

1948
31st SESSION
VII

QUESTIONNAIRE

International Labour Conference

THIRTY-FIRST SESSION

SAN FRANCISCO, 1948

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

Seventh Item on the Agenda



GENEVA
International Labour Office
1947

PRINTED BY "IMPRIMERIES POPULAIRES", GENEVA (SWITZERLAND)

INTRODUCTION

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

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

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

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

History of the Question

The problem of freedom of association and industrial relations was brought before the International Labour Organisation at the request of the Economic and Social Council of the United Nations. The Economic and Social Council had been called upon, at its 4th Session (February-March 1947), to examine the question of "guarantees for the exercise and development of trade union rights", which had been referred to it by the World Federation of Trade Unions. The American Federation of Labor had also submitted to the Council a memorandum concerning this matter.

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

The Economic and Social Council,

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

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

The Economic and Social Council,

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

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

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

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

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

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

2. A list of points relating only to the first four subjects indicated above.

Decisions of the Conference

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

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

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

Whereas the Preamble to the Constitution of the International Labour Organisation expressly declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace; and

Whereas the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress" and recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve, among other things: "the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures"; and

Whereas it also affirms that "the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilised world"; and

Whereas standards of living, normal functioning of national economy and social and economic stability depend to a considerable degree on a properly organised system of industrial relations founded on the recognition of freedom of association; and

Whereas, moreover, in many countries, employers' and workers' organisations have been associated with the preparation and application of economic and social measures; and

Whereas the International Labour Conference, the Regional Conferences of the American States Members of the International Labour Organisation and the various Industrial Committees have, in numerous Resolutions, called the attention of the States Members of the International Labour Organisation to the need for establishing an appropriate system of industrial relations founded on the guarantee of the principle of freedom of association;

The General Conference of the International Labour Organisation :
Having been convened at Geneva by the Governing Body of the
International Labour Office, and having met in its Thirtieth Session
on 19 June 1947,

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

I. FREEDOM OF ASSOCIATION

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

2. Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes; there should be no interference on the part of the public authorities which would restrict this right or impede the organisations in the lawful exercise of this right.

3. Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

4. Employers' and workers' organisations should have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

5. The guarantees defined in paragraphs 1, 2 and 3 herein with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. The acquisition of legal personality by employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

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

II. PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

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

9. (1) Where full and effective protection is not already afforded appropriate measures should be taken to enable guarantees to be provided for :

(a) the exercise of the right of freedom of association without fear of intimidation, coercion or restraint from any source with the object of :

- (i) making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member;
- (ii) prejudicing a worker because he is a member or agent or official of a trade union;
- (iii) dismissing a worker because he is a member or agent or official of a trade union.

(b) the exercise of the right of association by workers' organisations in such a way as to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

- (i) furthering the establishment of trade unions under the domination of employers;
- (ii) interfering with the formation or administration of a trade union or contributing financial or other support to it;
- (iii) refusing to give practical effect to the principles of trade union recognition and collective bargaining.

(2) It should be understood, however, that a provision in a freely concluded collective agreement making membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

10. Appropriate agencies should be established, if necessary, for the purpose of ensuring the protection of the right of association as defined in paragraph 9 herein.

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

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

This list of points is set forth below :

LIST OF POINTS

I. FREEDOM OF ASSOCIATION

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

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

3. (1) Need to provide that employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes.

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

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

5. Need to recognise the right of employers' and workers' organisations to establish federations and confederations of such organisations and to affiliate with international organisations of employers and workers.

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

7. Need to provide that the acquisition of legal personality by employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

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

II. PROTECTION OF THE RIGHT TO ORGANISE

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

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

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

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

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

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

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

The Conference recognised that this involved a question of the highest importance, requiring careful and detailed examination. Consequently, the Resolution requests the Governing Body to examine this question in all its aspects and to report back to the Conference at the 31st Session in 1948.

Observations on the Decisions taken by the Conference

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

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

I. FREEDOM OF ASSOCIATION

1. *Establishment of Organisations*

The text proposed by the Office was as follows :

Employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed or nationality, should have the inviolable right to establish organisations of their own choosing without previous authorisation.

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

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

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

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

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

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

2. Functioning of Organisations

The text submitted by the Office was as follows :

Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes without interference on the part of the public authorities.

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

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

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

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

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

Employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes; there should be no interference on the part of the public authorities which would restrict this right or impede the organisations in the lawful exercise of this right.

