, trade associations are forbidden to accept subsidies from national political organisations, or from foreign or international organisations.

At the present time, a number of countries have repealed the restrictions concerning the political activity of trade associations. The evident reason for this is that it is impossible to draw distinctions between purely economic and social activities and activities of a political nature.

Persons within the scope of the regulation. The laws concerning trade associations sometimes define precisely the persons to whom such regulations shall apply. However, in those countries in which the principle of freedom of association is recognised by the Constitution, such definitions signify merely that only the

persons specified by the law may form trade associations, within the meaning of such regulations, whereas other persons, although not coming within the scope of application of the special advantages prescribed by the law governing trade associations, nevertheless remain free to form associations according to the ordinary law.

Certain legal systems exclude civil servants, for example, from the application of the right of association, as, for instance, those of Chile, Cuba, Egypt, etc. In declaring civil servants to be thus excluded, the legislature actually intended to debar them from the right to strike and not from the right of association. This is particularly well illustrated in the case of France, where, being unable, under trade union law, to form trade unions in the proper sense of the term, civil servants formed common law associations which have been recognised by the State, and which, moreover, became affiliated to the central trade union organisations. The Act of 19 October 1946 legalised this situation by according to civil servants the right of association in the same way as it was accorded to employers and other workers. During the parliamentary discussions which preceded the passing of this enactment, it was agreed that it was desirable to draw a distinction between the right of association, on the one hand, and the right to strike, on the other, these two questions not necessarily being related. It follows that the recognition of the right of association does not imply a recognition of the right to strike.

A similar problem arose in the case of certain other categories of workers, particularly agricultural workers. In their case again, it is not a question of deciding whether they should or should not enjoy the right of association but whether the general law on trade associations should also apply to them. In certain countries, as, for instance, Brazil, Venezuela, etc., special regulations have been decreed with regard to agricultural workers.

It may be recalled, in this connection, that the Right of Association (Agriculture) Convention provides that every States Member ratifying the Convention should undertake to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Measures regarding publicity. The majority of legal systems prescribe certain formalities which trade associations must satisfy before they are constituted, such as registration or the filing of

copies of their constitutions and rules. This is the case in Argentina, Australia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, France, India, Mexico, the Netherlands, New Zealand, Peru, Portugal, the Union of South Africa, the United Kingdom, certain States of the United States, Venezuela, etc.

In several countries, registration is purely optional (for example, in the United Kingdom and the Netherlands), but more generally it is compulsory.

By such regulations, the legislature seeks to give a certain amount of publicity to the actual establishment of the trade association in order to enable the authorities to verify its identity and its legality but does not make the establishment of the trade association subject to previous authorisation. This intention on the part of the legislature is reflected clearly in the texts of the majority of the laws which simply refer to the " filing " of copies of the constitutions and rules. Frequently, the law expressly declares that the persons concerned have the right to form associations without previous authorisation (for instance, in Argentina, Bolivia, Cuba, India, Iran, etc.).

It follows that if the filing of copies of the constitution and rules is compulsory, registration is a matter of right and, if the competent authority should refuse to accept registration, the trade association may apply to a tribunal whose decision shall be substituted for that of the defaulting authority (for instance, Egypt, Mexico, Venezuela, etc.).

In very rare cases, the existing legal system still provides that the trade association must obtain previous authorisation before it is formed. In China, the Trade Union Act of 1943¹ contains a provision to this effect.

The Lebanon Labour Code of 1946 also provides that a trade association may not be formed without the authorisation of the competent Minister. Finally, in Portugal, employers' associations are formed at the instance of the Government, while trade unions cannot be established without previous Governmental authorisation.²

Functioning of Trade Associations.

Under a régime according freedom of association, it is the constitution and rules of the trade association which govern, in

¹ L.S. 1943 — China 6.

² L.S. 1933 — Port. 6.

full autonomy, its internal structure, its organisation, the method of election of the officials, their competence and their administration ; the constitution and rules also define, in full freedom, the aims and policy of the association and the rights and obligations of the members.

To ensure their efficient functioning, legal systems generally provide that trade associations should provide themselves with a constitution and rules and establish certain machinery, etc. But such provisions are of a purely formal kind, as it is for the associations themselves, by virtue of their autonomy, to give full effect to them.

In several countries the laws concerning trade associations also impose upon them the obligation of furnishing certain information to the authorities with regard to the composition of the executive, the number of members, etc. These provisions have the same object as that already mentioned in connection with the registration of trade associations, *i.e.* that of publicity.

Under other legal systems and particularly those of some of the Latin-American countries, certain labour authorities, generally labour inspectors, have the function of exercising supervision over the activities of trade associations. The object of this supervision is to ascertain whether the trade associations conform effectively to constitutional or legal provisions, and whether they administer their funds in accordance with legal regulations. Such measures are frequently enacted as a result of the anxiety of the legislature to give practical assistance to inexperienced organisations. They are designed to prevent any bad administration which might cause irreparable harm to the trade association. If the measures are applied in this spirit, they may make a real contribution to the consolidation of a syndicalist movement in its early days. But if the contrary is true, there is ground for fearing that they may result in a limitation of the autonomy of trade associations.

Provisions of this kind are found among the laws in force in several of the Latin-American Republics, China, Egypt, Iran, Iraq, India and the Lebanon. In Portugal, both employers' associations and trade unions are placed under the control of the State.

In those countries in which syndicalism has been firmly established for many years, there is no provision allowing intervention of this kind on the part of administrative authority. In Australia and New Zealand, the laws concerning conciliation and arbitration

impose certain obligations on trade associations in return for the advantages offered to them by the law, but the associations remain entirely free to bring themselves within such regulations or otherwise.

Compulsory Dissolution of Trade Associations.

Where the law prescribes certain conditions of substance and of form which trade associations are bound to satisfy, it also makes provision with regard to the dissolution of trade associations which cease to fulfil such conditions (*e.g.*, in France). In other countries a trade association may be declared to be dissolved if it commits a breach of the provisions of the penal code (*e.g.*, in Egypt, Iran).

No provision is made for such an eventuality, either in the countries in which trade associations are governed by the ordinary law, as in the Scandinavian countries, or in Australia, Canada, Ecuador, the United States, Mexico, New Zealand, the United Kingdom, Poland, Czechoslovakia, the Union of South Africa, etc. The view taken in those countries is that a punishable or criminal act should be imputed only to the person who commits it.

In several countries the decision relating to the dissolution of a trade association is within the competence of the executive authority (for instance, Bolivia, Chile, China, the Lebanon). More frequently, however, the legislature accords to trade associations, in the same way as to other organisations, the guarantees of ordinary judicial procedure. In such cases the trade association which has been subjected to dissolution by administrative order has the right to apply to the courts to set aside the decision taken (for instance, Egypt, Venezuela, etc.). But, as a general rule, only the courts are competent to decree the dissolution of an association (*e.g.*, France).

Federations and Confederations of Trade Associations.

While recognising the right of workers and employers to establish trade associations in full freedom, the law has sometimes subjected the formation of federations and confederations of associations to certain supplementary conditions, and has prohibited the affiliation of trade associations with international organisations.

Up to the present, these restrictions have been repealed in the majority of countries. The guarantee of freedom of association

implicitly includes the right of employers and workers to choose the form of organisation which is most convenient to them. It implies, therefore, not only the right of employers and workers to form trade associations, but also the right of such associations to establish federations and confederations.

The majority of legal systems expressly guarantee this right by stipulating, for instance, that the provisions governing the constitution, functioning and dissolution of trade associations shall apply *mutatis mutandis* to federations and confederations of associations (for example, China, Cuba, Iran, Mexico, Nicaragua, etc.). The provisions restricting the freedom of trade associations to affiliate with international organisations have also been repealed in the majority of countries.

In Portugal, however, neither employers' associations nor trade unions may adhere to an international organisation or send representatives to international congresses without the express consent of the authorities.

Privileges of Trade Associations.

It has been observed that a large number of legal systems make the establishment of trade associations subject to certain formalities being satisfied, in particular, registration or filing of constitutions and rules. Having satisfied these formalities, trade associations are endowed with civil personality, which entitles them to acquire and hold property, to contract and to sue in civil actions, in the same way as an ordinary individual possessing full legal capacity.

The accordance of personality involves *per contra* civil responsibility, in other words, the trade association is bound, to the extent of its assets, by contracts entered into on its behalf.

The full and rigorous application to trade associations of the common law principles of civil liability might involve serious consequences affecting the very existence of such associations. Therefore, certain countries have endeavoured to mitigate these consequences. Laws enacted in the United Kingdom and in the greater part of the Dominions have conferred on trade associations complete civil immunity in respect of lawful labour disputes. French legislation and many legal systems which have followed its example have provided that execution may not be levied on certain essential portions of the assets of associations.

In the United States, a similar result was obtained by the Norris-La Guardia Act of 1932¹, restricting the use of injunctions in connection with labour disputes.

At the present time trade associations possess legal personality in the majority of countries, while the question as a whole has lost much of its interest. Indeed, by mere force of circumstances, those countries which made no provision for the attribution of moral personality to trade associations have been obliged to accord, in the field of social relations (and especially with regard to collective agreements, conciliation and arbitration), as a purely *de facto* measure, the same rights to trade associations as are conferred on recognised associations. Moreover, the conception of the most representative trade association is now beginning to replace that of the recognised association.

This conception results from the belief that the regulation of social and economic relations should be based on powerful trade associations which are truly representative of the interests concerned. Hence, the law endeavours to confer on the most representative trade associations — the best equipped associations — powers concerning the regulation of conditions not only in respect of their members but in respect of all persons belonging to the occupation or to the industry.

There will be occasion in the other portions of this report to make reference to the many applications of this conception, not only in the field of fixing wages and conditions of employment, but also with regard to the participation of trade associations in the preparation and application of social and economic legislation.²

Admittedly, the law, by endowing certain organisations in this way with a representative authority extending beyond the orbit of their members, has, perforce, made a choice between the trade associations concerned. But, inasmuch as the autonomy of trade associations in relation to the State is safeguarded, and as the employers and workers remain free to choose the trade association to which they wish to belong, this choice is in no way arbitrary, because it applies, as it were, the democratic principle of majority representation to the field of social relations.

¹ L.S. 1932 — U.S.A. 2.

² See below, Collective Agreements, pp. 59 *et seq.*

Protection of the Right to Organise and to Bargain Collectively

One of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form associations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements. But this object would be frustrated if the parties themselves were able to question the exercise of the right of association or if they refused to enter in good faith into negotiations with a view to the conclusion of collective agreements.

Particular point has been given to this in the "findings and policy" clause in the United States National Labor Relations Act of 5 July 1935¹:

The denial by employers of the right of employees to organise, and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce...

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organised in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry, and by preventing the stabilisation of competitive wage rates and working conditions within and between industries.

The recognition of freedom of association by the State should therefore involve as a corollary the recognition of trade unions by the employers. In certain countries, especially in the United Kingdom, this recognition has been more or less spontaneously acquired in view of the particularly strong position of the trade unions, on which the law confers immunity with regard to penal offences and civil immunity in connection with labour disputes, and which are given indirect support as a result of the establishment of minimum wages in "unorganised" industries and trades and in agriculture.

In other countries, this recognition is the result of agreements of national application concluded between the central organisations

¹ L.S. 1935 — U.S.A. 1.

of employers and workers : the September Agreement of 1899 in Denmark, the December Compromise of 1906 in Sweden, renewed and extended by the Agreement of 1938, the National Convention of 1935 in Norway. Reference may also be made to the 1936 agreements concluded in France (Matignon Agreement) and in Belgium. By virtue of these agreements the two parties undertake to respect freedom of association, to base their mutual relations on a system of collective bargaining, and to have recourse to conciliation and arbitration in the event of labour disputes.

In other countries, the law has intervened to prohibit both acts directed against workers who are members of trade unions (such as anti-trade union clauses, discriminatory acts and reprisals of any kind taken against members and officials of trade unions) and acts directed against the trade unions themselves (such as the refusal to recognise trade unions and the refusal to enter into negotiations with them, the creation of company unions under the domination of the employer, etc.).

In Australia, New Zealand and the Union of South Africa, this protection results from the laws concerning conciliation and arbitration. In a large number of Latin-American Republics, it is provided by clauses contained in the labour codes or in the laws governing trade associations (Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua and Venezuela).

Protection is afforded by laws concerning labour contracts or collective agreements in Finland, France, the Netherlands, etc.

Finally, in a large number of countries, for instance, the United States, Canada, Belgium, Luxembourg, Sweden, China, etc., freedom of association is guaranteed by special legislation.

This brief survey demonstrates that, in the majority of countries, either by general agreements concluded between organisations or by custom which has become firmly established as the result of collective agreement, or alternatively as the result of legislation, the protection of the right of association is now ensured, in respect both of the wage-earner and of the trade union itself, against any prejudicial act on the part of the employer.

In the following pages an analysis will be made of the measures taken to give effect to this protection and to ensure the respect of the right of association and the right of collective bargaining.

PROTECTION OF THE RIGHT OF ASSOCIATION OF INDIVIDUAL WORKERS

Certain legal systems seek, by the application of a very general formula, to make the protection of freedom of association as comprehensive as possible.

Thus the Belgian Act of 24 May 1921¹ guarantees "freedom of association in all spheres", enunciates expressly the validity of the trade union agreement, and represses by penal sanctions any attacks on freedom of association by means of illegal pressure or through the medium of the labour contract.

By the French Act of 23 December 1946 on collective agreements², national agreements — agreements with a more restricted field of application can be concluded only within the framework of an already existing national agreement — are bound to contain clauses concerning freedom of association and the freedom of opinion of the workers, as well as conditions of engagement and dismissal, without these provisions being considered as an interference with the free choice of their organisations by the workers.

Legislation or collective agreements generally expressly prohibit those acts which experience has shown to be particularly prejudicial to the workers. In particular, these acts comprise the following: refusal to engage a worker who is a member of a trade union; agreements by which the worker is made to undertake not to belong to a trade union or to withdraw from membership; discriminatory measures taken or pressure exercised against the organised worker during his employment; discharge of the worker because of his membership in a trade union or of his trade union activities. Such acts are prohibited, for instance, in the following countries: Argentina, Australia, Bolivia, Brazil, Canada, China, Costa Rica, Ecuador, Finland, Mexico, New Zealand, the Union of South Africa, the United States, Venezuela, etc.

Particular reference may be made in this connection to the Federal National Labor Act, promulgated in the United States on 5 July 1935, as it has served as a model, not only for a large number of the States of the Union, but also for other American countries. The Act designates as "unfair labor practices" any attempts on the part of the employer in order *inter alia* :

¹ L.S. 1921 — Belg. 2-3.

² Cf. *International Labour Review*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947, p. 287.

1. To interfere with the exercise of the right by the workers to free self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of defending and protecting their mutual interests.

2. To encourage or discourage membership in any labor organization by exercising coercion or pressure against the worker at the time of his engagement or during the tenure of employment. This provision renders illegal the "anti-union clause" among others, and also any discriminatory acts. On the other hand, the law authorises the parties duly qualified to make collective agreements to include in them a clause making the membership of the worker in the contracting trade union a condition of his employment.

3. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act.

PROTECTION OF THE FREEDOM OF ASSOCIATION OF WORKERS' ORGANISATIONS

As already mentioned, in many countries the employers' and workers' organisations mutually recognise each other as the authorised representatives of all the employers and workers respectively and, by so doing, agree to determine wages and other conditions of employment through collective bargaining.

But in the absence of such mutual recognition the trade unions are obliged to resort to economic pressure to force the employer to enter into negotiations with them. Such disputes are particularly serious when they involve any question as to the principle of occupational solidarity and, for this reason, are liable to extend to industry as a whole. It should be recalled in this connection that the basic agreements concluded in the Scandinavian countries, France and Belgium were entered into for the particular purpose of avoiding disputes as to union recognition. It was the same consideration which led to the passing, in the United States, of the Wagner Act of 1935, which was effective in terminating a wave of strikes concerning the question of union recognition.

For the purpose of avoiding such disputes, the legal systems of many countries prohibit the employers from interfering in the constitution and internal life of the trade unions, or from refusing to recognise the trade unions or to negotiate with them.

Under the legislation in force in the United States and Canada

it is considered to be an unfair labour practice, and prohibited as such, for an employer to commit any act with a view :

1. To dominate or interfere with the formation or administration of any labour organisation or contribute financial or other support to it. This enactment amounts in practice to the outlawing of company unions created by the employer or operating under his control.

2. To refuse to bargain collectively with the representatives of his employees.

In Sweden, the machinery of collective bargaining has been dealt with by legislation in very great detail. The Act of 11 September 1936¹ confers the right of negotiation on the employer or employers' association concerned, on the one hand, and on the workers' organisation of which the employees concerned are members, on the other. In other words, the right is granted to institute negotiations respecting the adjustment of conditions of employment and respecting the relations between employers and employees in general.

The possession by one party of the right of negotiation entails upon the other party the obligation to enter into negotiations, which obligation involves the duty : (a) of attendance in person or by an authorised representative at the meeting for negotiations ; and (b) of making, where necessary, proposals supported by reasons for the settlement of the question concerning which negotiations were instituted.

In Mexico, Colombia, Ecuador and Venezuela, any employer who employs wage-earners belonging to a trade union is bound, if the union so demands, to enter into negotiations with a view to the conclusion of collective agreements.

It should also be mentioned that many legal systems give particular protection to the officials and agents of a trade union against any discriminatory or punitive measure which the employer might take against them on the occasion of their engagement or during the period of their employment (Australia, Bolivia, Brazil, China, Colombia, Ecuador, Mexico, New Zealand, Union of South Africa, etc.).

SUPERVISION AND SANCTIONS

In order to make these guarantees effective, legal systems generally prescribe the establishment of certain authorities parti-

¹ L.S. 1936 — Swe. 8.

cularly competent to supervise the application of such legislation, to take cognizance of any breaches which may occur, and to impose penalties.

In cases where the right of association and of collective bargaining has been the object of a general Agreement or a collective agreement, the conciliation and arbitration machinery which the parties have agreed to establish is called upon to settle disputes resulting from the agreement, as, for instance, the Labour Market Board, set up in Sweden under the Agreement of 1938, and the councils and committees prescribed in collective agreements concluded in the United Kingdom and the United States, etc.

Admittedly, such agencies cannot intervene except where the individual rights of the workers are at issue. Where a dispute arises on the question of recognition of a trade union, only an official court has sufficient authority to impose its will.

In Australia, New Zealand and the Union of South Africa the arbitration courts or industrial councils are competent to carry out the necessary enquiries and to impose sanctions.

In those countries which possess labour courts or arbitration tribunals with judicial functions, as, for instance, the Scandinavian countries and many Latin-American Republics, such authorities have the duty of settling disputes.

The Swedish Act of 1936 prescribes, apart from recourse to the Labour Court, a special procedure of conciliation and arbitration. This procedure is to be invoked by the central organisation of employees which is not directly involved in the dispute. By submitting to the procedure of conciliation and arbitration the parties undertake to observe a "truce", in other words, not to resort to strike, lockout or boycott for a certain period. This undertaking has a twofold effect: on the one hand, it binds the associations affiliated to the central organisation and, on the other hand, binds the employer in relation to the association concerned and its members.

In order to settle disputes, the competent authority appoints an independent chairman to preside over the negotiations, or sets up a committee of three persons if the question is particularly important or of an especially complicated character. In the event of the failure of conciliation, an arbitration board may be appointed. The parties are not obliged to accept the proposals made by the board, whose report is published. It is assumed that under the pressure of public opinion neither party will refuse to accept the recommendations made by the board.

