

REPORT VII

International Labour Conference

THIRTY-FIRST SESSION

SAN FRANCISCO, 1948

**FREEDOM OF ASSOCIATION
AND PROTECTION OF THE RIGHT
TO ORGANISE**

Seventh Item on the Agenda



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INTRODUCTION

The International Labour Conference decided, at its 30th Session, to place on the agenda of its 31st Session (San Francisco, June-July 1948) 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.

In accordance with the first paragraph of Article 31 of the Standing Orders of the Conference, the Office circulated to the Governments a summary report, together with a questionnaire, requesting that the replies of the Governments should reach the Office not later than 1 December 1947.¹

In accordance with paragraph 2 of the same Article 31, the Office, on the basis of the replies from the Governments, has to draw up a final report which may contain one or more Conventions or Recommendations.

As the question was not placed on the agenda of the Conference eighteen months before the opening of its 31st Session, this report, in accordance with paragraph 3 of Article 31 of the Standing Orders—adopted by the Conference at its 30th Session—has to be communicated to the Governments within a period determined by the Governing Body or, under exceptional circumstances, decided by the Officers of the Governing Body, in agreement with the Director-General. In accordance with this last provision, it was agreed that the final report should reach the Governments by 15 February 1948.

By 25 January 1948, the Office had received replies from the following Governments : Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, the Netherlands, Sweden, Switzerland, the Union of South Africa, the United Kingdom and the United States.

In order to be in a position to communicate the report to the Governments sufficiently early to enable them to hold the necessary consultations before the departure of their delegations,

¹ International Labour Conference, 31st Session, Questionnaire : *Freedom of Association and Protection of the Right to Organise*, Geneva (I.L.O.), 1947.

the Office, in preparing the report, has been able to take account only of the replies of the nineteen Governments referred to above. Any replies which arrive at a later date will be published in a brief supplementary report.

Before considering the replies of the Governments, it is necessary to recall very briefly the action taken by the United Nations agencies concerned with regard to the decisions of the last session of the Conference.

THE QUESTION OF FREEDOM OF ASSOCIATION BEFORE THE UNITED NATIONS

The Conference will remember that the question of freedom of association and industrial relations came before the International Labour Organisation at the request of the Economic and Social Council, applying the provisions of the Agreement entered into between the United Nations and the International Labour Organisation.¹

In the Resolution by which the Economic and Social Council referred these problems to the International Labour Organisation², the Council expressed the desire that it should have before it, at its next session, a report from the International Labour Organisation on the action taken in accordance with its request.

In deference to this wish, the International Labour Organisation, immediately after the close of the 30th Session of the Conference, in July 1947, sent to the Economic and Social Council a report which set forth, *inter alia*, the decisions unanimously taken by the Conference concerning freedom of association.³

The Office report gave rise to an extensive discussion on the part of the Economic and Social Council, on 8 August 1947, in the course of its fifth session, which was held in New York.⁴

¹ See International Labour Conference, 30th Session, Geneva, 1947, Report VII: *Freedom of Association and Industrial Relations*, pp. 1-12, Geneva (I.L.O.), 1947.

² *Op. cit.*, p. 1.

³ Cf. INTERNATIONAL LABOUR OFFICE: *Decisions concerning Freedom of Association adopted unanimously by the Thirtieth Session of the International Labour Conference on 11 July 1947, and Speeches delivered before the Conference by Mr. Léon Jouhaux, Reporter, and Mr. Louis E. Cornil, Deputy Reporter, of the Committee on Freedom of Association*, Geneva (I.L.O.), 1947.

⁴ Cf. UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL: E/533, etc.

The International Labour Organisation was represented at this session by a tripartite delegation of the Governing Body, consisting of Mr. David A. Morse (United States Government member), Mr. H. W. Macdonnell (Employers' deputy member) and Mr. Paul Finet (Workers' member), substitute for Mr. Jouhaux, together with Mr. Jef Rens, Assistant Director-General of the International Labour Office.

At the close of its discussion, the Economic and Social Council, by 15 votes to 2, with one abstention, adopted the following resolution :

The Economic and Social Council,

Having received the report transmitted by the International Labour Organisation in pursuance of the Council's request at its fourth session that the memoranda on the subject of trade union rights submitted to the Council by the World Federation of Trade Unions and the American Federation of Labor might be placed on the agenda of the International Labour Organisation at its next session and that a report might be sent for the consideration of the Economic and Social Council at its next meeting,

Takes note of the report and observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognised competence,

Decides :

(a) to recognise the principles proclaimed by the International Labour Conference ;

(b) to request the International Labour Organisation to continue its efforts in order that one or several international Conventions may be quickly adopted ;

(c) to transmit the report to the General Assembly ;

Awaits further reports on the subject to be transmitted by the International Labour Organisation and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights ;

Notes that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organisation ;

Considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Organisation ; and

Requests the Secretary-General to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

In accordance with sub-paragraph (c) above, the report of the International Labour Organisation was transmitted to the

General Assembly of the United Nations, whose Second Ordinary Session opened on 16 September 1947, in New York.