3. Dissolution and Suspension of Organisations

The text submitted by the Office was intended to protect employers' and workers' organisations against arbitrary dissolution by administrative authority. The Committee decided to extend this guarantee equally to the question of suspension of an organisation by administrative authority.

With this amendment, the point adopted by the Conference is as follows :

Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

4. Federations, Confederations and International Organisations of Employers and Workers

The text proposed by the Office was intended to assure to employers' and workers' organisations, first, the right to establish federations and confederations and, secondly, the right of affiliation with international organisations of employers and workers.

After the rejection of an amendment which sought to make the affiliation of a national to an international organisation subject to previous authorisation by the Government, the Office text was adopted, without alteration, in the following terms :

Employers' and workers' organisations should have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers.

5. Guarantees relating to Federations and Confederations

The Conference adopted with a slight alteration the Office text, as follows :

The guarantees defined in the paragraphs relating to the establishment, functioning, dissolution and suspension of employers' and workers' organisations should apply to federations and confederations of such organisations.

6. Acquisition of Legal Personality

The text proposed by the Office was intended to provide that the acquisition of special privileges by employers' and workers' organisations (as, for example, the acquisition of legal personality) should not be made subject to conditions of such a character as to restrict freedom of association. This was a saving clause intended to prevent the attribute of legal personality or other similar privileges from serving as a pretext for certain States to reintroduce by this means any prohibitive régime concerning associations (for example, by making the acquisition of legal personality subject to previous authorisation or by subjecting the functioning of associations to permanent control by the administrative authorities). The Committee deleted the phrase "the acquisition of special privileges" in the Office text and adopted the point in the following form :

The acquisition of legal personality by employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined.

7. Responsibilities of Organisations

On the proposal of the Employers' members of the Committee, the following point was adopted by 54 votes to 51 and was added to the list of points prepared by the Office :

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

The view was expressed in the Committee that such a clause appeared to lack the necessary precision for inclusion in a Convention on freedom of association, which should lay down clearly defined rights and obligations. Its real scope could be determined

only in relation to the obligations which employers' and workers' organisations are called upon to assume in respect of collective agreements or the settlement of labour disputes. It might, therefore, appear preferable to reserve such a provision for inclusion in due course in the international regulation of collective agreements or conciliation and arbitration. It is for this reason that the Office has thought it useful to consult the Governments on this point also.

II. PROTECTION OF THE RIGHT TO ORGANISE

The texts proposed by the Office under this heading were intended to complete the guarantee of freedom of association in relation to the State by a guarantee of the exercise of the right to organise in relation to the other party to the labour contract. Freedom of association, even where it is recognised by the State, might be prejudiced by the other party to the labour contract, if the latter should use his economic strength to hinder the exercise of a right formally recognised by the law.

The Office, taking into account the fact that the recognition of freedom of association might result either from agreements freely concluded between the parties concerned or from formal legal provisions, proposed two alternative methods of regulation, namely :

- (1) regulation by agreement; or
- (2) in the absence of appropriate contractual regulation, the guarantee of the exercise of the right of association by legislation.

The Office text with regard to the recognition of the right of association by agreement was as follows :

The central organisations of employers and workers should agree to recognise each other as the authorised representatives of the interests of employers and workers, and should undertake mutually to respect the exercise of the right of association.

The Committee, while fully supporting the method of contractual regulation, nevertheless laid down the relevant provisions in the following terms :

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

The text proposed by the Office concerning the legal guarantee of the right to organise was as follows :

1. In the absence of agreement between the central organisations of employers and workers, appropriate regulations should be prescribed to guarantee :

(a) the exercise of the right of association by the workers by measures designed to prevent any acts on the part of the employer or of his agents with the object of :

- (i) making the employment of the worker conditional on his not joining a trade union or on his withdrawing from a trade union of which he is a member;
- (ii) prejudicing a worker because he is a member or agent or official of a trade union;
- (iii) dismissing a worker because he is a member or agent or official of a trade union.

(b) the exercise of the right of association by workers' organisations by measures designed to prevent any acts on the part of the employer or employers' organisations or their agents with the object of :

- (i) furthering the establishment of trade unions under the domination of the employer;
- (ii) interfering with the formation or administration of a trade union or contributing financial or other support to it;
- (iii) refusing to recognise trade unions or to bargain collectively with them for the purpose of concluding collective agreements.