In the United States¹, Canada² and Argentina³, National Labour Relations Boards have been established and made exclusively competent to hear all alleged cases of unfair labour practices to which reference has already been made. These Boards are not bound by the formalities of normal procedure. They may make such investigations as are necessary, call witnesses, etc.

In the United States the decisions of the National Labor Relations Board are enforceable only after confirmation by a Federal Court. The latter, after examining the record of the proceedings filed with it by the Board or one of the parties, may modify or set aside the decision of the Board. The award of the Federal Court may be modified by the Supreme Court. In fact, the decisions of the Board, being based on conclusive evidence, are generally confirmed by the Federal Courts.

In Canada, the decisions of the Labour Relations Board cannot be assailed on factual grounds.

In Australia, New Zealand, Belgium, China and Mexico, as well as in various States of the United States of America and in several Canadian provinces, the authorities are competent to impose penalties on the guilty employer.

It should be observed in particular that in Australia and New Zealand the law modifies the ordinary legal rules as to onus of proof in favour of the worker whose freedom of association has been prejudiced. Under the rules of the ordinary law it is for the applicant — in this case the worker — to prove that the discriminatory act which has been committed against him is due exclusively to an anti-trade union motive. But it is clear that the worker could very rarely adduce such proof. Consequently the protection of the right of association might thereby become ineffective in the majority of cases. Australian legislation therefore provides that if, in proceedings brought in respect of an alleged breach of the right of association, all the facts and circumstances constituting such breach are proved with the exception of the motive for the act committed by the employer, the onus falls on the employer to prove that he was not actuated by the motive alleged in the complaint.

In Sweden the Labour Court may impose on the employer the obligation to compensate the wage-earner for any damage which he has suffered.

¹ L.S. 1935 — U.S.A. 1.

² L.S. 1944 — Can. 1.

³ Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 677.

In the United States, the worker who has been prejudiced by an unfair labour practice on the part of the employer has all his previous rights restored to him, in other words, he must be reinstated in his employment if he has been dismissed and may claim payment of the wages which have been lost. The National Labor Relations Board has been particularly effective in its interventions to prevent or punish offences committed against the right of association. According to the annual reports published by the National Labor Relations Board, the number of disputes of this kind is shown to be steadily diminishing, which clearly demonstrates that the employers, or the great majority of them, have accepted trade unionism as a fact and have admitted the principle of collective bargaining.

Collective Agreements

As a result of the protection of freedom of association, employers' and workers' organisations possess the autonomy necessary not only for administering their internal affairs but also for fixing wages and other conditions of employment by means of freely concluded collective agreements. In this way, the parties endeavour to replace the individual labour contract by collective provisions intended to govern the relations between employers and wage-earners bound by the collective agreement.

The practical problem which confronted the legislator was to discover a satisfactory method of ensuring the effective application of wages and other conditions of employment fixed by collective agreements, while at the same time preserving the full contractual freedom of the parties. In the following pages an analysis will be made of a few of the principal methods adopted for the purpose of ensuring that collective agreements shall take precedence over the individual labour contract.

COLLECTIVE BARGAINING MACHINERY

In several countries the State leaves it entirely to the employers' and workers' organisations to negotiate collective agreements. This is the case, for instance, in the United Kingdom and in the Scandinavian countries. It is a characteristic of the system prevailing in these countries that the trade unions and employers' associations have established by mutual agreement certain perma-

ment joint machinery in order to ensure continuity in their mutual relations.

In Sweden, for example, the Labour Market Board, set up in 1936, and given official status by the Basic Agreement concluded in 1938 by the central organisations of employers and workers, is intended to facilitate the application by the associations affiliated to the central organisations of the principles established by a mutual agreement for the purpose of guiding the parties in their negotiations.

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

The success of these methods is largely due to the fact that the employers and workers, freed at an early date from all legal restrictions, have been able to organise themselves as strong unified associations whose representative character is not questioned.

In those countries, on the other hand, where the trade union movement is divided, disputes have often arisen between the rival unions, and the legislature has had to intervene in order to decide which of the unions concerned was sufficiently representative and, therefore, qualified to enter into collective bargaining.

In certain countries, especially in those in which the trade union movement is divided according to religious denomination (for instance, Belgium, France, Luxembourg), joint committees have been set up in which the most representative organisations are represented in proportion to their membership.

In Belgium, joint committees, given legal status in 1945¹, are industrial agencies of national or regional scope, established in each branch of the economy at the request of, or after consultation with, the employers' and workers' organisations concerned. Composed of equal numbers of representatives of workers and employers, under the chairmanship of a Government representative, the joint committees have the functions of considering wages and conditions of employment, encouraging the conclusion of collective agreements, and preventing or settling labour disputes, etc.

¹ L.S. 1945 — Bel. 5.

The representatives of the employers and workers are appointed by the Government, which chooses them from lists of candidates which the representative employers' and workers' organisations are invited to submit. Under the terms of an Order of 27 July 1946, those organisations affiliated to a national organisation including at least thirty thousand members are deemed to be representative workers' organisations. In view of the plurality of the existing organisations, the representation of the workers on the joint committees is arranged in proportion to their actual membership among workers belonging to the branch of activity concerned.

In France, the Act of 23 December 1946 on collective agreements provides for the establishment of joint committees on the plan of the industry and of a Higher Commission for Collective Agreements on the national plan.

These agencies possess, *inter alia*, the following functions :

When so requested by an employers' or workers' trade organisation, the Minister of Labour will convene a joint committee in order to conclude a collective agreement which, in principle, shall cover the whole of an industry throughout the territory ; if the request does not emanate from one of the most representative organisations, the Minister may refuse to give effect to it.

If the joint committee is able to reach an understanding, a collective agreement will be signed. If, on the other hand, no agreement can be reached, the Minister, at the request of the parties, will intervene to help in the solution of the dispute. If no agreement has been reached after a period of one month, a Decree will be issued, after consultation with the employers' and workers' organisations, provisionally fixing conditions of employment in the branch of activity concerned.

The Higher Commission for Collective Agreements has the task of co-ordinating the work of the joint committees and of formulating general rules concerning the drawing up of collective agreements. At the request of the Minister or of the parties concerned, it is to give advice with regard to the solution of labour disputes which may arise in connection with the conclusion or application of a collective agreement. If the parties concerned so request, it may even arbitrate in such disputes.

Finally, the Commission has to consider the probable effects of collective agreements on prices, production and cost of living, and to advise the Minister of Labour regarding the conclusion, renewal and approval of collective agreements, and also regarding

the decrees fixing wages and other conditions of employment in the absence of collective agreements.

The Higher Commission for Collective Agreements is composed of fifteen members, five each representing the Government, the employers and the workers. The employers' and workers' members are appointed on the recommendation of the most representative central trade confederations.

Which are the most representative organisations ?

The Act does not define this term which, as is well known, was taken from the Constitution of the International Labour Organisation.

Various criteria of fact should be taken into consideration, for example, the number of members regularly paying contributions, the independence of the organisations in relation to the employers, the age and experience of the organisations, the patriotic attitude of the organisations during the war, and similar factors. According to the Ministerial Circular of 28 May 1945, " The General Confederation of Labour and the French Confederation of Christian Workers satisfy all these conditions. They and their federations and affiliated unions must still be considered representative unions. " ¹

By a decision taken on 13 March 1947, following the advice of the Higher Commission for Collective Agreements, the Government laid down the conditions to be satisfied, in addition to the general conditions previously mentioned, in order that organisations may be considered to be representative for the purpose of negotiating collective agreements.

By the terms of this decision, organisations whose membership includes 10 per cent. of all the organised persons in one of the occupational categories concerned may participate in the drawing up of the provisions of a collective agreement which are of concern to all the wage-earning categories. Organisations may participate in the negotiation of the provisions of national collective agreements which concern a particular category of wage-earners if their membership includes either 10 per cent. of all organised persons in the whole branch of industry concerned, and 25 per cent. of all the organised persons in the occupational category concerned ; or, 33 per cent. of all the organised persons in the occupational category concerned.

A Supervisory Commission set up within the framework of the Higher Commission for Collective Agreements is competent to assess the representative character of organisations.

¹ Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 680.

In several other countries (for instance, Argentina, Australia, Canada, Mexico, New Zealand, the Union of South Africa and the United States) the law recognises only one organisation as being a representative organisation for the purpose of concluding a particular collective agreement.

According to the Australian and New Zealand Acts concerning conciliation and arbitration, a single organisation, on the basis of the industry and the region, is registered, and thereby obtains the exclusive right of appearing as a party before the arbitration courts. The competent authority is bound to refuse registration of an association if there already exists an organisation to which the members of the new association might conveniently adhere. But in order to become registered, the trade union must furnish satisfactory guarantees that it is ready to accomplish its mission in good faith and to conform with the provisions of the law. The arbitration court may cancel the registration of a trade union if its constitution and rules do not contain adequate provisions to facilitate the admission of new members, or if they impose onerous conditions on the workers, or if they are not observed in good faith, etc.

Similar regulations are in force in the Union of South Africa, where the employers, employers' associations and trade unions are called upon to form Industrial Councils. These Councils, agencies for negotiation and conciliation, are officially recognised provided only that they are sufficiently representative.

In Mexico, also, the registration of more than one trade union may be refused. According to the Argentine Decree of 2 October 1945, the recognised trade unions are exclusively competent to protect the collective interests of the members in relation to the State and the employers. A trade union is recognised only after it has operated for a period of more than six months and if the number of contributory members is sufficiently high. If another trade union can claim a higher number of members than that of the recognised union, the recognition will be transferred. However, account is taken of the energy displayed by the recognised trade union in defending occupational interests. The Secretariat of Labour, which is the competent authority for granting recognition of a trade union, shall, within a time limit of sixty days, issue a decision granting or withholding recognition. If recognition is refused, the trade union concerned may bring an appeal before the executive authority.

In the United States and Canada, the National Labor Relations Boards, in addition to their quasi-judicial functions with regard to

the prevention of unlawful acts directed against freedom of association, also have the power to make decisions concerning the representative character of a trade union.

Under the Labor Relations Acts, the representatives designated for the purposes of collective bargaining by the majority of the employees in the economic unit appropriate for such purposes (undertaking, group of undertakings, sections of the undertaking) are the exclusive representatives of all the employees and therefore competent to conclude collective agreements on behalf of all the employees.

Whenever there is a dispute concerning the representation of employees, the Board holds an investigation. If the investigation still leaves doubt as to the representative character of the trade union, the Board is to organise an election by secret ballot in which all the employees concerned have the right to take part. The trade union which is successful in the election will represent all the wage-earners in the bargaining unit for the purposes of collective bargaining, including those who are not organised or who belong to a rival association.

By thus applying the democratic political principle of majority representation to the field of industrial relations, the countries of North America, through the establishment of a special administration for collective bargaining, have succeeded in greatly reducing, if not in eliminating, the number of inter-union disputes which had in the past occasioned serious losses to the national economy. Moreover, they have created an important precedent which may exercise considerable influence over legislation in all countries confronted by similar problems.

DEFINITION OF THE COLLECTIVE AGREEMENT

In the majority of countries the legal system leaves the associations entirely free to determine the contents of collective agreements, their form, their duration, and, generally, the rights and obligations which they involve (*e.g.*, Belgium, the United Kingdom, the United States, etc.).

However, in an increasing number of countries, the law has adopted the practice of defining those agreements which it will consider to be collective agreements. Legislation enacted before or immediately after the First World War frequently defined as a collective agreement any agreement relating to conditions of employment concluded between an employer, or a group of

employers, on the one hand, and any group of wage-earners, on the other hand (for example, France, Act of 1919). Such enactments have not generally exercised any considerable influence on the development of collective bargaining.

Experience has shown, indeed, that any agreements concluded *ad hoc* between an employer and a group of workers have only a temporary existence. They do not therefore fulfil the purposes of a collective agreement. Hence, the majority of laws which are at present in force, and which contain a definition of the collective agreement, provide that no agreement relating to conditions of employment shall be deemed to have the status of a collective agreement unless it has been concluded on the workers' side by an association (*e.g.*, Australia, Costa Rica, Finland, France (Act of 1946), Mexico, New Zealand, Nicaragua, Sweden, Switzerland, the Union of South Africa, etc.).

COMPULSORY EFFECTS OF COLLECTIVE AGREEMENTS

In the view of the majority of legislators, the surest way to ensure the efficiency of a collective agreement is to endow it with certain compulsory effects. A short analysis follows of the legislation enacted for this purpose.

Non-Derogation from the Collective Agreement

All legal systems provide that individual labour contracts made between members of the contracting organisations shall conform with the stipulations contained in collective agreements. If they do not so conform, they are null and void and are automatically replaced by the corresponding clauses in the collective agreement (for instance, Chile, Colombia, Costa Rica, Cuba, Ecuador, Finland, France, Iran, Mexico, the Netherlands, Norway, Sweden, Switzerland, Venezuela, etc.).

However, as the collective agreement is intended to fix minimum conditions, as was formerly all protective labour legislation, clauses in an individual labour contract which are more favourable to the worker than the corresponding conditions in the collective agreement are allowed to remain in force.

*Application of the Agreement to all the Workpeople
in an Undertaking*

If members of an organisation which is party to a collective agreement work in an undertaking in company with unorganised workers, the question arises as to whether the latter may be employed under different conditions from those affecting the former. Such a situation might prejudice the application of the collective agreement. Hence, the law endeavours to ensure identical conditions for the whole of the workpeople in an undertaking.

On the hypothesis that an employer bound by a collective agreement thereby assumes the obligation to apply the agreement in good faith in his undertaking, it is provided under several legal systems that the employer is bound to observe the terms of the agreement both with regard to his organised employees and with regard to those who are not members of the contracting association (Cuba, Finland, Mexico, Sweden, etc.).

The same result is attained in the United States and Canada by application of the principle that the organisation recognised as representing the bargaining unit concerned (undertaking or section of an undertaking under the control of the same employer) is competent to conclude a collective agreement on behalf of the workers employed in that unit whether they are organised or not. Consequently, the same conditions become applicable to all the workers employed in the same kind of work.

Extension to Third Parties

All the measures to which reference has so far been made have the object of guaranteeing the application of the collective agreement within the limits of contractual law. Consequently, the employer who has not signed the contract or does not belong to the contracting employers' association remains entirely free. By offering to his workpeople conditions of employment less advantageous than those provided by the collective agreement and thereby operating under more favourable conditions than do the competing undertakings bound by the agreement, these employers might jeopardise the very existence of the collective agreement. To prevent such a situation arising, an increasing number of legal systems make provision for the possible extension of the collective agreement to third parties, in other words, to

employers and workers who are not directly bound by it but who carry on their occupations or their business within the limits of its territorial and industrial field of application. This is the case, for instance, in Australia, Belgium, Brazil, Canada (Province of Quebec), Colombia, Costa Rica, Ecuador, France, Hungary, Ireland, Luxembourg, Mexico, the Netherlands, New Zealand, Poland, Portugal, Switzerland, the Union of South Africa, the United Kingdom, etc.

In the majority of countries the extension of collective agreements is made subject to a number of conditions intended to safeguard the legitimate interests of third parties. In the first place, an agreement cannot be extended to third parties except where it has acquired an outstandingly important status in the industry by reason of the fact that it was concluded by the majority of the employers and workers. Thus, in the United Kingdom, Part III of the Conditions of Employment and National Arbitration Order, 1940¹ — a provision which remains in force by virtue of the Wages Councils Act, 1945² — provides that employers' organisations and trade unions representing respectively an important proportion of the employers and workers engaged in a trade or industry in a particular district may settle by the procedure of negotiation or arbitration conditions of employment which are "recognised", in other words, conditions which are generally binding.

Under the French Act on collective agreements of 23 December 1946, collective agreements concluded by the most representative organisations of employers and workers apply *ab initio* to a whole industry or trade throughout the national territory, and their provisions override the relationships created by individual contracts in every establishment included within its field of application. However, the collective agreement must first have obtained the approval of the Minister of Labour, who can only refuse such approval if he is so advised by the Higher Commission for Collective Agreements. The provisions of an approved agreement are, *ab initio*, compulsory for all the workers in the occupations and districts included within its field of application.

Legislation often specifies that a collective agreement which might be extended to third parties must cover the majority of the workers and the majority of the employers who themselves

¹ L.S. 1941 — G.B. 3B; L.S. 1944 — G.B. 3B.

² L.S. 1945 — G.B. 1.

employ the majority of the workers (*e.g.*, Colombia, Mexico, Switzerland¹, etc.).

In the second place, the decision decreeing the extension of the collective agreement is very often taken only after an investigation. Accordingly, the agreement is published and an opportunity thus given to all concerned to submit observations and formulate objections (for instance : Australia, Belgium, Canada (Quebec), Colombia, Luxembourg, Mexico, New Zealand, Switzerland, the Union of South Africa, etc.).

If the objections appear to be well founded, the competent authority may refuse to give effect to the request for extension ; if they do not so appear, the authority declares the collective agreement generally binding and its decision is duly published.

DISPUTES AS TO INTERPRETATION

The purpose of the collective agreement is attained only if its provisions are effectively translated into conditions of employment which are observed in good faith both by the employers and the workers. In the same way as any enactment, an agreement may be violated and the interpretation of its provisions may give rise to disputes. In either of these events, the parties are naturally concerned, above all, that effect shall be given to the agreement in accordance with their intentions. But if they cannot agree on this issue, higher authority frequently intervenes to settle the dispute.

In certain countries, for instance the United Kingdom and the United States, the application of the collective agreement is left entirely to the parties concerned. They supervise the application of agreements in the undertakings and make themselves responsible for the settlement of disputes. Thus, the joint agencies, which, as previously mentioned, have been established in the principal industries in the United Kingdom, have to endeavour to conciliate the parties and may, if necessary, refer the dispute to arbitration. It is only in this latter eventuality that the case may come before the official conciliation and arbitration machinery. In the United States, the majority of collective agreements prescribe special conciliation and arbitration procedure for the settlement of disputes as to interpretation as, for instance, the appointment of Grievances Committees.

¹ L.S. 1943 — Switz. 2.

In a large number of countries, disputes as to interpretation, which are considered to be legal disputes, are within the jurisdiction of the courts and, generally, of special courts, such as labour courts (Norway, Sweden), or arbitration courts (Australia, Denmark, New Zealand, various Latin-American countries, etc.). Nevertheless, the law generally allows conciliation procedure to be applied in the first instance and especially such procedure as has been agreed upon between the parties.

This is particularly true under Swedish legislation.¹ If the collective agreement provides that the parties shall undertake negotiations for the settlement of any dispute as to interpretation of the agreement, the Labour Court cannot intervene so long as those negotiations have not been held. Nor can it intervene if the parties have agreed that the dispute shall be referred to arbitration.

SUPERVISION OF APPLICATION

Legislation in an increasing number of countries (Australia, Belgium, Brazil, France, Mexico, New Zealand, the Union of South Africa, etc.) empowers certain authorities, such as labour inspectors or inspectors appointed *ad hoc*, to supervise the application of collective agreements. Such measures are prescribed especially in those cases in which the collective agreement has been declared generally binding. Indeed, trade associations, being in a sense private associations, cannot intervene in the case of employers and workers who are not affiliated to them.