The International Labour Organisation was represented at this session by a tripartite delegation of the Governing Body, consisting of its Chairman, Sir Guildhaume Myrddin-Evans, the Employers' Vice-Chairman, Mr. J. D. Zellerbach, and the Workers' Vice-Chairman, Mr. Léon Jouhaux, together with the Director-General.

The General Assembly referred the question to its Third Committee (the Committee dealing with social, humanitarian and cultural questions), which further referred the matter to a specially constituted subcommittee in order to reconcile the different proposals submitted by a number of delegates.

On the report of the subcommittee, the Third Committee, by 31 votes to 5, with six abstentions, adopted a resolution to be submitted to the Assembly. After a long discussion¹, the Assembly adopted, with slight modifications, by 45 votes to 6, with 2 abstentions, the resolution submitted by the Third Committee.

The text of the resolution adopted by the Assembly is as follows :

The General Assembly,

Taking note of resolution 52 (IV) adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on " Guarantees for the Exercise and Development of Trade Union Rights " 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 " ;

Taking note also of resolution 84 (V) adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled " Decisions concerning Freedom of Association adopted unanimously by the Thirtieth Session of the International Labour Conference on 11 July 1947 ", to recognise the principles proclaimed by the International Labour Conference, and to request the International Labour Organisation to continue its efforts in order that one or several international Conventions may be adopted ;

Approves these two resolutions ;

Considers that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the

¹ See UNITED NATIONS, GENERAL ASSEMBLY: A/C. 3/166, etc., and A/444, etc.

improvement of the standard of living of workers and to their economic well-being ;

Declares that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognised and which are mentioned in the Constitution of the International Labour Organisation and in the Declaration of Philadelphia and, in particular, subsection (a) of Section II and subsections (a) to (j) inclusive of Section III of the Declaration of Philadelphia¹ ;

Decides to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52 (IV) of the Economic and Social Council ; and

Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

The importance of the Resolutions adopted, both by the Economic and Social Council and by the Assembly of the United Nations, will certainly not escape the notice of the Conference.

It is important to emphasise, in the first place, that the Economic and Social Council, as well as the Assembly, “ observes with satisfaction the action taken and proposed by the International Labour Organisation within its recognised competence ”. Thus, the proper competence of the International Labour Organisation, in questions concerning the regulation of trade union rights and industrial relations, has been formally recognised by the various agencies of the United Nations.

Secondly, the Economic and Social Council and the Assembly of the United Nations have endorsed the principles proclaimed in respect of trade union rights by the International Labour Conference and have, therefore, requested the International Labour Organisation to continue its efforts with a view to the adoption of one or several international Conventions. This official sanctioning, by the United Nations, of the decisions taken at its 30th Session by the International Labour Conference enhances their character of universality, as it associates with them a number of countries, Members of the United Nations, which are not as yet Members of the International Labour Organisation. The Economic and Social Council expressed once

¹ Sub-paragraphs (a) to (j) of Section III of the Declaration of Philadelphia are quoted in the annex to the Resolution.

more on this occasion a desire to receive further reports on the progress of the activities undertaken in this field by the International Labour Organisation.

Thirdly, the Economic and Social Council and the Assembly of the United Nations have given prominence to the importance of the problem of international supervision of the effective application of freedom of association. In this connection, it may be recalled that, in accordance with the suggestions made on this matter by the World Federation of Trade Unions and the American Federation of Labor, the 30th Session of the Conference adopted a Resolution concerning international machinery for safeguarding freedom of association.¹ In this Resolution, the Conference recognised that the question was one of paramount importance which required careful and detailed examination and, therefore, requested the Governing Body to examine the question in all its aspects and to report back to the Conference at the 31st Session in 1948.

The Economic and Social Council, in its resolution of 8 August 1947, while noting that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Office at the same time expressed the opinion that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the International Labour Office. Consequently, the Council requested the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights in the study of these problems.

For its part, the General Assembly of the United Nations recommended to the International Labour Organisation, on its tripartite basis, to pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

In the light of the decisions taken by the Economic and Social Council and in accordance with the Resolution adopted

¹ See INTERNATIONAL LABOUR OFFICE: *Official Bulletin*, 31 July 1947, Volume XXX, No. 1, p. 69.

by the 30th Session of the International Labour Conference, the Governing Body, therefore, will have to examine the question in its entirety in order that, at the appropriate time, concrete proposals concerning this matter may be placed before the Conference and the United Nations.