2. It should be understood, however, that a provision in a freely concluded collective agreement making compulsory membership of a certain trade union a condition precedent to employment or a condition of continued employment does not fall within the terms of this Resolution.

Under the terms of this provision, the acts enumerated in the text were judged to be unlawful simply because they were such as to prevent the exercise of the right of association of the workers or of workers' organisations. The Committee considered that the question was too complicated to be regulated as a whole by means of an international labour Convention at the next session of the Conference. It decided, therefore, for the purposes of international regulation in 1948, to take only the principle of the legal protection of the right to organise, and to refer to the next session of the Conference, in accordance with the double-discussion procedure, the questions of the application of the principle of the right to organise.

Consequently, the Committee adopted the point relating to the principle of the protection of the right to organise in the following terms :

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

Finally, the Committee approved without alteration the following point submitted by the Office :

Appropriate agencies should be established, if necessary, for the purpose of ensuring the protection of the right of association.

* * *

Article 31, paragraph 1, of the Standing Orders of the Conference defines the procedure for the consultation of Governments by means of a questionnaire. It prescribes, in particular, that "this questionnaire shall request Governments to give reasons for their replies". The Office calls the attention of the Governments to this provision and requests them to be good enough to indicate, at least briefly, in every case in which it may be useful, the reasons for their replies.

On the basis of the replies from the Governments, the Office will draw up a final report which will be placed before the Conference at its 31st Session (1948) for final discussion and decision. In order that the Office may study these replies, draw up the report mentioned above and communicate it to the Governments so that they may receive it sufficiently early for them to be able to consider it and to hold the necessary consultations before the departure of their delegations, *it is important that, in accordance with the Standing Orders of the Conference, the replies from the Governments should reach the International Labour Office, in Geneva, not later than 1 December 1947.*

Geneva, August 1947.

QUESTIONNAIRE

I. Desirability and Form of International Regulation

1. *Do you consider that the Conference should adopt international regulations concerning freedom of association and the protection of the right to organise in the form of one or several Conventions?*

2. *If the answer to Question 1 is in the affirmative, do you consider that the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise?*

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

3. (a) *Do you consider that it would be desirable to provide that employers and workers, without distinction whatsoever, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation?*

or, alternatively,

(b) *Do you consider that it would be preferable to enumerate descriptively the persons to whom the right of association should apply and, therefore, to provide that employers and workers, public or private, without distinction as to occupation, sex, colour, race, creed, nationality or political opinion, should have the inviolable right to establish or join organisations of their own choosing without previous authorisation?*

(c) *Do you consider that it would be desirable to provide that the recognition of the right of association of public officials by international regulation should in no way prejudice the question of the right of such officials to strike?*

III. Functioning of Organisations

4. (a) *Do you consider that it would be desirable to provide that employers' and workers' organisations should have the right to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes?*

(b) *Do you consider that it would be desirable to provide further that the public authorities should refrain from any interference which would restrict this right or impede the organisations in the lawful exercise of this right?*

IV. Dissolution and Suspension of Organisations

5. *Do you consider that it would be desirable to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority?*

V. Federations, Confederations and International Organisations of Employers and Workers

6. *Do you consider that it would be desirable to provide that employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers?*

VI. Guarantees relating to Federations and Confederations

7. *Do you consider that it would be desirable to provide that the guarantees with regard to the establishment, functioning, dissolution and suspension of employers' and workers' organisations referred to in Questions 3, 4 and 5, should apply to federations and confederations of such organisations?*

VII. Legal Personality of Organisations

8. *Do you consider that it would be desirable to provide that the acquisition of legal personality by employers' and workers' organisations should not be made subject to conditions of such a character as to restrict freedom of association as hereinbefore defined?*

VIII. Responsibilities of Organisations

9. (a) *Do you consider that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their full share of responsibilities and obligations?*

or, alternatively,

(b) *Do you consider that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration?*

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

10. *Do you consider that international regulations should guarantee the exercise of the right to organise?*

11. *If the answer to Question 10 is in the affirmative, do you consider that the protection of the right to organise should be effectively assured by means of mutual agreement between organised employers and workers?*

12. *Do you consider that, in the absence of full and effective guarantee by means of mutual agreements, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source?*

X. Establishment of Agencies for the Purpose of Ensuring Respect of the Right to Organise

13. *Do you consider that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise?*

* * *

14. *Have you any proposal or suggestion to make on any point relating to the questions of freedom of association and of protection of the right to organise, to which no reference has been made in this questionnaire?*