It may also be mentioned that the staff representatives appointed in several countries, such as the works councils in Poland and Czechoslovakia, and the staff delegates in France, have the right to supervise the application of collective agreements in the undertakings and to inform the labour inspectors of any cases involving the breach of such agreements.

Conciliation and Arbitration

States generally make available to the parties two methods of settling labour disputes : (1) voluntary conciliation and arbitration procedure ; and (2) compulsory conciliation and arbitration

¹ L.S. 1928 — Swe. 3.

procedure. As these two systems are fundamentally different in character they will be considered separately.

VOLUNTARY CONCILIATION AND ARBITRATION

At the outset it should be observed that States generally give preference to the systems of conciliation and arbitration established by the parties by virtue of general agreement or under special clauses included in collective agreements.

But, in the absence of any contractual system of conciliation and arbitration, or in order to supplement any such system, Governments have made official systems of voluntary conciliation and arbitration available to the parties.

Voluntary Conciliation

By means of voluntary conciliation and arbitration the legislature aims to assist the parties in reaching agreement without infringing their freedom of decision. Accordingly, the machinery which it makes available to them should be such — by reason of its composition, procedure and the general facilities which it offers — as to inspire full confidence in the parties.

Conciliation Machinery.

In the majority of countries, the Ministry of Labour, the social administrative authorities subordinate to the Ministry, and especially the services competent with regard to labour relations, have the power, in the event of a labour dispute, of intervening directly between the parties or of calling on independent persons to conciliate the parties (for instance : United Kingdom, Act of 1896 ; France, Act of 1946 on collective agreements, etc.).

In other countries, such as Colombia, Venezuela, etc., *ad hoc* conciliation boards are appointed whose members include equal numbers of representatives of the respective parties, under the chairmanship of a Government representative, who presides over the proceedings and seeks to conciliate the parties, but cannot vote with regard to any decision.

Generally, however, while the *ad hoc* appointment of conciliation boards is permitted, preference is given to permanent institutions. Such institutions offer the advantage of being able to undertake their duties immediately a dispute arises or threatens to arise.

Moreover, they are composed of persons independent of the parties directly involved in the dispute and are, for this reason, particularly qualified to give an objective opinion regarding the matter in issue.

For this purpose legislation prescribes the appointment either of individual conciliators or mediators, or of joint agencies composed of equal numbers of representatives of employers and workers respectively, appointed, as a rule, on the proposal of the most representative organisations.

The first system is employed in the United States, the Scandinavian countries and the Netherlands; the second has been adopted — frequently in conjunction with the first — in Canada, Mexico, the United Kingdom, Switzerland, the Union of South Africa, etc.

Thus, under one form or another, there now exists in the majority of countries permanent conciliation machinery competent to lend its assistance to the parties for the purpose of settling labour disputes.

Conciliation Procedure.

By means of voluntary conciliation efforts are made to persuade the parties to a dispute to resume negotiations under an appropriate procedure and to facilitate the conclusion of an agreement by an objective consideration of their demands.

Intervention of organisations. The trade associations being the parties to the negotiations which have preceded conciliation, it is natural that they should also be associated in the conciliation procedure. Normally, it is the employer, the employers' associations or the trade unions which, through their representatives, initiate the conciliation procedure, make themselves parties to it, and undertake discussions.

Admittedly, according to many legal systems, intervention in the conciliation procedure is not reserved only to the trade associations. The purpose of the legislator is to settle any labour dispute under whatever form it may arise. But if the association is involved in the dispute, it is the association which will appear before the conciliation agency and, in those countries where it is recognised as the qualified representative of the workers or of the employers, as the case may be, it will always have the right to intervene, a right which has been extended under several legal systems to individual labour disputes (for instance, France).

Formalities of procedure. Although conciliation procedure cannot entirely disregard certain formalities, in order to prevent any arbitrary action such formalities are generally reduced to a strict minimum.

In the first place, the legislator seeks to persuade the parties to resume their interrupted negotiations as rapidly as possible. In view of the voluntary nature of the procedure, it behoves the more diligent party to have recourse to conciliation and where, as is the case under certain legal systems (in the Scandinavian countries for example), the conciliator is empowered to intervene on his own initiative, the procedure is nevertheless instituted only with the consent of the parties.

However, in several Latin-American countries, once the procedure has been initiated by one of the parties, it cannot be frustrated by the other. The parties, and in particular the workers, have the obligation to submit to the conciliating authority as well as to the other party, within a brief period specified by the law, their statement of demands indicating precisely the reasons and circumstances underlying the dispute. The presentation of the statement of demands imposes on the other party an obligation to make reply. In order to expedite the procedure, the law frequently prescribes minimum periods for the summoning of the parties, the hearing of witnesses, the production of proofs, etc.

In the second place, in order that the conciliation agency may form an objective opinion as to the dispute, it is authorised by the law to summon witnesses, to make investigations on the spot, and, frequently, to call for production of the employers' records and of any other documents necessary for the consideration of the facts. According to many legal systems, that of Canada for instance¹, the investigation constitutes the essential part of the conciliation procedure. Generally, the parties are entirely exempt from any costs in respect of the procedure.

Agreements by conciliation. If the parties arrive at an understanding, the conciliation procedure is terminated by the conclusion of an agreement equivalent to a collective agreement.

If the contrary is true, the agency for conciliation submits to the parties concerned certain proposals for the settlement of the dispute, but it is a logical consequence of voluntary conciliation that the parties remain entirely free to accept or to reject such proposals.

¹ L.S. 1925 — Can. 1 ; L.S. 1944 — Can. 1.

If the parties accept the proposals made by the agency of conciliation, they undertake thereby to give effect to them in the same way as to the clauses of freely concluded collective agreements. Many legal systems expressly provide that agreements reached through conciliation are to possess the status of collective agreements.

If the attempts at conciliation fail, the parties resume their full freedom of action, but it is frequently provided that the conciliation agency shall publish a report on the history of the dispute, indicating the proposals and objections put forward by the parties, the result of the enquiry and the recommendations made for the settlement of the dispute. In this way, the law seeks to keep the public objectively informed in order that it may itself form an opinion concerning the dispute and so persuade the parties, under the pressure of this public opinion, to settle the dispute amicably in spite of the failure of conciliation.

Prevention of Strikes or Lockouts.

By facilitating the conclusion of a collective agreement by means of voluntary conciliation, the law seeks to prevent, as far as possible, strikes and lock-outs.

In a number of countries (the United States, the United Kingdom, for instance) this question is generally left to the parties themselves, who often provide in their constitutions and rules that there should be no recourse to strike or lock-out so long as the procedure of conciliation is being followed or until the expiry of a certain period.

Several legal systems make it obligatory for the parties to give notice to the conciliation agency and to the other party of any intention to suspend work (Sweden for instance).

According to the Mexican Labour Code, and to several Latin-American systems which are modelled on it, strikes and lock-outs are subjected to legal provisions, in the sense that they are not considered lawful unless they are called for legitimate purposes, are supported by the majority of the persons concerned and have been notified to the other party beforehand. The conciliation agency adjudicates as to the legality of the strike or lock-out and, if it has been declared legal, the parties are free to resort to it.

In those countries which legislate in this way regarding strikes, particular protection is given to the workers.

In Mexico, if the strike has been declared lawful, the authorities are bound to ensure that the rights of the strikers are respected,

to protect them and to support them in their efforts to make the strike effective.

Moreover, the strike can only suspend and not terminate the labour contract. It follows therefore that when work is resumed, the workers are reinstated in their former employment and retain all the rights and privileges (seniority, pension rights, etc.) which they had acquired before the cessation of work.

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

On the other hand, in order to ensure the effective functioning of conciliation machinery, other legal systems make the parties refrain from any economic pressure during the conciliation procedure or until after a certain period of time. This is the case, for instance, in the United States (railways), Canada, Union of South Africa and several Swiss cantons. Similar provisions have recently been adopted in the United States (in certain States), in order to prevent strikes and lock-outs in the public services or public utilities.

In all countries the parties are bound to resume work as soon as the conciliation procedure has ended in the conclusion of an agreement or in the adoption of conciliation proposals. In fact, the conciliation has attained its object : a new collective agreement now governs the relations between employers and workers.

Voluntary Arbitration

The laws which establish conciliation procedure generally offer to the parties, in addition, the opportunity of settling labour disputes by voluntary arbitration, either in lieu of or after the failure of conciliation.

The characteristic feature of voluntary arbitration is the fact that the parties make a reference to one or several independent persons, or arbitrators, asking them to settle the dispute by an award. The arbitration being voluntary, the parties remain free to have recourse or not to this procedure, but if they do so by mutual agreement, they thereby undertake, by virtue of the submission to arbitration, to accept in advance the arbitral award. In this way, the parties who cannot agree on the actual facts in the dispute mutually agree on the method to be followed for its settlement and may conduct their negotiations in the presence of another party without having recourse to direct action.

If arbitration is provided by agreement, it is for the parties to determine the methods of procedure and to appoint the arbitrator. Very frequently, however, the legal system makes permanent arbitrators available to them (the United Kingdom, Sweden, for instance), or provides for the appointment of permanent arbitration commissions or tribunals, including employers' and workers' representatives appointed on the proposal of the most representative organisations (*e.g.*, the Industrial Court in the United Kingdom, the conciliation and arbitration boards in Mexico and other Latin-American countries, the conciliation and arbitration offices in Switzerland, etc.).

The rules of arbitration procedure, where arbitration is instituted by law, resemble those of judicial procedure. However, in this case also, the arbitrator has to endeavour in the first instance to persuade the parties to conclude an agreement and it is only where this new attempt at conciliation meets with no success that he should make an award.

The arbitral award has no binding force if the procedure has been invoked at the request of one party only (United Kingdom), but, on the other hand, it binds parties who by previous agreement have referred the dispute to arbitration. However, under certain systems (for instance, Brazil, China, Mexico, Peru), the award is compulsorily binding even where the arbitration procedure has been invoked by one party only.

The restrictions on the freedom to declare a strike or lock-out imposed on the parties by several legal systems during the procedure of conciliation apply, even more strongly, in the case of arbitration procedure; frequently, any reference to arbitration is made subject to an undertaking by the parties to refrain from any kind of direct action or to resume work which has been suspended.

COMPULSORY CONCILIATION AND ARBITRATION

Under the systems of voluntary conciliation and arbitration the law merely offers to the parties concerned a procedure which enables them to reach agreement where their direct negotiations have failed.

Under the systems of compulsory conciliation and arbitration, on the other hand, strikes and lock-outs are prohibited.

A system of compulsory arbitration was introduced both in

Australia¹ and in New Zealand² in the early years of the present century. Such a system is based essentially on the idea that, in return for their associations abandoning methods of direct action (such as recourse to strike or lock-out), the workers shall enjoy a certain standard of living guaranteed by the law.

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

Registered organisations have both the duty and the exclusive right of negotiating with regard to rates of wages, which cannot in any event be lower than the indispensable minimum, as well as with regard to other conditions of employment.

If the parties fail to conclude a collective agreement, the arbitration court fixes the wages and conditions of employment by an arbitral award binding upon the parties. The court may declare that the award shall constitute a common rule for the industry, in other words, that it is binding on all concerned. It may also give the authority of an award to the provisions of a collective agreement and so make them generally binding. Strikes and lock-outs are prohibited and the observance of awards and collective agreements is ensured by penal provisions.

Compulsory arbitration under one form or another was imposed also as a war-time measure in the United States, the United Kingdom and Canada. The reason for this was that wage control appeared to be a necessary corollary to price control. Both the United States and Canada have returned to the system of free collective bargaining while in the United Kingdom compulsory arbitration has been temporarily retained. But, in fact, it is the employers' and workers' organisations which themselves assume the responsibility for fixing wages and other conditions of employment by means of freely concluded agreements.

A similar problem has arisen, following the cessation of hostili-

¹ L.S. 1928 — Austral. 2 (Commonwealth); 1930 — Austral. 11; 1934 Austral. 15.

² L.S. 1925 — N.Z. 1; 1932 — N.Z. 1; 1936 — N.Z. 1 and 7; 1943 — N.Z. 3.

ties, in those countries which were devastated by the war. The difficulties of economic reconstruction make it indispensable to exercise a certain amount of control over the national economy as a whole, and in particular over prices and wages. This is the case, for the time being, in France, Belgium, Norway, Finland, the Netherlands, Poland, Czechoslovakia, China, etc. These measures are no doubt temporary ; but for the moment, all those countries are unable to return to a system of free collective bargaining without endangering the unstable equilibrium of their economies.

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

Co-operation between the Public Authorities and Employers' and Workers' Organisations

The continued development of the organised movements of employers and workers, the extension of social and economic legislation and the establishment of very large social and economic administrative services gave rise, before the war, to a problem with regard to the rational organisation of co-operation between the public authorities and employers' and workers' organisations, the principle of which has already been given concrete form on the international plan by the creation of the International Labour Organisation.

During the war, particularly great opportunities for co-operation became apparent and, in fact, the majority of the countries involved in the conflict found it necessary to associate the organised movements of employers and workers very closely indeed with the administration of the war economy. When the war ended, a tremendous task of social and economic reconstruction confronted the Governments of those countries which had been devastated, a task which could not be successfully accomplished without the active assistance of the organised forces of production and labour.

Many European countries have found it necessary to establish, at least temporarily, a more or less general control over the whole of their national economies. The serious shortages of supplies, raw materials, means of production and exchange have necessitated an inventory of their resources and their requirements, and the

drawing up on the basis of such inventory a plan for reconstruction and development of the national economy. Certain countries have also nationalised their basic industries.

In order to accomplish these tasks, the Governments and parliaments have had to call on the workers' and employers' organisations because, in the last analysis, the realisation of the reconstruction programme depended, to a large extent, on their direct assistance. Accordingly, the very status of trade unionism within the State has been fundamentally transformed. The trade unions became convinced that the improvement of the standard of living and general conditions of existence of the workers was directly related to increase in production and in the output of labour. Consequently, they have voluntarily abstained, in several liberated countries, from regular recourse to direct trade union action for the purpose of enforcing a general rise in wages which, in view of the conditions of shortage prevailing in their countries, would have led inevitably to inflation and economic chaos. But, on the other hand, they have obtained the right, to an extent never realised in the past, to participate in the organisation and administration of economic and social life.

As a result of this participation in the responsibility for administering the national economy, the trade unions are able to ensure, on the one hand, that the utilisation of national resources is effective and complete and genuinely directed towards the satisfaction of reconstruction requirements and, on the other hand, that the improvement in the standard of living of the workers shall develop progressively in proportion to the increase in production and productivity of labour.

Admittedly, the problem of co-operation does not arise in quite the same way in those countries which have been spared devastation by the war and which have, therefore, been able to return, on the cessation of hostilities, to a régime of more or less complete economic liberty.

But if the nature of co-operation is directly related to the degree of responsibility which the State itself has to assume in the direction and control of the national economy, it remains none the less true that, under one form or another, the public authorities in the majority of countries at the present time have effectively enlisted the technical experience of employers' and workers' organisations in order to solve the problems with which they are confronted.

In the following pages a brief reference will be made to the more recent applications of the principle of co-operation, first on the plan

of the undertaking, then on the plan of the industry, and finally on the national plan.

CO-OPERATION AT THE LEVEL OF THE UNDERTAKING

The principle of associating the wage-earners with production and of democratising the undertaking by the establishment of agencies representing the staff is as old as social policy itself. But its realisation was for a long time frustrated by opposition on the part of the employer, who feared encroachment by his staff on his powers of management, and on the part of the trade unions, which feared encroachment by the employer on the independence of the agencies representing the staff. Hence, it required the atmosphere of a war to give concrete form to the conception of labour-management co-operation.

During the first World War the experiment of co-operation in the undertakings was tried for the first time on a vast scale. In this connection, reference may be made to the works committees established during the war in Germany, and to the staff delegations appointed in the arms plants in France. In the United Kingdom, the Whitley Committee recommended the establishment of joint production committees, both on the plan of the undertaking and on that of the industry.

In the inter-war period, the recommendations of the Whitley Committee were put into force in the United Kingdom only to a very limited degree (for instance, in the pottery industry, electrical supply industry, municipal transport, the railways, and the public services). The chief reason for this was that the trade unions feared that the joint works committees might be utilised by the employer, as was the case in the United States, as a means of frustrating trade union activities.

Following the termination of the first war, laws concerning works committees were enacted in Germany, Austria, Luxembourg, Norway, Czechoslovakia. Elected by the staff, these agencies were intended to represent the workers in the undertaking in their relations with the employer and to intervene with regard to any questions of a social nature concerning the staff, with the exception, however, of questions regarding the fixing of wages and other conditions of employment, matters which were reserved to the trade unions. These institutions played an important part so long as the trade unions were in a position to support them, but their importance declined under the influence of the

economic crisis of 1930 and they were finally suppressed or deprived of all their real functions in the countries with totalitarian régimes (Germany, Austria).

The Second World War gave new impetus to their development. The importance acquired by the joint production committees set up in the United States¹ and in the British Commonwealth² is well known. Supported by the trade unions, which themselves were associated very closely with the administration of the war economy, the committees were intended to supplement the efforts of the trade unions by making the staff directly interested in the increase of production and improvement of output in the undertakings.

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

Agencies representing the staff now exist, under one form or another, in, *inter alia*, Canada, Finland, France, Hungary, India, Iran, Italy, Luxembourg, Norway, Poland, Rumania, the United Kingdom, Sweden, Czechoslovakia, Yugoslavia, in numerous industries in the Netherlands, in certain industries in Denmark, in Switzerland, and the Union of South Africa. In Belgium, Parliament is considering a draft law concerning works committees. Similar committees have been re-introduced in Germany and Austria. Reference may also be made to the works unions or committees prescribed by the Chilean and Ecuadorean labour codes.

These agencies assume very different forms, from the point of view of structure, methods of organisation and functions. They appear as joint production committees, works councils or committees, staff delegations, etc. In order to assess clearly their real status, a brief analysis of their structure and functions is given in the following pages.

Methods of Co-operation Within the Undertaking

Effective co-operation between the employer and workers in the undertaking can be guaranteed only if it is based upon per-

¹ Cf. *International Labour Review*, Vol. LII, No. 4, Oct. 1945: "Wartime Methods of Labour-Management Consultation in the United States and Great Britain", p. 309.

² I.L.O.: *British Joint Production Machinery*, Studies and Reports, Series A (Industrial Relations), No. 43 (Montreal, 1944).

manent machinery. How is this machinery created ? What is its structure ? How is its operation guaranteed ?

Establishment of Works Committees.

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

In Italy, the management committees set up in 1944 were also the result of agreements concluded between employers and trade unions.

In Norway and Sweden, the system is based upon national agreements concluded between the central organisations of employers and workers. The Norwegian agreement dates from December 1945¹ and the Swedish from August 1946.² These agreements provide that the affiliated associations shall establish, by means of collective agreements, joint works committees in the different branches of economic activity.

In the Netherlands, the Board of Government Conciliators, established under the Decree of 5 October 1945³, has decreed that in a number of collective agreements clauses relating to the establishment of joint committees shall be included, and that they shall have binding force. In Denmark, Switzerland and several other countries, some collective agreements contain similar provisions.

In another group of countries, the view has been taken that only the law could be sufficiently authoritative to ensure continuous and effective co-operation between the employer and workers. This was the case in France (Ordinance of 22 February 1945, amended by the Act of 16 May 1946⁴); Finland (law of 21 June 1946⁵); Hungary (Ordinance of 5 June 1945⁶); the Netherlands (mining industry); Poland (Decree of 6 February 1945⁷); Czechoslovakia (Decree of 24 October 1945⁸).