Finally, the Assembly of the United Nations decided to transmit the report of the International Labour Organisation on freedom of association to the Commission on Human Rights.

It is important to emphasise, in this connection, that the Commission on Human Rights, which met in Geneva in its second session from 2 to 17 December 1947, included, among the objects which associations may pursue, "trade union" objects, which were not referred to in the draft submitted by the Drafting Committee. On the other hand, taking into account the special competence of the International Labour Organisation with regard to the question of regulation of trade union rights, the Commission on Human Rights refrained from dealing with this problem in the Draft International Covenant on Human Rights.

The Conference will no doubt observe with satisfaction that a particularly fruitful collaboration has been established between the United Nations and the International Labour Organisation with regard to a question of vital importance both for the Governments and for the workers and employers of all countries in the world.

CHAPTER I

REPLIES OF THE GOVERNMENTS

General Observations

AUSTRIA

At the present day, it would not be possible to imagine a democratic régime without the participation of employers' and workers' associations in the field of social and economic policy; these associations are the determining factors whose objective and responsible co-operation, free from outside influence, and directed towards the best interests of the community, constitutes the best guarantee of the harmonious development of social and economic legislation and of that social peace which is necessary for such development.

In Austria, where the right of workers and employers to form associations in full freedom has been guaranteed for decades under the Constitution (leaving aside the latest years of the totalitarian régime), both the legislative and administrative authorities have always attached the greatest importance to the extensive co-operation of workers' and employers' associations in the field of social and economic policy. Particular progress has been made in the case of collective agreements, on which new legislation was enacted in 1946 to correspond with present-day circumstances.

NETHERLANDS

In replying to the questions contained in the questionnaire, it has been taken as a matter of course that freedom of association—like every other freedom—is bound by the requirements of public order, as defined by national legislation.

SWITZERLAND

Switzerland prides itself on being a country in which the spirit of freedom is ever alive and could not be extinguished. It therefore attaches very great importance to freedom of association, although the right to combine has not, in Switzerland, given rise to extensive legislation. The right is laid down in the Federal Constitution; Article 56 provides that "citizens have the right to form associations, provided that the objects and methods of such associations are not unlawful or dangerous to the State". However, this constitutional provision governs only relations between the citizen and the State and does not, therefore, protect freedom of association against interference on the part of individuals. In the latter case, private law is applicable, and, in particular, the provisions of the Swiss Civil Code concerning protection of civil status (Article 27 f.) and those of the Swiss Code of Obligations concerning the liability resulting from unlawful acts (Article 41 ff.). It should be added that the Civil Code allows great freedom with regard to the formation of associations; it imposes only a minimum number of requirements in this connection.

In order to guarantee even more effectively the right of association, the competent authorities are at present considering a proposed Federal Decree concerning the protection of the right of association of workers and salaried employees. Moreover, it may be observed that the recent adoption by the Swiss people, on 6 July 1947, of the Federal Decree concerning the Articles of the Federal Constitution relating to the economic field (4 April 1946) may have a favourable influence on the activities of associations. Article 34 *ter* (b) of the Constitution confers on the Confederation henceforth the right to legislate regarding the relations between employers and workers or salaried employees, and especially on the joint regulation of questions concerning the undertaking or the occupation.

UNION OF SOUTH AFRICA

In approaching this question it should be constantly borne in mind that the International Labour Organisation is composed of a large number of Member States of varying national practices and traditions and involving peoples at widely varying stages

of social and economic development, these variations sometimes being evident as between the population of one Member State and another, sometimes as between the population of the metropolitan Member State and the population of its dependent territories, and sometimes as between different sections of the population in the territory of the same Member State.

Furthermore, some States have "Constitutions" in which certain principles are enunciated. While setting out to ensure the fundamental rights, for the protection of which any Convention which may be adopted is designed, great care should be exercised in ensuring, if at all possible, that the text of any Conventions adopted should not involve the amendment of the "Constitution" of any State as a preliminary to ratification.

What is desired is results from the adoption and subsequent ratification of any such Conventions, and it is suggested that in the approach to this question the International Labour Organisation should constantly bear in mind the principles set out in the Resolution adopted at the New York Conference of 1941 on the question of collaboration between public authorities and workers' organisations and employers' organisations—a principle which it is considered applies with equal force to the fundamental questions of freedom of association, the protection of the right to organise and collective bargaining, all of which constitute the foundation on which any such collaboration must be built.

The relevant paragraph of the Resolution reads as follows :

The Conference,

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.¹

A perusal of the Director-General's report on the earlier attempts to regulate these matters and a perusal of the reports to and discussions of various regional conferences indicate that, while fundamental rights should be clearly stated, any Conven-

¹ See Report VII, 1947, *op. cit.*, p. 27.

tions adopted will fail in their purpose, and positive results will not be obtained unless the terms of such Conventions permit of development along the lines of national experience.