¹ Cf. *International Labour Review*, Vol. LII, Nos. 3-4, Mar.-April 1946, p. 222.

² *Idem.*, Vol. LV, No. 5, May 1947, p. 425.

³ L.S. 1945 — Neth. 1.

⁴ L.S. 1945 — Fr. 8; 1946 — Fr. 8.

⁵ L.S. 1946 — Fin. 1.

⁶ Cf. *International Labour Review*, Vol. LV, Nos. 3-4, Mar.-Apr. 1947: "Industrial Relations in Hungary", p. 247.

⁷ L.S. 1945 — Pol. 2.

⁸ L.S. 1945 — Cz. 1.

Where the collective agreement is used as a means of establishing agencies representing the staff, it offers the parties concerned greater freedom in choosing the type of organisation which is most appropriate to the particular conditions in the industry. Moreover, the field of application, structure, and functions of these agencies may be adapted to the requirements peculiar to each undertaking. Thus, considerable differences may be observed, not only as between one country and another, but as between one industry and another and even between different undertakings.

On the other hand, if the establishment of the agencies is decreed by law, all the undertakings included within the legislative field of application are placed in the same category. The same is true in the case of national agreements concluded by the central organisations of employers and workers, that is to say, where they are really representative of all the employers and workers concerned (as is the case, for instance, in Norway and Sweden).

Thus, these various regulations provide that in all undertakings of a certain size, employing, for instance, at least 20 wage-earners (Hungary, Poland, Czechoslovakia), 25 wage-earners (Netherlands, Sweden), 50 wage-earners (France), works committees shall be established. As will be seen later, they also prescribe identical rules for the establishment and functioning of the committees, and define precisely their powers and functions.

Composition of Works Committees.

The committees created by the laws or collective agreements adopted during recent years are, for the most part, joint committees, including, on the one hand, the employer or his representative or representatives and, on the other hand, representatives of the workers, the number of whom is determined in proportion to the number of wage-earners employed in the undertaking (for instance, Canada, Finland, France, the Netherlands, Norway, Sweden and the United Kingdom).

The Committee is deemed to be an agency for co-operation, which should enable the representatives of the staff to meet regularly with the employer and to discuss with him all questions of mutual concern.

In Hungary, Poland and Czechoslovakia, on the other hand, the works councils are composed exclusively of representatives of the staff. Although obligatory in undertakings of all kinds, whether public or private, the councils are intended to be an integral part of the national economic organisation. It is their

function, as, for instance, is specified in the Czechoslovak legislation — enacted at the same time as the decrees nationalising industry — to ensure that the economic activity of the undertaking is carried on in harmony with the public economic interest and with the needs of the workers, to co-operate in the management of the undertaking and to co-operate with the public authority.

The method of selecting the representatives of the staff varies according to the method by which the agencies representing the staff are established. If the committee is set up as the result of collective agreement, the parties determine in full freedom the method of selection. It is left to the trade unions concerned to select as representatives of the staff those of their members who are employed in the undertakings covered by the agreement or, in consultation with the employer, to organise an election in the undertaking.

Both legal enactments and national agreements, on the other hand, contain specific provisions regarding the choice of representatives. They are to be elected by secret and direct ballot under the conditions prescribed. It is characteristic of all such regulations that they ensure to the trade unions concerned a paramount influence over the constitution of the committees. Experience has shown, in fact, that works committees are unable to accomplish their mission unless they can count on the support of the trade unions.

Hence, the regulations generally provide that the representatives shall be elected from lists of candidates drawn up by the trade unions concerned or from among the workers in the undertaking who are members of the most representative trade unions. Under certain systems, the representatives of the staff in small undertakings are appointed directly by the trade union (for instance, Poland, Sweden, Czechoslovakia).

Functioning of Works Committees.

Whereas collective agreements leave it to the parties to ensure the functioning of the committees, regulations prescribed on the national scale generally contain certain compulsory provisions intended to ensure the effective functioning of the committees, as, for instance, provisions relating to the regularity of meetings, the procedure at meetings, the relations of the committee with the rest of the staff, its relations with the authorities, in particular, the labour inspectors, etc.

Moreover, these regulations impose certain obligations on the

employer. He is generally obliged to make appropriate premises available to the committee, to allow the members of the committee sufficient time for the carrying out of their duties, and to pay for that time as if it were normal working time. In short, the employer must not only refrain from any act which might impede the functioning of the committee, but must also give it every possible assistance in order that it may accomplish its task.

In a few countries (Czechoslovakia, Ecuador), the employer is obliged to pay over, for the purposes of the works committee, a certain percentage of the net profit of the undertaking.

Very generally, it is further provided that the workers' members of the committees are to be given special protection against any discriminatory acts on the part of the employer, and, in particular, against dismissal on the grounds of their activities as representatives of the staff (for instance, Finland, France, Hungary, Norway, Poland, Sweden, Czechoslovakia).

Finally, efforts are made, to a certain extent, to ensure trade union participation in the functioning of the committees. According to certain legal systems, representatives of the trade union may attend meetings of the committee if the staff representatives so request, or if questions of general interest are to be discussed (France). Any decisions of general concern must be taken by agreement with the trade union (Czechoslovakia). Any disputes arising as to the application of the regulations are referred to the trade associations concerned (Norway, Sweden, Finland, Hungary, for instance) or settled with their assistance (Poland, Czechoslovakia).

The Functions of Works Committees

The functions of works committees are most generally of a social and economic nature.

Functions of a Social Nature.

The committees generally deal with all questions concerning the work and welfare of the staff of the undertaking, always with the exception of wages and other conditions of employment. It has already been observed that the trade unions have hesitated to give their full support to the establishment of works committees because they feared that, on the plan of the undertaking, the agencies representing the staff might be called upon to deal with wages questions, which can be settled effectively only by means

of collective agreements on the plan of the industry. Hence, in order to prevent any such competition which might cause harm to the wage-earners, the regulations prohibit the works committees from interfering in collective bargaining. Where any exception to this rule is admitted, it is understood that the committee may intervene only within the limits provided by the collective agreements themselves (for instance, Poland, France, Czechoslovakia) ; on the other hand, they have the duty of supervising the application of collective agreements, adapting rates of wages to local conditions, and participating in the determination of piece-rates in the undertaking, etc.

Under several legal systems, the committees are not authorised to intervene in labour disputes (for instance, Canada, Czechoslovakia, France, Norway, Sweden. It is deemed that such a function would not be compatible with their co-operative mission. In France, under the Act of 16 April 1946, staff delegates, functioning at the same time as the works committees, have the duty of submitting individual and collective complaints to the employers, and are competent to lay before the labour inspectorate any complaint relating to the application of laws and regulations.

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

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

Certain questions such as safety and health, vocational training and apprenticeship, the creation and administration of social services in the undertaking (canteens, recreational facilities, libraries, day nurseries, sick bays, etc.) enter in all countries within the competence of the production or works committees.

The questions of engagement and dismissal are of close concern to every wage-earner and it is therefore natural that he expects to be consulted on these matters. In a large number of countries, these questions are governed by the laws concerning labour contracts ; in others, they are dealt with by collective agreement.

For instance, many collective agreements concluded in the United States formally recognise the right of the employer to engage, suspend, transfer or dismiss a worker, but also authorise the Grievances Committees to intervene on behalf of any worker who is dismissed and to determine, in consultation with the employer, conditions of advancement, dismissal and re-engagement of the different categories of staff.

Several systems provide that the works committees shall be consulted with reference to the engagement, allocation and dismissal of wage-earners (for instance, Czechoslovakia, Hungary, Poland, Sweden). In France, these questions are settled by national collective agreements and, in the nationalised industries (for instance, gas and electricity), by joint committees, in accordance with the staff regulations prescribed by the legislation decreeing nationalisation.

Functions of an Economic Nature.

The need to increase the productivity of the undertakings and to improve the output of the workers was one of the determining factors in the establishment of works committees and production committees. Hence, their technical and economic functions are today considered as being of particular importance.

In the first instance, it should be observed that all regulations, laws, general agreements or collective agreements providing for the establishment of works committees, confer on them functions of an exclusively advisory kind in the technical or economic field. The actual management is reserved to the head of the undertaking (for instance, express provisions in the French and Czechoslovak legislation).

With regard to the technical side of production, the committees have the functions, *inter alia*, of studying production methods, the organisation and co-ordination of work, the satisfactory employment of manpower, the best utilisation of technical installations and raw materials, and of putting forward any suggestions which may improve conditions of production. The joint production committees in the United States, the United Kingdom and Canada are considered to have attained particular success during the war in their activities in this field.

In order that the committees shall efficiently accomplish their mission, the regulations provide that the employer shall keep the committee informed regarding current methods of production, the results which have been obtained, and new methods which he

is proposing to introduce. He is bound to give consideration to the opinions expressed by the committees and the suggestions which they put forward. If he does not do so, the committee even has the right, under certain systems (Czechoslovakia, Finland, France), to refer the question to the associations concerned, or to the competent authority.

In order to encourage the initiative of the workers, the committee may propose to the employer the payment of reasonable compensation to wage-earners whose suggestions have been effectively utilised (France, Sweden).

In the economic field, properly speaking, precise functions are conferred on the committees only by laws or national agreements (for instance, Czechoslovakia, Finland, France, Hungary, Norway and Poland). The Committees set up by collective agreement generally limit their activities to questions of a social and economic nature. The committees are normally authorised to study any suggestion put forward either by the employer or by the staff with the object of increasing the production of the undertaking and of improving its output. A committee may make recommendations regarding the application of suggestions which have been accepted. According to the French Act, the committee may also make recommendations regarding the utilisation of profits.

In countries such as Poland and Czechoslovakia, which have nationalised their larger industrial undertakings, the powers of the works councils are particularly extensive. They co-operate in the drawing up of the production plan and in its execution and ensure, in particular, that the plan shall be in harmony with the general economic programme of the State. They supervise the execution of the production plan, including the programme of investments of the undertaking. In short, they exercise a certain amount of supervision over the management of the establishment from the technical, administrative and economic points of view.

Similarly, in those countries which have adopted a national plan of economic reconstruction, in the application of which the trade associations participate (for example, in France), the works committees, in co-operation with the trade unions, have also the right to supervise the application of the plan in the different undertakings.

In order to carry out these tasks, the committees have to be given all necessary information by the employer. He must, for instance, keep them regularly informed as to the developments of the undertaking and market conditions. Under the Norwegian

and Swedish agreements, the employer is bound to give such information only on condition that it will not cause him prejudice. In France, the employer must submit to the works committee an annual report of the activities of the undertaking and the plans for the next trading year, and is obliged to keep it informed of the profits which are realised.

In order to be fully aware of the financial position of the undertaking, the committee has the right to see the accounts and balance sheet in all cases where these documents have to be made public, that is to say, in the case of limited liability companies or nationalised undertaking (Czechoslovakia, France, Norway, Sweden).

The French Act gives the committees the right to summon the auditors, to hear their explanations, and, when so doing, to have the services of an accounting expert at the expense of the undertaking. Finally, the French and Czechoslovak Acts confer on the committees the power to delegate one or several of their members to the Boards of nationalised undertakings. Representatives of the staff have the right to be present at all meetings in an advisory capacity.

Naturally, the members of the works committee are bound to secrecy regarding trade matters, but this has been limited by the French Act of 16 May 1946 to questions relating to methods of manufacture.

This brief survey reveals that, in an increasing number of countries, efforts are being made to find a satisfactory solution to the problem of labour-management co-operation within the undertaking. The list of countries which have established agencies representing the staff, either as joint production committees, works committees or works councils or, lastly, as staff delegates, is already an extensive one. Admittedly, the functions which have been conferred upon them differ considerably according to the different methods by which they have been established.

But all the countries which have tried the experiment of establishing agencies representing the staff have become convinced of the usefulness of this method of co-operation, not only for the purpose of improving the working and living conditions of the staff, but also for the purpose of improving productive efficiency.

CO-OPERATION AT THE LEVEL OF THE INDUSTRY

In the chapter concerning collective agreements, reference has been made to the part played by industrial committees in certain countries in the fixing of wages and conditions of employment.

Collaboration in the social, technical and economic fields on the part of the agencies for co-operation established at the level of the industry, either by way of agreement between the parties or on the initiative of the Governments, will be considered in the following pages.

Working Parties or Advisory Bodies

In several countries, the employers' and workers' organisations have agreed, either on their own initiative or under pressure from the Government, to give joint consideration to the problems affecting their industry. In the Netherlands, for instance, they created in May 1945 an agency to which they gave the name of "Foundation", in order to emphasise its permanent nature and private character (Foundation of Labour). Under the auspices of this body, industrial councils have been set up in the various economic branches, each composed of equal numbers of employers' and workers' representatives nominated by the organisations concerned. The functions of these councils are essentially of a social character and aim at ensuring good relations between employers and workers; but the Government also consults the councils on all questions concerning the industry and, in particular, on wages questions.

The working parties set up in several industries in the United Kingdom are due to Government initiative.¹ The President of the Board of Trade, in September 1945, explained the general purpose of working parties as follows. It is necessary for British industry to increase production of goods for the home market and for export. Even before the war, several industries were being outstripped by similar industries in other countries, and the situation became progressively worse during the six years of war. To remedy this position, the various industries would have to be organised and placed on a thoroughly efficient basis, so that the workers might be enabled, so far as possible, to produce a maximum quantity of goods in a minimum time and with a minimum of effort. Hence, the tripartite working parties have the primary function of drawing up a balance sheet of available resources and of formulating a programme.

Each working party consists of three equal groups representing employers, the trade unions and the interests of the general public. The members of the first two groups are chosen from lists drawn

¹ Cf. *International Labour Review*, Vol. LII, No. 5, Nov. 1945, p. 508.

up by the employers' associations and the trade unions respectively; the members of the third group, as well as the Chairman, are appointed by the Government.

Working parties of this kind have been established in 15 industries, among them the pottery, cotton, and boot and shoe industries.

It is interesting to observe that all those working parties which have already published their reports¹ have recommended to the Government that a permanent advisory council, of similar composition to the working parties themselves, should be established in each industry, for the purposes of carrying on research, informing the Government of the position of the industry, and of keeping the industry informed concerning Government policy; in short, to serve as a liaison between the industry and the Government.

In pursuance of these recommendations, the Government has now drafted an Industrial Organisation Bill, intended to generalise the establishment of industrial councils. An advisory council for the engineering industry was formed in February 1947. It is intended to give advice to the competent Ministers on all questions concerning that industry, with the exception of questions concerning wages and conditions of employment, which belong to the field of collective bargaining. The council, under the chairmanship of the Minister, includes equal numbers of employers' and workers' representatives, nominated respectively by the organisations concerned.

In several countries, legislative measures have been passed establishing advisory bodies for all important industries. In France, joint committees have been set up attached to each branch of the Ministry for Industrial Production. They consist of equal numbers of employers, engineers, technicians and supervisory staff, and workers and salaried employees appointed on the recommendations of the most representative organisations. These committees have to be consulted on questions regarding production and distribution of products in the industry concerned. They are also to give advice with regard to price-fixing, quotas of raw materials, etc.

In Belgium, the Government has already laid before Parliament draft legislation concerning the establishment of industrial coun-

¹ *Idem.*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1946: "Collaboration of Employers and Workers with Government Departments in Great Britain", p. 321.

cils, intended to supplement, at the level of the industry, the draft already mentioned in connection with works committees.

It should be observed that the joint agencies already existing in various countries in connection with labour relations, as, for instance, the Belgian Joint Committees or the Industrial Councils in the Union of South Africa, may also be consulted by the Government with regard to the appropriation and application of laws relating to the industries concerned.

Supervisory Bodies

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

For instance, a council for the mining industry was set up in the Netherlands by an Order of 20 June 1945. The council, under the chairmanship of a Government representative and consisting of equal numbers of employers' and workers' representatives, supervises production and distribution of coal, the social and economic administration of the mining industry, and the social security of the workers in the industry. It exercises supervision, in particular, over the management of mining undertakings, industrial combines, methods of production, etc.; it also has the duty of drawing up a miners' charter. In the exercise of its functions it is assisted within the undertakings by works committees and section committees composed of employers' and workers' representatives.

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

The Council consists of an independent chairman and six members appointed by the Minister. The members are appointed

on the basis of their individual capacity and not as representatives of any particular interest. Several of them, however, are bound to be chosen from industrial and trade union circles.

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

In Hungary, the Decree of 9 June 1946 is a measure of general application.¹ In order to increase production and permit a rational organisation of industrial output, the Decree requires the establishment of industrial production committees in each branch of industry and of a national Industrial Production Council.

The Committees consist of two workers' and two employers' representatives; the chairman is appointed by the Government. The two workers' representatives are appointed, one on the proposal of the Council of Trade Unions and the other on the proposal of the trade unions directly concerned. In private industry, the employers' members are appointed in a similar way; in the case of public undertakings, the authorities responsible for the administration and control of such undertakings appoint the employers' members.

These committees may propose to the undertakings and to the occupational organisations concerned the introduction of reforms relating to methods of work, manufacturing processes, standards of output and remuneration schemes. They may, in particular, decide that wages shall be determined according to output. They also have the power to supervise the application in the industry of all the measures adopted. The national Industrial Production Council supervises and co-ordinates the work of the production committees and acts as an appeals court from their decisions.

¹ Cf. *International Labour Review*, Vol. LV, Nos. 3-4, March-April 1947: "Industrial Relations in Hungary", p. 247.

Nationalised Industries

In several countries, the legislature has taken the view that only the nationalisation of certain industries would permit of their recovery. But in taking such decisions, the law has endeavoured in the majority of these countries to associate the employers and workers — and, frequently, the representatives of the public and of the consumers — in the direction of the industry and in the management of nationalised undertakings.

Thus, for example, in Czechoslovakia, France and Poland, employers' and workers' organisations are represented in the agencies of administration, management or supervision, created by the Acts for nationalising industry.

In the United Kingdom, on the other hand, the legislation nationalising certain industries has been based on the theory that nationalised industry, if it is effectively and exclusively to serve the general interest, should be placed under the direction of independent persons who do not represent any particular interests. Hence, employers' and workers' organisations do not participate directly in the management of nationalised undertakings. However, some of the members of the administrative boards are chosen from among the employers and trade union leaders on condition that they abandon their organisational functions when taking up their new posts. Moreover, the representative organisations of employers and workers must be consulted by the administrative board on all questions concerning workers employed in the industry.

It is impossible, within the scope of this short report, to examine thoroughly the whole problem of co-operation between the State and employers' and workers' organisations in the nationalised industries. It must suffice, therefore, taking the coal mining industry as an example, to illustrate the application of the different methods of co-operation adopted in the United Kingdom, France, Czechoslovakia and Poland.

The Coal Industry Nationalisation Act of Great Britain¹ establishes a National Coal Board with the duties of working the coal in Great Britain and of making coal available to consumers in such qualities, quantities and sizes and at such prices as it considers to be in the public interest.

The Board consists of a Chairman and eight other members, who are to be men of recognised experience in public affairs, in

¹ Cf. *International Labour Review*, Vol. LIV, Nos. 3-4, Sept.-Oct. 1946, p. 198.

industrial, commercial or financial matters, applied science, administration or the organisation of workers.

In addition to the National Coal Board, two other agencies are set up for the purpose of safeguarding the interests of the public : the Industrial Coal Consumers' Council and the Domestic Coal Consumers' Council.

The National Coal Board is required to consult the representative organisations of employers and workers for the purpose of concluding agreements establishing and maintaining machinery for : (1) settlement by negotiation of terms and conditions of employment with provision for arbitration in default of such settlement ; (2) consultation on questions relating to the safety, health or welfare of persons employed by the Board, the organisation and conduct of the operations in which such persons are employed, and for matters of mutual interest to the Board and to its employees. The effective application of this co-operation was inaugurated by several conferences which took place under the auspices of the National Coal Board, the National Union of Mineworkers and the National Association of Colliery Managers. In November 1946, the same organisations established a joint body, the National Consultative Council, for the purpose of giving advice on all the questions referred to above.

In France, the Act of 17 May 1946¹ to nationalise mineral fuel placed the administration of the mines in the first place under a central agency, the National Coal Board (*Charbonnages de France*), and secondly, Regional Boards (*Houillères de bassin*) established in each coalfield.

The functions of the National Coal Board is to direct, supervise and co-ordinate the operation of the various mining agencies, to submit for Government approval a plan for coal production and re-equipment of the mines, to advise on import and export schemes, to make proposals concerning fuel prices, to encourage research and vocational training, etc.

The Regional Boards are responsible for the production, processing and sale of coal.

These different bodies are constituted as follows :

The National Coal Board is composed of eighteen persons : six representatives of the State appointed by the Ministers concerned ; six representatives of consumers (three representing industry and three representing domestic consumers, one of the

¹ *Ibid.*, p. 209.

latter representing family associations and two the trade unions), and six representatives of the staff (manual workers, salaried employees, foremen, supervisory staff) appointed on the recommendation of the most representative trade unions.

Each Regional Board consists of nineteen members : six representatives of the National Coal Board, two representatives of consuming industries appointed by the Chambers of Commerce concerned, two of domestic consumers appointed by local councils and two of consumers in general, submitted by the Minister of National Economy, and seven representatives of the different grades of personnel, appointed by the most representative regional trade unions.

The Director-General in each case is appointed by Ministerial Decree after proposal by the Board concerned.

The relationship between the staff and the administration of the mines is established by the Miners' Charter provided for by a Decree of 14 June 1946.¹ The Charter was drafted after consultation with a commission of delegates of the most representative recognised workers' unions ; it takes the place of a collective agreement and contains provisions on engagement and dismissal, wages, allowances in kind, hours of work, holidays with pays and social security. Joint committees established at local, regional and national levels see that the Charter is enforced and settle labour disputes.

In Poland and Czechoslovakia², the administration of nationalised undertakings is entrusted to central and regional agencies. A Director, or a Board of Directors, is placed in charge of each nationalised undertaking.

In Czechoslovakia, the Boards are composed in part of persons appointed by the Government after consultation with the Central Council of Trade Unions and other organisations concerned, and in part by persons elected by the workers in the undertaking. Each Board is presided over by a Director-General, who may, if necessary, veto its decisions and appeal to higher Government authority.

In Poland, the directors of nationalised undertakings are, to a fairly considerable degree, chosen from among the officials of the trade unions.

¹ *Ibid.*, p. 211.

² *Idem*, Vol. LIII, Nos. 1-2, Jan.-Feb. 1946, p. 75.

CO-OPERATION AT THE NATIONAL LEVEL

The extent of co-operation at the national level naturally depends upon the role which the State itself has to play in the organisation of economic and social life. As it would clearly be impossible to make a thorough consideration of such a problem in a few pages, all that can be done within the scope of this report is to call attention to the more recent developments and to describe very briefly the different forms of co-operation on the national plan at present existing in various countries.

Bipartite Co-operation

In several countries the greatest importance is attached to the efforts made by the principal central organisations of employers and workers to produce a direct solution for certain nation-wide problems.

In the United States¹ a conference of the representatives of the main employers' and workers' organisations was convened by the President in November 1945 to seek the most appropriate means for reducing the number and extent of labour disputes. Although the conference was unable to reach definite conclusions concerning all the questions submitted to it, it nevertheless contrived to reach agreement regarding the methods for settling disputes arising out of the interpretation of collective agreements.²

In Sweden, representatives of the Employers' Federation and of the Confederation of Trade Unions set up, in 1936, a Board for the purpose of joint consideration of certain problems affecting the labour market. The work of the Board led to the conclusion, in 1938, of a Basic Agreement which, as previously mentioned³, lays down principles of guidance with regard to labour and management relations concerning collective bargaining, settlement of labour disputes, etc.

By the terms of this Basic Agreement the Labour Market Board was established for the purpose of ensuring permanent co-operation between the two central organisations. During its nine years of existence the Board has adopted a collective agreement concerning the safety of workers in undertakings (1942), an agreement concerning the promotion of vocational training

¹ Cf. *International Labour Review*, Vol. LII, No. 6, Dec. 1945, p. 673.

² See above, p. 68.

³ See above, p. 60.

(1944) and, lastly in 1946, the agreement concerning works councils which has been analysed in a previous chapter.

The Foundation of Labour, set up in 1945 in the Netherlands, to which reference has already been made, is intended to ensure, both on the national plan and on the plan of the industry, permanent co-operation between employers' and workers' organisations. It serves as an agency for promoting collective bargaining and also as an advisory body to the Government.

In 1946, the Government of the United Kingdom reconstituted the National Joint Advisory Council¹, first created in 1939 but replaced in 1940 by the Joint Committee attached to the Ministry of Labour. The Council includes 17 representatives of the British Employers' Confederation and 17 representatives of the Trades Union Congress. It has the function of studying problems of industrial relations as a whole and also in so far as they affect economic problems.

On the basis of the discussions held in the Council, the United Kingdom Government published a White Paper² on the economic considerations affecting relations between employers and workers. In this document, the Government urges, in particular, the need to increase production and output and recommends to this end the extension of the system of joint production committees set up during the war.

Tripartite Co-operation

Tripartite co-operation is carried on either by means of *ad hoc* consultation with employers' and workers' organisations, or through the medium of tripartite agencies, set up as permanent bodies, on which the Government, the employers and the workers are represented.

Ad hoc Consultation of Employers' and Workers' Organisations.

In the majority of countries, the Government or the Parliament invites employers' and workers' organisations to give advice concerning certain social and economic problems, and with regard to the preparation of economic and social legislation. In addition to this traditional method of consultation, several Governments in recent years have convened actual conferences, at which repre-

¹ Cf. *International Labour Review*, Vol. LIV, Nos. 5-6, Nov.-Dec. 1945, p. 369.

² Statement on the Economic Considerations Affecting Relations between Employers and Workers — Presented by the Minister of Labour and National Service to Parliament by Command of His Majesty. London, January, 1947.

sentatives of the Government and representatives of the organisations hold joint discussions regarding certain questions of national importance.

Thus, in Belgium, the Government has on several occasions called a National Labour Conference¹, under the chairmanship of the Prime Minister, which has included, in addition to the Ministers concerned, representatives of the most representative organisations of employers and workers. The Conference has been called upon to give advice to the Government concerning the price and wages policy and other social problems of general importance. Among the recommendations which it has adopted, reference may be made to those concerning the extension of the system of holidays with pay, the institution of a workers' household re-equipment fund and the establishment of works committees, industrial councils and a national economic council.

In France, a National Prices and Wages Conference was held in July 1946 under the chairmanship of the President of the Council. In addition to the Ministers concerned, delegates from the most representatives employers' and workers' organisations took part. The Conference adopted several recommendations concerning the control of prices and wages. The principles formulated with regard to the Government wages policy were subsequently embodied in a Decree of 29 July 1946, concerning the readjustment of wages.

Labour Councils.

Advisory labour councils have existed for many years in several countries, either in the form of national councils with general jurisdiction, or of industrial councils created for certain branches of the economy, such as agriculture, the merchant marine, or, lastly, of specialised councils for particular sections of social legislation such as " safety and health ", " social insurance ", " placement and vocational training of workers ", etc.

Such agencies have recently been established in a large number of countries. Typical examples are, for instance, the councils set up in Belgium (Safety and Health Committees, Superior Safety and Health Committee); in Egypt (Advisory Labour Council); in Finland (Labour Council); in France (National Labour Council); in Iran (Superior Labour Council); in Venezuela (Technical Agricultural Council), etc.

¹ Cf. *International Labour Review*, Vol. LIII, Nos. 5-6, May-June 1946, p. 392.

To illustrate the part played by these councils, a brief description will be given of the methods of functioning of the French National Labour Council.¹ The function of the Council is to study all problems concerning labour and social policy, except social security questions, which fall within the competence of the Superior Social Security Council. It may request the Minister of Labour to have information collected on its behalf, either directly by the Minister of Labour or through the intermediary of other Ministers concerned. All draft labour laws and regulations and legislation with regard to social policy — with the exception of social security legislation — must be submitted to the National Labour Council for an opinion. Parliamentary committees may consult one or several members of the Council on any important questions or on questions with regard to which the Council has made recommendations.

The Minister of Labour is President of the Council, which consists of five Members of Parliament, 18 representatives of employers and 18 of workers, appointed on the nomination of the most representative organisations of employers and workers, six representatives of farmers and six of farm workers, appointed on the nomination of the most representative agricultural organisations, five representatives of independent workers' organisations and the co-operative movement, etc.

The machinery of the Council includes a general meeting, a permanent committee, technical sections and a Secretary-General.

Following the model of the International Labour Organisation, several countries have set up a Tripartite Labour Organisation or a National Labour Conference.

In India, the Tripartite Labour Organisation was set up in 1942.² It includes, in addition to Government representatives, equal numbers of delegates from the representative organisations of employers and workers; its principal machinery consists of a plenary conference and a permanent committee. The Organisation has the function of giving opinions on all industrial questions concerning the country as a whole and, in particular, on the unification and reform of labour legislation. Hence, it has co-operated in the preparation of the new legislation concerning labour disputes; and it is at present considering the reform of existing trade union and factory legislation.

¹ Cf. *International Labour Review*, Vol. LIV, Nos. 1-2, July-Aug. 1946, p. 75.

² *Idem.*, Vol. XLVII, No. 1, Jan. 1943, p. 1.

In Luxembourg a tripartite National Labour Conference¹ was set up immediately after the liberation for the purpose of assisting the Government in its task of economic reconstruction and of co-ordinating all the work for national recovery; its duty is to study the economic and social development of the country and to give advice on proposed social legislation.

Economic Councils.

In a large number of countries the Governments have also set up economic councils to advise the authorities with regard to national economic problems. These councils have to undertake studies and investigations, to draw up a balance sheet of national needs and resources, and to give advice with regard to all proposed laws and regulations of economic importance.

In several countries these bodies are composed exclusively of experts. In the United States, for instance, the Council of Economic Advisers established by the Employment Act of 1946² consists of three experts particularly qualified to assist the President in the preparation of the Economic Report which he is to submit annually to Congress under the provisions of this Act.

In order to fulfil its task, the Council may consult the representatives of industry, agriculture, labour, consumers, etc. A joint parliamentary committee, composed of seven members of the Senate and seven members of the House of Representatives, has the duty of studying the development of production and employment, of examining programmes of economic co-ordination and of guiding Congress when it is preparing related legislation.

The Economic and Social Council in Argentina, the Production Council of Costa Rica and the Chinese Economic Council are, similarly, purely technical agencies in which employers' and workers' organisations are not represented.

On the other hand, representatives of industrial organisations participate in the economic councils set up in Belgium (Economic Co-ordination Committee; a proposed law to establish a national economic council is before Parliament); in Czechoslovakia (Economic Council); in Finland (Economic Council); in France (National Economic Council); in the United Kingdom (National Production Advisory Council); in Greece (Economic Committees); in Norway (Economic Co-ordination Councils); in Rumania

¹ L.S. 1944 — Lux. 3.

² L.S. 1946 — U.S.A. 1.

(Superior National Economic Council); in Venezuela (National Economic Council), etc.

Under Article 25 of the Constitution, the French Economic Council is to examine, in an advisory capacity, proposed Acts and Bills within its competence which are submitted to it by the National Assembly before discussion by the latter; it may also be consulted by the Council of Ministers. It must be consulted on the setting up of a national economic plan for full employment and the rational utilisation of material resources. Of its 150 members, 45 are appointed by the most representative organisations of workers, 20 by the organisations of employers in industry, commerce and handicrafts, and 35 by agricultural organisations, etc.

One of the characteristic features of the development of economic organisations in recent years is that the national economic councils are looked upon as agencies for co-ordination and constitute, so to speak, the apex of a pyramid of agencies existing in the various economic branches and the different geographical regions of the country.

Reference has already been made to the fact that the Hungarian production committees are placed under the supervision of a National Council for Industrial Production. The French Economic Council has to co-ordinate the work of the many advisory committees which have been set up in late years and, in particular, of the advisory committees attached to the Ministry of Industrial Production.¹

In the United Kingdom, also, the National Production Advisory Council is supplemented by Regional Boards and District Committees.

The National Council consists of representatives of the Trades Union Congress and of the British Employers' Confederation, together with the chairmen of the Regional Boards. It is consulted by the Government on general problems of industry.

The Regional Boards consist of a chairman, representatives of the employers and trade unions concerned and representatives of Government departments. They keep the Government advised with regard to industrial conditions within their regions and make suggestions respecting the fuller utilisation of each region's resources in capacity or labour. The District Committees, which

¹ See above, p. 90.

include equal numbers of employers and workers, have to advise the Regional Boards with regard to industrial problems of the districts.

Economic Plans

All this economic organisation naturally acquires increased importance in those countries which have put into effect plans for the reconstruction of their national economies.

Without entering into a detailed examination of this tremendous problem, it may be observed that all these plans seek to establish, on a priority basis according to urgency, certain objectives which the national economy must attain within a specific period (two, four, five years), and to indicate the measures which will enable the different branches of economy to produce a certain amount of goods or perform certain services within the periods prescribed.¹ Such plans have been adopted, for instance, in Argentina, China, Czechoslovakia, France, Poland and Yugoslavia. They are being studied in the United Kingdom and the Netherlands.

These plans vary in character according to "the economic circumstances of the country, its stage of political development, its social structure and its methods of Government".²

Essentially a Government conception, the Argentine Five Years Plan, for instance, is primarily intended to ensure the economic independence of the country by systematic development of its resources and industry. The British plan aims at a certain equilibrium between supplies for home consumption and exports. The French, Polish and Czechoslovak plans have the primary purpose of raising the standard of production in basic industries, modernising their equipment and providing them with the necessary capital and manpower, etc.

In the majority of countries, employers' and workers' organisations are closely associated in the preparation and application of plans for economic reconstruction.

The White Paper referred to above, published by the United Kingdom Government, declares in this connection that "under democracy the execution of the economic plan must be much more a matter for co-operation between the Government, industry

¹ See, for example, for France, *Rapport général sur le premier plan de modernisation et d'équipement* (Commissariat général du plan de modernisation et d'équipement, Paris, novembre 1946-janvier 1947).

² Economic Survey for 1947 — Presented by the Prime Minister to Parliament by Command of His Majesty, London, February 1947.

and the people, than of rigid application by the State of controls and compulsions ”.

In Poland and Czechoslovakia, the preparation of the plan is the task of an inter-departmental agency, the Economic Council, in which the central trade union councils are represented.

In France, it is the task of an authority specially created for that purpose : the Planning Commissariat, assisted by a Planning Council. Similar agencies have been set up in Canada (Province of Saskatchewan : Economic Advisory and Planning Board) ; in Rumania (Superior Council of National Economy for the planning, co-ordination and execution of economic policy), etc.

The most representative organisations of employers and workers are generally represented on the central planning agencies and on the technical and occupational committees which have the task of preparing an inventory of the resources and needs of the different industries and of drawing up programmes for their re-equipment. The application of the plan, once it has been adopted by the Government and Parliament, comes within the competence of the agencies which have co-operated in its preparation, *e.g.* France, Decree of 15 January 1947.

As a result of their close association in the preparation and application of plans for economic reconstruction, employers' and workers' organisations thus participate directly in the actual administration of the national economy as a whole.

CHAPTER III

CONCLUSIONS AND OBSERVATIONS

Object of the Discussion

By giving the title of " Freedom of Association and Industrial Relations " to the question laid before the Conference by the Governing Body, on the invitation of the Economic and Social Council, the Governing Body intended to call the attention of the Conference not only to the problem of freedom of association in the strict meaning of the term, but to the whole tremendous problem of industrial relations. It thus wished to take into account, to the greatest degree possible, the proposals submitted to the Economic and Social Council both by the World Federation of Trade Unions and by the American Federation of Labor which, as indicated in the Introduction, have both referred in their memoranda to the part played at present by the organised movements of employers and workers in connection with the regulation of labour relations and also of social and economic relations.

A few suggestions are submitted to the Conference regarding the action which it might see fit to take on the request of the Economic and Social Council.

The very fact that the Economic and Social Council has asked the International Labour Organisation to place these questions on the agenda of its present session, and to send to the Council a report for consideration at its next session (July 1947), clearly demonstrates the importance of these matters at the present time.

Naturally, it will be for the Conference itself to consider in full freedom what course of action it will prescribe and to decide as to the manner in which it shall be implemented.

It will be recalled, in this connection, that Article 15 of the Constitution of the International Labour Organisation provides

that the agenda shall be transmitted so as to reach each Member four months before the opening of the session. It follows that the Conference will not be able to adopt any Convention or Recommendation at this session.

Subject to this, however, the Conference, as it may deem expedient, can adopt a Resolution expressing a number of fundamental principles with regard to the question and, as it were, outlining the programme which the Conference might propose to follow at future sessions. It might also consider, at this session, a list of points bearing on questions the regulation of which might appear particularly urgent, and which it might deem already opportune to settle by immediate international regulation.

The Office, in anticipation of these two possibilities, submits to the Conference :

1. *A proposed Resolution* concerning the various aspects of the problem of association, namely : (1) freedom of association ; (2) protection of the right to organise and to bargain collectively ; (3) collective agreements ; (4) voluntary conciliation and arbitration ; (5) co-operation between the public authorities and employers' and workers' organisations.

2. *A list of points* which refers only to the first four headings of the proposed Resolution, as cited above.

It will be clear from the survey of legislation and practice made in the previous chapter — as also from the numerous studies which the Office has devoted to the same matters in the past — that, with regard to freedom of association, the protection of the right to organise and to bargain collectively, and collective agreements, there exists, in spite of certain differences in the modalities of national regulations, a number of principles which are sufficiently defined and important and generally accepted and applied, to provide the Conference with the material for one or several Conventions, which would probably receive a large number of ratifications within a short time. The specific obligation which States would assume by ratifying those Conventions would then provide an effective guarantee of the strict and uniform application of the fundamentally important principles which are set forth in the Constitution and would form an appropriate basis for the regulation of industrial relations.

The problem of voluntary conciliation and arbitration appears to be appropriate, if not for international regulation by means of

a Convention, at least for regulation by means of a Recommendation.

On the other hand, the principles which are fundamental to the national regulation of the problems relating to co-operation between the public authorities and employers' and workers' organisations do not, at the present time, appear to be applied on a sufficiently general and uniform scale to be capable, at the outset, of being regulated internationally.

Finally, the Conference might wish to discuss the suggestion put forward in the proposed Resolution submitted to the Economic and Social Council by the World Federation of Trade Unions, for the establishment of a Committee on the Right of Association to keep a constant watch on the respect of the right of association. If the Governing Body were, for example, to appoint a Committee on Freedom of Association, to establish the facts of the case whenever the guarantee of freedom of association is in dispute, such a Committee might be able to render valuable services.

It should also be remembered, in this connection, that the Governing Body, at its 101st Session (March 1947), had already decided to instruct the Office to undertake an extensive international enquiry into methods of co-operation between the public authorities and employers' and workers' organisations, with the specific object of placing this question on the agenda of an early session of the Conference.

The decisions which the Conference might take in this connection will, therefore, simply expedite the implementation of a programme of work already decided upon by the Governing Body.

To facilitate the work of the Conference, the Office has endeavoured to define as concisely as possible, in the following pages, the scope of the provisions included in the list of points and the proposed Resolution.

Analysis of the Provisions of the Proposed Resolution and List of Points

FREEDOM OF ASSOCIATION

Section I of the proposed Resolution and list of points concerns freedom of association considered as a guarantee accorded to employers and workers in relation to the State. Freedom of

association must, indeed, form part of the basis of the whole system of industrial relations and co-operation, as it would not be possible to speak of collective bargaining or co-operation in the true sense of those terms if the organisations participating in such bargaining and co-operation did not enjoy complete autonomy in relation to the State and were not accorded full freedom of expression and action.

The Office has endeavoured to define freedom of association in this sense under six separate heads, the scope of which will be explained very shortly in the following pages.

1. The intention of paragraph 1 is to guarantee to employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, the right to establish organisations of their own choosing without previous authorisation.

This formula involves three distinct elements which require a brief explanation.

Guarantee of Freedom of Association

The guarantee of freedom of association is a corollary to the provision: "The right to establish organisations... *without previous authorisation*". The import of this provision could not be better defined than by stating that the right to establish organisations should no longer be considered as a concession gratuitously accorded by authority, but rather as a fundamental right belonging to employers and workers, which, accordingly, commands the respect even of the public authority.

It does not follow, however, that all regulations governing associations are necessarily contrary to the principle of freedom of association as thus defined.

In a number of countries, the establishment of associations is governed by detailed legal provisions which, according to the intention of the legislature, do not impede the formation of associations but are designed to give help to inexperienced workers in establishing their organisations.

It is with this intention, for instance, that under certain legal systems the formation of the association is made subject to the formality of registration. Such a formality cannot be deemed to be incompatible with freedom of association, because the State naturally has the right to require organisations (in the same way as individuals) to make known their existence. But if regis-

tration was made subject to conditions of substance or of form calculated to cause uncertainty regarding the right which employers and wage-earners should have of forming associations in full freedom, that would naturally be contrary to the principle of freedom of association because, by a similar expedient, the State would actually reserve the right to make the establishment of an employers' or workers' organisation subject to previous authorisation.

However this may be, the wording " without previous authorisation " is sufficiently specific to enable countries to distinguish between measures which are and those which would not be compatible with the principle of freedom of association.

Application of Regulations

It will be observed that in accordance with the terms of Article 41, paragraph 2, of the Constitution of the International Labour Organisation, the guarantee of freedom of association is applicable both to employers and workers, who are placed on a footing of complete equality. No doubt the authors of the Constitution were primarily concerned with the guarantee of the right of association of the workers (and the term " employers " did not appear in the wording of Article 41, paragraph 2, except as a term of reference), for the right of association of the workers continued to be disputed, while a more favourable attitude was adopted towards the right of association of the employers in the very great majority of countries.

But the experience which the world has had of totalitarian systems in the interval between the two wars has proved that the suppression or domestication of workers' organisations was followed very shortly by the suppression or domestication of employers' organisations.

By making use of the term " employers " and " workers ", the Office has wished to give point to the fact that the relevant question in this connection is that of guaranteeing the right of association for trade purposes — a problem which comes directly and unquestionably within the competence of the International Labour Organisation — and not the right of association in general, which falls within the competence of other international agencies such as the Human Rights Commission which, even now, is drawing up a Bill on Human Rights.

Secondly, the guarantee of the right of association should apply to all employers and workers, public or private, and, therefore, to public servants and officials and to workers in nationalised industries.

It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organised, even if those interests are not always of the same kind.

However, the recognition of the right of association of public servants in no way prejudices the question of the right of such officials to strike, which is something quite apart from the question under consideration.

Finally, paragraph 1 affirms with particular force the "principle of non-discrimination" on the grounds of sex, colour, race, creed or nationality.

In adopting this text, the Office has merely conformed to a principle of universal application, which is at the very basis of the Constitution of the International Labour Organisation and which has been solemnly reaffirmed in the Declaration of Philadelphia and the Charter of the United Nations.

Freedom to Choose Organisations

In specifying in paragraph 1 of Section I that the persons enjoying freedom of association should have the right to establish *organisations of their own choosing*, the Office in no way intended to assume a position favouring either the theory of the single organisation or that of plurality of organisations.

However, there appear to be no grounds for doubting that employers and workers in all the countries of the world are fully conscious of the advantages of a unified trade union movement. It is by no mere chance that in those countries (such as the United Kingdom, the Scandinavian countries, Australia, New Zealand, etc.) in which the trade union movement was organised from the beginning on a unified basis it has been able to achieve particularly outstanding success, both in the field of labour relations and in the field of social protection in general.

It is also well known that, following the liberation, powerful single trade union organisations were set up spontaneously in a large number of European countries (*e.g.*, Italy, Poland, Czechoslovakia, Yugoslavia, Bulgaria, Hungary, Rumania, etc.), because experience before the war had demonstrated to them the impotence of a trade union movement divided into many rival factions.

Nevertheless, in a number of countries there exist several organisations representative of employers and workers founded on distinctions as to religious or political denomination.

The Office has considered it desirable to take this fact into account and to ensure to employers and workers the right to choose the organisations to which they wish to belong in all those cases where there are several organisations between which they might choose.

2. While paragraph 1 of Section I is intended to define the freedom of association of employers and workers as individuals, paragraph 2 purports to define the freedom of association of employers' and workers' organisations. Under its provisions, employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.

This provision is intended to prevent any of those acts of interference on the part of the public authorities which, under totalitarian systems, were designed to impose on trade associations such conditions of substance and of form with regard to their constitutions, their activities and their objects as might please the authorities.

Such intervention manifested itself, among other ways, in the direct appointment of officials of associations, the control of the internal and external life of organisations, the surveillance of general meetings of associations, the annulment of decisions freely taken by a majority of the members and, in short, in a series of measures taken for the purpose of bringing the whole functioning of all such organisations under the permanent control of the administrative authorities.

Admittedly, in this connection, national legislation which, purely as a matter of guidance, includes provisions regarding the questions to which statutory regulation might usefully be made applicable (for instance, the organisation of trade associations, their financial management, the allocation of their funds, relations between the administrative officials of associations and their members, the conditions of admission and withdrawal of members, etc.) might be of considerable instructive value to inexperienced associations, provided always that it does not bring into question the administrative autonomy of the organisations.

3. Paragraph 3 completes the guarantees relating to the formation and working of organisations with a guarantee against arbitrary dissolution by administrative authority.

If the legislature reserved to the authorities the right to dissolve employers' and workers' organisations by mere administrative decision, the very existence of such associations would be more or less at their mercy. But this guarantee does not mean that trade associations are given an entirely free hand. In fact, associations of workers or employers are bound, like all other organised collectivities or individual citizens, to observe the ordinary laws for maintaining public order, which are imperative and, by their very terms, applicable to everyone. In other words, an organisation having as object the committing of criminal or immoral acts, or seeking to undermine the internal and external security of the State, would be unlawful and could not, therefore, invoke the guarantee of the principle of freedom of association.

Reservations regarding legality or public order are implicit in all laws guaranteeing a right or a freedom and, therefore, need not be expressly defined. It follows equally that it is unnecessary to define in legal terms (and such terms could never be sufficiently comprehensive in view of the manifold functions which trade associations are called upon to perform at the present day) the objects which trade associations might legally pursue, as their activities must be kept within the limits of the law and public order.

4. Paragraph 4 is intended to guarantee to employers' and workers' organisations the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

This provision merely gives expression to the fact that workers or employers are united by a solidarity of interests, a solidarity which is not limited either to one specific undertaking or even to a particular industry, or even to the national economy, but extends to the whole international economy.

The United Nations, like the International Labour Organisation, is founded on the recognition of this fact. Moreover, the international status of employers' and workers' organisations is formally recognised, at the present day, by their participation in the United Nations and the International Labour Organisation.

5. Paragraph 5 merely extends the guarantees provided in the preceding paragraphs to federations and confederations of trade associations. It follows that the establishment, functioning and dissolution of the latter should not be made subject to any formalities other than those prescribed in the case of employers' and workers' organisations.

6. Paragraph 6 is a saving clause with the object of preventing the attribution of special privileges (such as the attribution of legal personality) from serving as a pretext for reintroducing any prohibitive régime concerning associations.

PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

Section II is intended to supplement the guarantee of freedom of association in relation to the State by the guarantee of the exercise of the right to organise in relation to the other party to the labour contract.

Indeed, freedom of association, even when guaranteed by the State, might be brought into question by the other party to the labour contract who, using his economic strength, is in a position to hinder, or even to paralyse, the exercise of a right formally recognised by the law.

The recognition of freedom of association by the other party to the labour contract should, therefore, be a necessary corollary to the recognition of freedom of association by the State. This recognition may result either from an express or a tacit agreement made between the central organisations of employers and workers or by a formal legal provision. The method of guarantee is less important than the actual effectiveness of the guarantee.

7. Paragraph 7 refers to the recognition of the right of association by agreements between organisations of employers and workers. It provides that the central organisations of employers and workers should agree to recognise each other as the authorised representatives of the interests of employers and workers and should undertake mutually to respect the exercise of the right of association.

It has been pointed out in the analysis of legislation and practice that in the United Kingdom this recognition is accorded by a tacit agreement between the central organisations of employers and workers, while it is the subject of express agreements of national application, concluded between the central organisations of employers and workers, in Denmark, Sweden, Norway, France (Matignon Agreement) and Belgium. It should be remembered that under these agreements both parties formally undertake to respect freedom of association and to found their mutual relations on a system of collective bargaining.

Thus, the mutual guarantee of freedom of association and, in a more general way, the establishment of collective relations may be achieved very effectively without the direct intervention of the legislature.

8. In those countries, on the other hand, in which these conditions do not exist, either because the organised movement of employers or workers is too divided, or because the parties do not adhere to an agreement of this kind, the legislature should intervene in order to guarantee the exercise of the right of association. This principle is affirmed in paragraph 8, which provides that, in the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee the observance of the right of association of the workers and of workers' organisations.

8. (a) Clause (a) is intended to guarantee the exercise of the right of association by the workers against any acts committed with the object of attacking the workers' trade union rights, in order to preserve an undertaking by this means from all trade union influence.

The paragraph places restraint only on the most characteristic and most prevalent of such acts which occur at the time of the engagement of the worker or during the period of employment.

In the first place the employer or his agents may be tempted to make the employment of the worker expressly conditional on his not joining a particular trade union or on his withdrawing from a trade union of which he is a member. It is well known that in the past the anti-trade union contract ("yellow-dog" contract) was the instrument used to further this policy.

During the period of employment numerous methods are available to the employer, such as, for instance, change of occupation, downward grading, reduction of wages, etc., whereby he might exercise unlawful discrimination against workers who are members, agents or officials of a trade union.

Finally, the employer is in a position to dismiss an employee for the sole reason that he is a member of a trade union or that he has performed lawful trade union activities.

It is precisely acts of this kind which are covered by paragraph 8 (a).

However, in conformity with numerous laws concerning the protection of association, paragraph 8 (a) recognises the possibility of the parties to a collective agreement adopting a clause

providing that compulsory membership of a certain trade union shall be made a condition precedent to employment or a condition of continued employment. The legislature has taken the view that such a union security clause, provided that it is freely agreed upon between the parties, constitutes the soundest guarantee against discriminatory acts of an anti-trade union nature.

8. (b) Clause (b) supplements the guarantee of the free exercise of the right of association by individual workers by a guarantee of the free exercise of the right of association by workers' organisations. It is designed, among other things, to prohibit acts impairing the system of collective bargaining or causing it to deviate from its true object.

Thus, for instance, employers or employers' associations might be tempted to establish company unions which would be entirely under their domination and with which they might pretend to settle conditions of employment to the exclusion of the free trade unions. They might seek to attain the same ends by interfering in the formation or administration of trade unions, or by contributing financial or other support to them.

Finally, employers or employers' associations, while not directly interfering in the formation of trade unions, might refuse to recognise them as the authorised representatives of the wage-earners, or might refuse to enter into negotiations with them, in good faith, for the purpose of concluding a collective agreement.

Paragraph 8 refers only to acts on the part of the employer or employers' associations. The reason for this is that they alone, when the relationship of employer and employee is established, possess means of coercion which might frustrate the free will of the workers, while it is difficult to conceive that the freedom of association of the employers might be jeopardised by similar acts on the part of organised workers or of workers' organisations.

The Office has refrained from suggesting provisions concerning the possibility of trade associations attempting, by means of unlawful coercion, to violate the freedom of unorganised wage-earners or of wage-earners who are members of rival organisations—for the particular reason that unlawful acts of this kind to which trade associations might have recourse, such as physical violence, threats, abuse or assaults, are, in all countries, punishable under the Penal Code. In other words, organised workers, as well as their organisations, come under common law and do not enjoy any privileges distinct from those of other individuals or other organisations.

9. Paragraph 9 recommends the establishment of appropriate agencies for the purpose of ensuring the protection of the exercise of the right of association as thus defined.

It is, in fact, in the interests of all parties, that disputes as to " union recognition " (which are the most serious of all labour disputes, as they involve a question of principle) should be settled as promptly as possible and should, therefore, not be subject to the long and onerous procedure of the ordinary courts.

It is for this reason that numerous countries have set up special agencies (*e.g.*, the labour relations boards in the United States and Canada, and the labour tribunals in numerous countries) to hear such disputes and to impose sanctions.

But, in view of the many differences between different national systems, it has not been considered opportune to draft more precise recommendations in this connection.

COLLECTIVE AGREEMENTS

As a consequence of the guarantee of freedom of association in relation to the State, on the one hand, and of the protection of the right to organise and to bargain collectively, on the other, employers and workers may, in full freedom, establish genuinely independent organisations, which are, for that reason, capable of determining wages and other conditions of employment by means of freely concluded collective agreements.

Collective agreements can serve as valuable instruments for the determination of conditions of employment only if they are the result of voluntary negotiation, by means of which the parties decide as they please as to their contents, duration and field of application.

But while employers' and workers' organisations should themselves assume the responsibility of determining the relations which shall subsist between them, it is none the less true that in their own interest as well as in the interest of the whole national collectivity, measures should be taken to ensure the effective application of agreements and thus to prevent labour disputes which might arise during their period of validity.

Paragraphs 10 to 16 are specifically intended to strengthen the establishment of collective agreements, while fully safeguarding the contractual freedom of the parties.

10. Paragraph 10 recommends that employers' and workers' organisations should determine conditions of employment by

means of collective agreements, as that is the most appropriate method of determining the relations which shall subsist between them.

Previous reference has already been made to the scope of national agreements as to mutual recognition, concluded in certain countries between the central organisations of employers and workers, which specifically include, without reservation, the acceptance of the principle of collective bargaining.

11. In the absence of agreements of this kind, States should, according to the recommendation contained in paragraph 11, make available to the persons concerned appropriate agencies to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.

In a fairly large number of countries, collective agreements are concluded under the auspices of national or regional joint committees, composed of nominees of the most representative organisations of employers and workers. By reason of the representative character of these committees, collective agreements thus concluded may be made applicable, at the outset, to a whole industry, either on the national or regional plan.

In other countries, including the United States and Canada, labour relations boards, while not directly intervening in negotiations, have the important function of certifying which trade union, for the purposes of collective bargaining, is representative of the majority of workers within the limits prescribed for the scope of the collective agreement, or to proceed, if necessary, to the holding of an election by secret ballot, in order to determine which trade union shall represent all the workers concerned for the purpose of collective bargaining.

12. Paragraph 12 stipulates that the provisions of a collective agreement should override the terms contained in individual contracts or gang contracts concluded between employers and workers bound by the collective agreement, except where the terms of those contracts are more favourable to the workers than the provisions in the collective agreements.

The fundamental purpose of collective agreements is to determine the conditions of employment of the workers bound by such an agreement, instead of leaving these conditions to be determined by individual labour contracts. The logical development of such a system would be for individual contracts to be gradually superseded completely by collective agreements. However, in

the absence of legal regulation, the undertakings entered into by the parties to a collective agreement are of a purely moral kind. In other words, employers and workers, even when bound by a collective agreement, may derogate from it without thereby committing an offence or becoming liable to penalty.

Admittedly, powerful organisations are able to ensure the observance of an agreement, by recourse to strike or lockout if necessary, but it is evidently in the interests of all to ensure that legal sanction should be substituted for *de facto* sanction.

The very great majority of national legal systems today accord legal recognition to collective agreements. By virtue of this recognition, the provisions of individual contracts concluded between employers and wage-earners bound by the collective agreement become completely null and void, and are automatically replaced by the corresponding provisions in the collective agreements.

Only clauses in individual contracts which are more favourable to the wage-earners than the provisions in the collective agreement remain unaffected by this annulment.

In short, as a result of legal recognition, conditions of employment prescribed in collective agreements acquire validity — in accordance, moreover, with the intention of the parties — as minimum labour standards, from which the parties cannot depart unless the departure is in favour of the wage-earners.

Finally, as a result of legal recognition, the parties bound by the agreement are legally entitled to maintain their rights before the competent legal authority whenever necessary.

13. Paragraph 13 states that the provisions of a collective agreement should apply to all the workers in the service of the employer or employers bound by the collective agreement, even though such workers may not be members of the workers' organisation which has concluded the collective agreement.

According to a strict interpretation of the common law principles of contract, only the employer or employers parties to such contracts, on the one hand, and the wage-earners who are members of the contracting trade union, on the other, would be bound by the agreement. It follows that the employers, even though bound by the agreement, are free to establish with those wage-earners who are not members of the contracting organisation conditions of employment less favourable than those prescribed by the collective agreement.

This would result in a paradoxical situation in which, in one and the same undertaking, conditions of employment varied according to whether the workers were members or not of the trade union. Hence, all national legal systems at the present day provide for the automatic extension of a collective agreement to all the wage-earners, whether organised or not, who are employed in the undertakings falling within the scope of the agreement.

14. Paragraph 14 provides for those cases in which the application of the provisions of a collective agreement concluded between an employers' organisation and a workers' organisation may, subject to certain safeguards, be extended to a minority of employers and workers who, while not being members of the contracting organisations, nevertheless carry on their activities within the industrial and territorial scope of the collective agreement.

The principal reason which has induced the legislature in a great many countries to prescribe the extension of collective agreements to certain third parties is that the employers and workers who accept in good faith the principle of collective bargaining should not become prejudiced by any unfair competition, as regards the settlement of conditions of employment, in which employers and workers not bound by the agreement might engage by stipulating conditions of employment inferior to those provided by the collective agreement.

Moreover, the very existence of a régime of employment inferior to that prescribed by collective agreements may tend to endanger the stability of the collective agreement itself.

Lastly, national enactments, like international Conventions, frequently prescribe that certain of their provisions may be applied by means of collective agreements. Clearly, it would be impossible to adopt such a procedure if the collective agreements did not apply to all the employers and all the wage-earners carrying on their activities within the industrial or territorial scope of the collective agreements.

But, as the extension of collective agreements results in employers and wage-earners who have not taken any part in their preparation becoming subject to agreements, paragraph 14, following the example of many national legal systems, provides a number of guarantees designed to safeguard their interests.

In the first place, the collective agreement whose scope might, in due course, be extended must have acquired a paramount

importance in the industry and region to which it applies. Among other things, not only must it bind the majority of the employers and wage-earners, but the employers bound by it must employ the majority of the wage-earners.

Secondly, the employers and workers to whom the terms of a collective agreement would apply in this way are entitled to submit their observations and objections beforehand to the competent authorities.

The way is thus left open for third parties to present their case, and the authorities who are responsible for decreeing the extension may do so in full knowledge of all the circumstances.

It is important to emphasise that, in the intention of the law, the extension of collective agreements to certain minorities is not calculated to coerce them, but rather to prevent them from taking advantage of a privileged position. In other words, such a measure is as favourable to the employers' organisations as to the workers' organisations, who co-operate in good faith in the determination of conditions of employment by means of collective bargaining.

15. Paragraph 15 provides that disputes which arise in regard to the interpretation or application of an existing collective agreement should be settled by a conciliation and arbitration procedure mutually agreed upon by the parties to the collective agreement.

Disputes as to the interpretation of a collective agreement are entirely distinct from disputes arising in connection with the conclusion or renewal of a collective agreement. The former, indeed, are disputes of a juridical kind, which in no way differ from those which may arise regarding the interpretation or application of any other kind of contract and which should, accordingly, be capable of amicable settlement without recourse to strike or lockout.

In short, it is a question of the application to collective agreements of the general principle of inviolability of contracts, which is recognised as being fundamental to all social relationships, either national or international.

16. Lastly, paragraph 16, following the example of the majority of national legal systems, provides that the labour inspectorate should be competent to supervise the application of collective agreements. The determination of conditions of employment by means of collective agreements has acquired such importance

in a number of countries that the legislature has deemed it necessary to guarantee its application in the same manner as the application of social legislation.

VOLUNTARY CONCILIATION AND ARBITRATION

For the purpose of settling labour disputes, States have set up two types of procedure, fundamentally different in character :

(1) Voluntary conciliation and arbitration procedures, which are nothing more than subsidiary procedures for the conclusion of collective agreements, as only the free acceptance by the parties concerned of the recommendations of the conciliation and arbitration bodies confers any real validity upon them.

(2) Compulsory conciliation and arbitration procedures, which are, in the final analysis, methods for fixing wages and other conditions of employment by the State, since the will of the State replaces, through the intermediary of arbitration courts, the will of the parties concerned.

In the proposals which the Office submits to the Conference, it has purposely refrained from taking account of compulsory systems. The analysis of legislation and practice has demonstrated that there would be little prospect of the Conference reaching agreement even as to the principle of compulsory conciliation and arbitration.

On the other hand, the system of voluntary conciliation and arbitration is universally accepted, even by those countries which make provision for recourse to compulsory arbitration as a last resort.

Voluntary Conciliation

17. It should be observed, in the first place, that all countries quite properly give preference to conciliation procedures established by the parties concerned, either in the form of national agreements concluded between the central organisations of employers and workers, or in the form of special clauses relating to conciliation included in collective agreements. But, in the absence of, or in addition to, contractual systems of conciliation, Governments have deemed it necessary to make available to the parties official agencies which, by their composition and their procedure and the other facilities which they offer, are such as to inspire the complete confidence of the parties.

It is in accordance with this principle that paragraph 17 provides that regional and national conciliation bodies should be established to lend their assistance to the parties for the purpose of preventing or settling labour disputes.

18. Paragraph 18 affirms a principle of general application, namely, that the organisations of employers and workers concerned in such disputes should be associated in each stage of the procedure. The direct participation of employers' and workers' organisations in the procedure for settling disputes appears to be indispensable, as the recommendations of the conciliation agencies are effective only if they are voluntarily accepted by the parties to the disputes.

19. The intervention of agencies for conciliation should not only be free of cost, but should also be as expeditious as possible, as the parties will have recourse to conciliation procedure only where a dispute threatens to arise or has already arisen. Hence, the times allowed for the appearance of the parties, the hearing of witnesses and the production of proofs should be prescribed in advance and reduced to a minimum.

Many national enactments further expressly stipulate that the conciliation agencies are not bound by rules of procedure applicable under ordinary law.

20. It is inherent in voluntary conciliation that it should be optional. But if the parties have recourse by mutual agreement to an agency for conciliation they should be obliged to refrain from strikes or lockouts during the procedure of conciliation.

21. In the same way as the recourse to conciliation, the acceptance of the recommendations of agencies for conciliation should, by the very definition, be optional. But once a recommendation has been accepted by the parties concerned, it should become binding on the parties.

Paragraphs 20 and 21, which have just been summarised, do no more than apply to the procedure of voluntary conciliation the principles of good faith which should govern industrial relations.

22. Paragraph 22 provides that agreements reached by the parties during the procedure, as well as such recommendations by the conciliation bodies as may be accepted by the parties,

should have the same legal validity as collective agreements concluded without the intervention of a conciliator.

In short, this paragraph merely draws the logical conclusion from the eminently contractual nature of the procedure of voluntary conciliation.

Voluntary Arbitration

23. In the event of the failure of conciliation, and as a second stage in the voluntary settlement of disputes, States also make voluntary arbitration procedures available to the parties.

However, as is provided by paragraph 23, nothing should prevent the parties from having recourse to voluntary arbitration at the outset if they so desire.

24. Voluntary arbitration is fundamentally completely different from voluntary conciliation. Whereas, in the case of voluntary conciliation, proposals for settlement have no validity unless they are freely accepted by the parties, in the case of voluntary arbitration, on the other hand, the parties leave it to the decision of a third party (arbitrator or board of arbitration) to decide between them.

In other words, the mere fact of having recourse to arbitration, by the consent of all the parties concerned, implies in advance the acceptance of the decision which will finally be made.

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

The first four sections analysed above relate more particularly to freedom of association and to the organisation of labour relations, whereas this section is concerned with the far wider problem of the organisation of co-operation between the public authorities and employers' and workers' organisations.

As has already been explained in the analysis of law and practice, in an increasing number of countries the responsibility of employers' and workers' associations is no longer limited to the field of organising labour relations, but also extends to the organisation of social and economic life. Moreover, it has also been observed that a very large number of States have closely and effectively associated employers' and workers' organisations in the preparation and application of economic and social measures, not only at the

level of the undertaking, but also at the level of the industry and at the national level.

This association between the public authorities and employers' and workers' organisations had to be adopted by a number of States, as the prevailing circumstances made it indispensable; the States realised indeed that the vast programmes of reconstruction, industrialisation and modernisation of their national economies demanded the unconditional co-operation of all the vital forces in the nation and, above all, of the organised forces of production and labour. On their side, the trade unions had to be satisfied that the improvement of living conditions was directly related to the increase in the economic potential and in the productivity of labour. They took the view that they should be enabled, by participation in the control and direction of economic life, to ensure that the improvement of their standard of living would be effectively achieved at the same time as the increase in production and output.

It should be remembered that the nature and extent of the post-war problems with which the various States have had to contend vary considerably as between countries devastated and exhausted by the war and countries which have been more or less spared by the conflict and whose economic structure has remained intact, although it may not have been very greatly strengthened.

It is therefore natural that the methods adopted by the various countries for organising co-operation between the public authorities and employers' and workers' organisations should differ considerably. Thus, for instance, in certain countries the machinery for co-operation is established by purely voluntary agreement, whereas in others the status of that machinery is defined by law.

The Office has, of course, been obliged to pay heed to these fundamental differences in conception and has had, therefore, to refrain from submitting too detailed proposals to the Conference, which would have been satisfactory to a certain number of countries, but unacceptable to others and, for that very reason, would have had no chance of gaining unanimous approval.

In the three recommendations grouped under the section "Co-operation between the public authorities and employers' and workers' organisations", an attempt has been made to define the object of co-operation, firstly at the level of the undertaking, then at the level of the industry, and finally at the national level.

25. Paragraph 25 provides that in all public or private establishments where a specific number of persons are employed, agencies representing the staff (as, for instance, works committees, production committees, staff delegates, etc.) should be set up, either by agreement between the parties or by legislation, for the purpose of co-operating with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency.

Following the example of legislation in the majority of countries, the scope of this provision includes both public and private establishments, as the usefulness of an agency representing the staff is the same in both cases.

No definite figure has been suggested for the minimum number of wage-earners who must be employed in an undertaking in order to make it advisable to set up agencies representing the staff. It seemed reasonable to conclude that the various countries themselves were in the best position to assess in which establishments such agencies could be usefully set up.

Nor does paragraph 25 make any proposal as to the form which the representation of the staff should take, whether production committees, works committees or staff delegates. It will be remembered that, during the war, the majority of the Allied countries, such as the United Kingdom, the United States, Canada, New Zealand, etc., set up joint production committees. On the other hand, most of the liberated European countries have preferred works committees, which are sometimes under the chairmanship of the head of the undertaking, as in France, but are more frequently composed exclusively of representatives of the staff, as, for instance, in Central and Eastern European countries.

Moreover, in the English-speaking countries, the agencies representing the staff have been set up as the result of agreements concluded between the employers' and workers' organisations concerned, whereas in the majority of countries on the European Continent they owe their existence to legislation.

The Office has not considered it desirable to exclude either of these two possibilities, and has considered, therefore, that it would be preferable to leave it to the countries to make their own choice as to the way in which agencies representing the staff should be established.

Finally, the functions of the agencies representing the staff vary considerably from one country to another, as they range

from mere supervision of social legislation to effective participation in productive efficiency.

The formula "co-operation with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency" appears sufficiently comprehensive to cover every form of co-operation.

26. Paragraph 26, which defines co-operation at the level of the industry, proposes that, in all branches of industry and commerce, joint committees of employers and workers should be established, either by agreement between the employers' and workers' organisations concerned, or by legislation, for the purpose of co-operation in the solution of social, technical or economic problems affecting such industry or commerce.

Here again, in conformity with existing circumstances, the Office has left it open for joint committees to be established by agreement between the employers' and workers' organisations, or by legislative enactment.

The powers of these bodies vary considerably according to the legal status of the industries concerned; in some countries they are purely advisory, whereas in others they are called upon to participate directly in the control and administration of nationalised industries.

The formula "for the purpose of co-operating in the solution of social, technical or economic problems affecting such industry or commerce" in this case, also, covers all these possibilities.

It should be remembered that the establishment of national industrial committees would provide a firm support for the activities of the international industrial committees.

27. Paragraph 27 invites the States Members of the International Labour Organisation to consider the desirability of establishing machinery for co-operation at the national level (as, for instance, national economic councils or national labour councils, etc.) for the purpose of giving advice to the competent authorities with regard to the preparation and application of economic and social measures.

The establishment of machinery for co-operation at the national level cannot result (as in the two examples previously examined) from agreements voluntarily concluded between employers' and workers' organisations, but rather from action taken by the public authorities. It is for this reason that paragraph 27 refers directly

to the States Members of the International Labour Organisation.

It has already been observed that the extent of co-operation at the national level will probably vary according to the degree of responsibility which the State feels that it must assume in the direction and control of national economy.

However, the necessity for increasingly closer co-operation between the public authorities and employers' and workers' organisations in the preparation and application of economic and social measures is generally recognised at the present day, and Governments and Parliaments in many countries have taken effective steps to avail themselves of the advice of specialised agencies in which employers' and workers' organisations are directly represented.

CHAPTER IV

TEXTS SUBMITTED TO THE CONFERENCE

Proposed Resolution concerning Freedom of Association and Industrial Relations

Whereas the Preamble to the Constitution of the International Labour Organisation expressly declares " recognition of the principle of freedom of association " to be a means of improving conditions of labour and of establishing peace ; and

Whereas the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress " and recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve, among other things : " the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures " ; and

Whereas standards of living, normal functioning of national economy and social and economic stability depend to a considerable degree on a properly organised system of industrial relations founded on the recognition of freedom of association ; and

Whereas, moreover, in many countries, employers' and workers' organisations have been associated with the preparation and application of economic and social measures ; and

Whereas the General Labour Conference, the Regional Conferences of the American States Members of the International Labour Organisation and the various Industrial Committees have, in numerous Resolutions, called the attention of the States Members of the International Labour Organisation to the need for establishing an appropriate

system of industrial relations founded on the guarantee of the principle of freedom of association,

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947,

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

I. FREEDOM OF ASSOCIATION

1. Employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, should have the inviolable right to establish organisations of their own choosing without previous authorisation.

2. Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.

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

4. Employers' and workers' organisations should have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

5. The guarantees defined in paragraphs 1, 2 and 3 herein with regard to the establishment, functioning and dissolution of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. The acquisition of special privileges by employers' and wage-earners' organisations (as, for example, the acquisition of legal personality) should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

II. PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

7. The central organisations of employers and workers should agree to recognise each other as the authorised representatives of the interests of employers and workers, and should undertake mutually to respect the exercise of the right of association.

8. (1) In the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee :

(a) the exercise of the right of association by the workers by measures designed to prevent any acts on the part of the employer or of his agents with the object of :

- (i) making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member ;
- (ii) prejudicing a worker because he is a member or agent or official of a trade union ;
- (iii) dismissing a worker because he is a member or agent or official of a trade union.

(b) the exercise of the right of association by workers' organisations should be guaranteed by measures designed to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

- (i) furthering the establishment of trade unions under the domination of the employer ;
- (ii) interfering with the formation or administration of a trade union or contributing financial or other support to it ;
- (iii) refusing to recognise trade unions or to bargain collectively with them for the purpose of concluding collective agreements.

(2) It should be understood, however, that a provision in a freely concluded collective agreement making compulsory membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

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

III. COLLECTIVE AGREEMENTS

10. Employers' and workers' organisations, appreciating the great value of voluntary negotiation, should undertake to determine wages and other conditions of employment by collective agreements.

11. Appropriate agencies (as, for example, joint committees or labour relations boards) should be established, where necessary, to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.

12. The provisions of a collective agreement should override the terms contained in individual contracts concluded between employers and workers bound by the collective agreement, except in so far as the said terms are more favourable to the workers than the provisions of the collective agreement.

13. The provisions of a collective agreement should apply to all the workers in the service of the employer or employers bound by the collective agreement, even though such workers may not be members of the workers' organisation party to such collective agreement.

14. (1) Where voluntarily concluded collective agreements bind the majority of the workers and the majority of the employers (who should also employ the majority of the workers) coming within their scope, appropriate measures should be taken to extend the application of such collective agreements to all the employers and workers whose activities are carried on within the industrial and territorial scope of the collective agreements.

(2) The employers and workers to whom the terms of a collective agreement are so made applicable should be authorised to submit their observations and objections beforehand to the competent authorities.

15. Disputes arising as to the interpretation or application of an existing collective agreement should be settled by a conciliation and arbitration procedure mutually agreed upon by the parties to the collective agreement.

16. Labour inspectors should be competent to supervise the application of collective agreements in all establishments included within the scope of such agreements.

IV. VOLUNTARY CONCILIATION AND ARBITRATION

Voluntary Conciliation

17. Regional and national conciliation bodies should be established to lend their assistance to the parties for the purpose of preventing or settling labour disputes.

18. The employers' and workers' organisations concerned in the disputes should be associated with each stage in the procedure.

19. The conciliation procedure should be free and expeditious; the time allowed for the appearance of the parties, the hearing of witnesses and production of proofs should be prescribed in advance and reduced to a minimum.

20. Recourse to conciliation procedure should be voluntary, but once a dispute has been referred to conciliation by the consent of all the parties concerned, the parties should be obliged to refrain from strike or lockout during the procedure of conciliation.

21. The parties should retain the right to accept or to reject the recommendations of conciliation bodies, but, once a recommendation has been accepted, it should become binding on the parties.

22. Agreements reached by the parties during the procedure, as well as such recommendations by the conciliation bodies as

may be accepted by the parties, should have the same legal validity as voluntarily concluded collective agreements.

Voluntary Arbitration

23. Voluntary arbitration machinery should be established to which the parties may have recourse, either at the outset or after conciliation procedure has failed.

24. Recourse to arbitration should be voluntary, but, once a dispute has been referred to arbitration by the consent of all the parties concerned, the parties should be obliged to accept the award.

V. CO-OPERATION BETWEEN THE PUBLIC AUTHORITIES AND EMPLOYERS' AND WORKERS' ORGANISATIONS

25. In all public or private establishments where a given number of persons are employed, agencies representing the staff (as, for instance, works committees, production committees, staff delegates, etc.) should be set up, either by agreement between the parties or by legislation, for the purpose of co-operating with the management of such establishments in the progressive betterment of the working and living conditions of the staff and in the continuous improvement of productive efficiency.

26. In all branches of industry and commerce, joint committees of employers and workers should be established, either by agreement between the employers' and workers' organisations concerned or by legislation, for the purpose of co-operating in the solution of social, technical or economic problems affecting such industry or commerce.

27. The States Members of the International Labour Organisation should consider the desirability of establishing machinery for co-operation at the national level (such as national economic councils or national labour councils, etc.) for the purpose of giving advice to the competent authorities with regard to the preparation and application of economic and social measures.

List of Points which might Form a Basis for Discussion by the Conference

DESIRABILITY OF INTERNATIONAL REGULATION AND FORMS OF SUCH REGULATION

1. *Desirability of adopting international regulation concerning :*
 - A. Freedom of association ;
 - B. Protection of the right to organise and to bargain collectively ;
 - C. Collective agreements ;in the form of a proposed Convention.

2. *Desirability of drawing up proposed separate Conventions concerning :*

- A. Freedom of association ;
- B. Protection of the right to organise and to bargain collectively ;
- C. Collective agreements.

3. *Desirability of drawing up, in addition, one or several Recommendations concerning voluntary conciliation and arbitration.*

A. FREEDOM OF ASSOCIATION

4. *Need to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, should have the right to establish organisations of their own choosing without previous authorisation.*

5. *Need to provide that employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.*

6. *Need to stipulate that employers' and workers' organisations should not be liable to be dissolved by administrative authority.*

7. *Need to recognise the right of employers' and workers' organisations to establish federations and confederations of such organisations and to affiliate with international organisations of employers and workers.*

8. *Need to stipulate that the guarantees defined by paragraphs 4, 5 and 6 with regard to the establishment, functioning and dissolution of employers' and workers' organisations should apply to federations and confederations of such organisations.*

9. *Need to stipulate that the acquisition of special privileges by employers' and workers' organisations (as, for example, the acquisition of legal personality) may not be made subject to conditions of such character as to restrict freedom of association as hereinbefore defined.*

B. PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

10. *Need to provide that the exercise of the right of association of the workers and of workers' organisations should be guaranteed, either by means of agreements between the central organisations of employers and workers or by appropriate legislation.*

11. *Need to provide that in the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee :*

(a) the exercise of the right of association by the workers by measures designed to prevent any acts on the part of the employer or of his agents with the object of :

1. making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member ;
2. prejudicing a worker because he is a member or agent or official of a trade union ;
3. dismissing a worker because he is a member or agent or official of a trade union ;

(b) the exercise of the right of association by workers' organisations by measures designed to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

1. furthering the establishment of trade unions under the domination of the employer ;
2. interfering with the formation or administration of a trade union or contributing financial or other support to it ;
3. refusing to recognise trade unions or to bargain collectively with them for the purpose of concluding collective agreements.

12. *Desirability of providing that any provision in a collective agreement freely concluded between representative organisations of employers and workers making compulsory membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of paragraph 11 above.*

13. *Desirability of providing that appropriate agencies should be established for the purpose of ensuring the protection of the right of association as defined above.*

C. COLLECTIVE AGREEMENTS

14. *Desirability of providing that appropriate agencies (as, for example, joint committees or labour relations boards) should be established to lend their good offices to employers' and workers' organisations to aid in the conclusion of collective agreements.*

15. *Need to define the collective agreement as being an agreement relating to conditions of employment concluded between one or several workers' organisations on the one hand, one or several employers' associations, or any other group of employers, or one or several employers individually, on the other hand.*

16. *Need to stipulate that the provisions of a collective agreement should override the terms contained in individual contracts concluded between employers and workers bound by the collective agreement, except in so far as the said terms are more favourable to the workers than the provisions of the collective agreement.*

17. *Need to stipulate that the provisions of a collective agreement should apply to all the workers in the service of the employer or employ-*

ers bound by the collective agreement, even though such workers may not be members of the workers' organisation, party to such collective agreement.

18. *Desirability of providing that voluntarily concluded collective agreements, binding the majority of the workers and the majority of the employers (who should also employ the majority of the workers) may be extended to apply to all the employers and workers whose activities are carried on within the industrial and territorial scope of the collective agreement as determined by the contracting parties.*

19. *Desirability of providing that the employers and workers to whom the terms of a collective agreement are so made applicable should be authorised to submit their observations and objections beforehand to the competent authorities.*

20. *Desirability of providing that disputes arising as to the interpretation or application of a collective agreement should be referred to a procedure for settlement mutually agreed upon by the parties to the collective agreement and, in the event of the failure of this procedure, should be referred to a system of compulsory arbitration or to an appropriate judicial procedure.*

21. *Desirability of providing that labour inspectors should be competent to supervise the application of collective agreements in all establishments included within the field of application of such agreements.*

D. CONCILIATION AND ARBITRATION

Voluntary Conciliation

22. *Desirability of recommending the establishment of regional and national conciliation bodies to lend their assistance to the parties for the purpose of preventing or settling labour disputes.*

23. *Desirability of providing that employers' and workers' organisations concerned in the disputes should be associated with each stage in the procedure.*

24. *Desirability of providing that the conciliation procedure should be free and expeditious and that, accordingly, the time allowed for the appearance of the parties, the hearing of witnesses and the production of proofs should be prescribed in advance and reduced to a minimum.*

25. *Desirability of providing that recourse to conciliation procedure should be voluntary; but that once a dispute has been referred to conciliation by the consent of all the parties concerned, the parties should be obliged to refrain from strike or lockout during the procedure of conciliation.*

26. *Desirability of providing that the parties should retain the right to accept or to reject the recommendations of conciliation*

bodies ; but that, once a recommendation has been accepted, it should become binding on the parties.

27. *Desirability of providing that agreements reached by the parties during the procedure, as well as the recommendations of the conciliation bodies which are accepted by the parties, should have the same legal validity as voluntarily concluded collective agreements.*

Voluntary Arbitration

28. *Desirability of recommending the establishment of a system of voluntary arbitration to which the parties might have recourse, either at the outset or after conciliation procedure has failed.*

29. *Desirability of providing that recourse to arbitration should be voluntary, but that, once a dispute has been referred to arbitration by the consent of all the parties concerned, the parties should be obliged to accept the award.*

E. FEDERAL STATES

30. *Desirability of including in the Conventions concerning freedom of association, protection of the right to organise and to bargain collectively, and collective agreements, appropriate provisions to facilitate the adherence to such Conventions of federal States.*

APPENDICES

APPENDIX A

I. Draft Resolution submitted by the World Federation of Trade Unions to the Economic and Social Council on Guarantees for the Exercise and Development of Trade Union Rights.

1. Ever since the end of the Second World War, one notes that certain interventions tend, in various countries, to destroy the very foundations of trade union rights. The means employed to hinder the progress of the trade union movement are principally as follows: the large-scale dismissal of trade unionist workers, the arrest of active trade unionist and trade union leaders, the occupation of trade union premises, the revocation by the Government of bodies democratically chosen by the trade unions, the nomination of trade union leaders by the Government, the prohibition of all coloured or native workers against forming occupational organizations, the prohibition on occupational organizations against forming any federal occupational or inter-occupational organizations, whether locally, nationally or internationally, etc.

2. Such attacks on trade union rights can demonstrate the persistence in certain countries of nefarious ideologies which have placed the world in deadly peril. The respect for trade union rights as an element of peace and co-operation between the peoples should be assured on the international level.

3. Trade unionism when unhampered in its evolution tends to go further than the particular interests of its members and becomes, in an ever-increasing measure, the spokesman of the general interests. This aspect of the evolution is also clearly illustrated by the programmes of economic reorganization formulated in most countries by the workers' trade unions. Basing itself on the generally accepted idea that the exercise of the right of ownership is a social function, trade unionism, representing the producers, insists on the necessity of bringing the community into still greater participation in the general direction of economic policy.

4. In the social domain, the role of the trade unions is still more important. They conclude collective agreements which can be extended to embrace all workers in a profession or in a nation, that is to say, even those who are not members of these organizations. In certain cases therefore, the trade unions are given the power to make regulations.

In many countries also, they share in the control and direction of industrial undertakings and even in the activities of the State ; in this way, they take part in the preparation of social legislation through their advisory councils, labour councils and economic councils, and share in the application of social legislation by administering social security institutions, by collaborating with inspecting bodies and also on conciliation and arbitration boards and on labour tribunals by supervising employment, apprenticeships, occupational training, and control of prices, etc.

5. Thus, in war, as in peace, the States call on the aid of trade union organizations in order to introduce a higher degree of justice into their social system. In this way alone can there be the guarantee of a peaceful evolution in conformity with the facts and with the democratic development. If, for example, it is rendered impossible for workers to make collective agreements, they have no other means of redressing the wrongs inflicted on them than by the collective stoppage of work and by agitation.

6. This evolution, which must be guaranteed and made general, is merely the expression of the democratic principle, according to which those concerned, namely the producers, should have a say in determining economic and social policy. The value of this principle has been increased by the fact that the war for the triumph of democracy and liberty has been brought to a successful issue with the active help of the working class and as a result of its sacrifices. Already the victory of the United Nations has inspired the development of trade unionism in all quarters in close relationship with social progress and the development of popular liberties.

7. Within the State, the role of modern trade unionism is of ever-increasing importance. This role, however, can be effective and can be of value for the community only on condition that the trade union movement preserve its independence, its autonomy and its spontaneous character. It is therefore fitting that the State should not obtain a hold over the trade unions and over the workers' movement by means such as : the nomination of administrative bodies and leaders by the public authorities, or the interference of the latter on any other score in the running of trade unions.

8. Furthermore, any attempt to hinder the federation of trade union organizations on the occupational and inter-occupational level, locally, nationally and internationally, constitutes a very serious infringement of trade union liberty. In fact, the idea of organization is at the very basis of trade union movement which, by its very nature, tends to integrate into ever-widening entities. Trade union practice in every country is decisive in this direction and any effort to the contrary could only tend to restore a corporate system condemned by experience.

Moreover, the evolution of trade unionism extends beyond national frontiers and is manifested with equal intensity on the international level.

9. Even at the end of the First World War, the Peace Conference insisted on the necessity of organizing the working class. Through its representatives, the working class took part in a series of conferences and in a number of international organizations and in this way the international personality of the workers' organizations became an indisputable reality.

10. Attention should be drawn to the work undertaken by the W.F.T.U. after the Second World War, in order to assist trade union organization in liberated or defeated countries, an action which constitutes one of the most important factors in the spread of democracy in the political, social and economic domain, and of which the beneficial effect has been recognized by all the Governments concerned.

11. After the Second World War, the evolution which we have demonstrated, both on the national and international level, became more pronounced. Already relations of confidence have been established between the Economic and Social Council and the World Federation of Trade Unions.

12. Besides, according to Article 1 (3) of their Charter, the United Nations propose as one of their aims, the realization of international co-operation in solving international problems of an economic, social, intellectual or humanitarian nature, by developing and encouraging respect for the rights of man and the fundamental liberties for all without distinction of race, sex, language or religion. The same idea is to be found in Articles 55 c. and 62 of the Charter. The attainment of this objective presupposes the general expansion and consolidation of trade unionism on the national and international level.

13. Effective co-operation in economic and social matters is only feasible with the help of the masses of the peoples, who must be assured of an ever-increasing standard of comfort, and whose most responsible elements are organized within trade unions.

The recognition of trade union rights and the unrestricted and uncontested use of those rights should allow the full development of the trade union activities. These activities may lead the trade union organizations in each country to co-operation in establishing and implementing social legislation. The outcome of this progressive social legislation, setting out the constructive possibilities of trade unionism, can be a new right enabling the trade unions to determine the economic and social policies in each country.

14. Unorganized, spontaneous anarchic movements can be a danger to the internal peace of every country. If effective international co-operation is to be established, there must be pacification and consolidation of the democratic régime within each State.

15. Effective respect for trade union rights, apart from guarantees proper to every country, demands a safeguard of an international character whenever the use of these rights results in developments which might affect the international life. From national and international practice there can be established, for trade union rights, a real common international law, for which respect in all States should be assured by the Economic and Social Council.

* * *

On the basis of the preceding considerations, the W.F.T.U. submits to the Economic and Social Council, the following Resolutions :

1. Trade union rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.
2. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within

their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.

3. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally or internationally.
4. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.
5. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted.

II. Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights.

1. On 28 February 1947, a document E/C.2/28 was circulated to the members of the Economic and Social Council on behalf of the World Federation of Trade Unions. This document contains a draft of the proposed Resolution regarding the guarantees for the exercise and development of trade unions' rights.

2. In the document E/CT.2/2 circulated to members of the Council as of 20 August 1946, the American Federation of Labor, in its draft of a proposed "International Bill of Rights" covered, among other questions, the basic points raised by the World Federation of Trade Unions.

Specifically, the American Federation of Labor draft urged the adoption of the following provisions as a part of the "International Bill of Rights":

IV

BASIC HUMAN RIGHTS

Without freedom from fear of tyranny by absolutist bureaucrats or dictators and without freedom from want, there can be no political or industrial democracy within nations or just relations and enduring peace between nations.

Only by removing the political, economic and social ills and maladjustments afflicting humanity will mankind be able to reach that long hoped-for stage of civilization in which peace and plenty shall truly prevail.

In this spirit, the American Federation of Labor proposes to the Economic and Social Council of the United Nations that it draft an

International Bill of Rights which shall be part of the general Peace Treaty and be binding on all its signatories. We propose that this International Bill of Rights shall include the following provisions :

1. Every human being — irrespective of race, colour, creed, sex or national origin — has the right to pursue his or her work and spiritual development in conditions of freedom and dignity.

2. Freedom of expression and association is vital to the preservation of the basic liberties and the enhancement of the spiritual and material progress of the human race. These rights must be inviolate for those who oppose, no less than for those who support, a ruling party or a régime at any specific moment.

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

3. The right to organize and work for a constantly more equitable distribution of the national income and wealth and the right to strive for the enhancement of the moral and material well-being of the people — for better health and security against the ravages of unemployment, accidents, sickness and old age — are to be considered inalienable. The conditions of work under modern large scale industry make it especially necessary for the working people to have an effective system of social legislation which will provide minimum wages and maximum working hours ; guarantee against the employment of child labour ; set up adequate medical care ; provide accident, unemployment and old-age insurance and other such vital measures making for effective social security of the population.

4. Raise labour standards throughout the world. There is no more effective way of stimulating the revival of production and the international expansion of markets than by increasing the purchasing power of the great mass of people in every country.

5. Freedom of religion and right to religious worship are indispensable to a truly democratic society.

6. The right of asylum is to be guaranteed by all nations. No human being who is a refugee from any political régime he disapproves of is to be forced to return to a territory under the sovereignty of that régime.

7. The right to migrate or leave temporarily or permanently a country in which a citizen does not want to remain must be assured, limited only by the laws of immigration of the country which he may wish to visit.

8. There must be freedom of opinion and expression and full access to the opinions of others.

9. The more full and complete knowledge of the world is extended and realized by the peoples of all nations, the less will be the distance and misunderstandings between nations and peoples. Therefore, the right of free access to and exchange of information — scientific, economic, social, religious and political — the promotion of knowledge and of cultural relations, the full and free dissemination of news by radio and press must be assured.

10. Involuntary servitude in any shape, manner or form or under any guise shall be outlawed and discontinued by all nations and all peoples.

11. Freedom from arbitrary arrest, detention, search and seizure ; proper judicial determination of arrest and charges ; a fair public trial by jury or competent and unprejudiced court constituted in accordance with normal judicial procedure ; right of habeas corpus and freedom from arbitrary imposition of penalties.

12. The key to the entire approach of human rights must be the placing of respect for human personality and welfare above all else. In this spirit, the foregoing rights can have tangible meaning and practical application only if :

(a) All human beings have real security and are free from discrimination on account of race, colour, creed or difference of political belief from the Government in control or the party in power.

(b) There is to be no peacetime conscription or militarization of workers protesting or striking against conditions of labour which they consider unfair or unsatisfactory.

(c) All economic or political discrimination and punishment for differences of political opinion or religious belief and practices are to be eliminated. The threat of being sent to concentration or labour camps as a punishment for difference of opinion with any government authority or dominant political party must be completely removed.

(d) Freedom from censorship of books, press, radio and art, having due regard to the requirements of morals and decency.

(e) Freedom from the terror of secret police surveillance, arrest or torture. This can be assured only through the abolition of all political police and concentration camps in every country.

3. Basically, the protection of rights of trade union members and of their organizations is encompassed by the above proposals of the American Federation of Labor. These proposals were referred to the Human Rights Commission of the Economic and Social Council, were considered by that Commission and were referred by it to the Drafting Committee empowered to draft an International Bill of Rights.

4. There is no doubt that numerous problems which affect workers generally, or labour and trade union organizations more specifically, are outside the framework of reference set forth for the Human Rights Commission. The United Nations, under the terms of its Agreement with the International Labour Organization (document A/72), Article I, recognized the latter organization as " a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein ". The terms of reference of the International Labour Organization are indicated in its Constitution, Article 10 and Articles 19, 20, 21, 35 (Constitution and Rules, Montreal, 1946).

5. It is therefore quite proper for the Economic and Social Council to request the International Labour Organization to make a survey of labour conditions in the various countries, Members of the United Nations, in order to secure information on the treatment received by the individual workers in the exercise of their rights to form, join or belong

to trade union organizations without interference or coercion by the governmental authorities ; on the extent, if any, of government domination or interference with trade union organizations ; and regarding any coercive acts directed against individual workers insofar as their relations to their trade union organizations are concerned. On the basis of such inquiries, the International Labour Organization should be requested to undertake the necessary steps for the elimination of such practices which deny basic individual rights to workers or collective rights to their organizations.

6. The American Federation of Labor, after examining in detail the proposals submitted to the Economic and Social Council by the World Federation of Trade Unions, suggests that these proposals be amended to read as follows :

DRAFT RESOLUTION

I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the International Labour Organization, that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows :

- (A) To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the Government ?
- (B) To what extent are trade unions free to operate in accordance with the decisions of their own members, whether on a local, regional or national basis, without interference by governmental authorities ?
- (C) To what extent are workers free to select, elect or appoint officers of their own trade unions ?
- (D) To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations, without governmental interference ?
- (E) To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country ?
- (F) To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference ?
- (G) To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation ?
- (H) To what extent is the right of workers and of their organizations to resort to strikes recognized and protected ?
- (I) To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers ?

- (J) To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf ?
- (K) To what extent are workers free to move from one part of the country to another, within the confines of the national borders, and to what extent are they free to migrate outside the national boundaries ?
- (L) To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference ?
- (M) To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language or religion, protected against compulsory, or forced, labour ?
- (N) To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection ?

II. The Economic and Social Council further recommends to the International Labour Organization that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various states, proposals for :

- (a) incorporating the rights universally recognized ;
 - (b) protecting the workers and their organizations against the violation of basic labour or trade unions' rights ; and
 - (c) providing proper measures for the enforcement of such rights.
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APPENDIX B

Principal International Labour Office Publications concerning Freedom of Association, Industrial Relations, and Co-operation between the Public Authorities and Employers' and Workers' Organisations.

STUDIES AND REPORTS

Series A (Industrial Relations) :

- No. 27. *Industrial Relations in the United States*, by H. B. BUTLER (1927).
- Nos. 28-32. *Freedom of Association* (1927-1930), 5 vols.
- Vol. I. *Comparative Analysis*.
- Vol. II. *Great Britain, Irish Free State, France, Belgium, Luxembourg, Netherlands, Switzerland*.
- Vol. III. *Germany, Austria, Hungary, Czechoslovakia, Poland, Baltic States, Denmark, Norway, Sweden, Finland*.
- Vol. IV. *Italy, Spain, Portugal, Greece, Yugoslavia, Bulgaria, Rumania*.
- Vol. V. *United States, Canada, Latin America, South Africa, Australia and New Zealand, India, China, Japan*.
- Nos. 33, 35, 38. *Studies on Industrial Relations* (1930, 1932, 1935), 3 vols.
- No. 34. *Conciliation and Arbitration in Industrial Disputes* (1933).
- Part. I. *General Problems of Conciliation and Arbitration*.
- Part. II. *Conciliation and Arbitration in Selected Countries*.
- No. 36. *Industrial Relations in Great Britain*, by J. H. RICHARDSON (1933).
- No. 39. *Collective Agreements* (1936).
- No. 40. *Labour Courts* (1938).
- No. 43. *British Joint Production Machinery* (1934).

REPORTS

- Trade Union Conditions in Hungary* (Documents presented by the Mission of Enquiry of the International Labour Office, 1921.)
- Methods of Collaboration between the Public Authorities, Workers' Organisations and Employers' Organisations* (International Labour Conference, 26th Session, Geneva, 1940.)

- Wartime Developments in Government-Employer-Worker Collaboration.*
(International Labour Conference, New York, 1941.)
- Industrial Relations* (Third Conference of the American States Members
of the International Labour Organisation, Mexico City, 1946.)
- Industrial Relations in Inland Transport* (Inland Transport Committee,
Second Session, Geneva, 1947.)

In Preparation or in the Press

- Methods of Co-operation between the Public Authorities and Employers' and Workers' Organisations.
- Studies on Industrial Relations and Joint Production Machinery in Selected Countries : Czechoslovakia, France and Poland.
- Reports on Industrial Relations and Joint Production Machinery in Selected Industries : Iron and Steel ; Metal Trades ; Textiles ; Building, Civil Engineering and Public Works ; Petroleum.
- Report of the Director-General to the New Delhi Conference (Chapter Dealing with Industrial Relations).
- Joint Production Machinery in the United States of America During the War.

GENERAL DOCUMENTATION

- The *International Labour Review* contains regular analyses of legislation and practice concerning freedom of association, industrial relations and social and economic organisation.
- The *Legislative Series* has been publishing since 1920 the principal legislative texts on these subjects.
- The *International Survey of Legal Decisions on Labour Law* published, from 1925 to 1938, in respect of certain countries (United States, Germany, France, United Kingdom, Italy), the principal legal decisions concerning the application of labour legislation (freedom of association, collective agreements, conciliation and arbitration, labour courts, social and economic organisation, etc.).
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