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?*

AUSTRALIA

1. Yes. Freedom of association, coupled with the right of employers and workers to organise, is already firmly established as a way of life in Australia. The proportion of the working population already organised in trade unions is believed to be higher than in any other country in the world, excepting the Soviet Union, and it is doubtful whether it would ever be necessary, unless in exceptional circumstances, to protect this right in Australia. The adoption of international regulations would not involve any alteration of the position in Australia, except in a matter of form, but in other countries international regulation may be of concrete value in furthering freedom of association and the protection of trade unions.

2. If protection of the right to organise, as well as the right of freedom of association, is to be provided for by international regulation, then a single Convention, rather than separate Conventions, is favoured.

AUSTRIA

1. In view of the importance of "freedom of association" and of the "protection of the right to organise" as outlined in the introduction to this reply¹, it would seem necessary that

¹ See above, under "General Observations", p. 8.

the international regulation of these two legal questions should take the form of a Convention.

2. The international regulation of the matters mentioned under Question 1 should be dealt with not by two separate Conventions, but by a single Convention. The protection of the right to organise is a necessary complement to freedom of association; these two legal questions are so closely related to each other and bear upon each other in so many ways that it appears desirable to adopt a single Convention for their international regulation.

BELGIUM

1. International regulations concerning freedom of association and protection of the right to organise should be adopted by the Conference in the form of a Convention.

2. These two questions seem to be so closely related that it appears reasonable to contemplate only a single Convention.

BULGARIA

1. Yes.

2. Yes.

CANADA

1. Yes.

2. Yes.

CHINA

1. Yes, the Conference should adopt international regulations concerning freedom of association and protection of the right to organise in the form of one or several Conventions.

2. It is recommended that the Conference should adopt one Convention concerning freedom of association and protection of the right to organise, because, although these are two separate questions, they are closely related.

DENMARK

1. Yes.¹

2. No.

¹ In its reply to the Questionnaire, the Danish Government communicated to the Office the opinions of the Danish Employers' Confederation and of the Confederation of Danish Trade Unions with regard to each question, indicating that the Government was of the same opinion as these organisations in respect to Questions 1-4, 6-9 and 11-14. The replies to these questions, therefore, should be considered as an expression of the views jointly held by the Danish Government and the employers' and workers' organisations.

ECUADOR

1. The Government of Ecuador considers that the international regulations concerning freedom of association and protection of the right to organise should be adopted under the form of a single Convention, as these two questions are closely related to each other.

2. As already indicated, only a single Convention should be contemplated, in view of the close connection between freedom of association and protection of the right to organise.

FINLAND

1. The reply is in the affirmative.

2. The Conference should adopt two separate Conventions which should be discussed at the same time.

FRANCE

1. Yes.

2. Yes.

HUNGARY

1. Yes.

2. It would be sufficient to adopt a single Convention.

INDIA

1. Yes.

2. The Conference should adopt two separate Conventions, one concerning the freedom of association and the other concerning the protection of the right to organise.

MEXICO

1. Yes.

2. It would be sufficient to have one Convention on freedom of association.

NETHERLANDS

1. The reply to this question is not in the negative, but it may be doubted whether without effective international supervision the practical realisation of this laudable principle will be achieved. Experience shows that the virtual situation in a country may lead to the impairment of freedom, against which international Conventions as such are of little avail.

2. If the suggestion made in the reply to Question 10 is not adopted, the subject matter of both parts of the questionnaire could be embodied in one Convention.

SWEDEN

1. Yes.

2. To the Swedish Government it seems desirable that freedom of association and the protection of the right to organise should be dealt with in a single Convention.

SWITZERLAND

1. Inasmuch as freedom of association constitutes an element in the basic freedoms of the individual, it is considered that freedom of occupational association, as well as the protection of the right to organise, should be guaranteed by international regulation.

2. A single Convention should suffice to include both these questions, which are closely related to one another. Perhaps it might be advisable for it to be supplemented by a Recommendation dealing with certain points which cannot be set forth in detail in a Convention.

UNION OF SOUTH AFRICA

1. No. It is considered preferable that, in the first instance, the international regulations should take the form of Recommendations. Conventions could follow in the light of experience of reports on Recommendations. If, however, the Organisation decides upon the form of Conventions, then it is considered desirable that there should be two or more Conventions, unless one Convention divided into parts can be devised with the right vesting in Members to ratify one or more parts.

2. Subject to what has been stated in reply to Question 1, the answer is in the affirmative.

UNITED KINGDOM

1. Yes; provided that the regulations do not require the enactment of legislation concerning freedom of association or the protection of the right to organise in cases where this

freedom and right exist under current law or are satisfactorily secured in other ways.

2. The two subjects might be dealt with in a single Convention.

UNITED STATES

1. Yes.

2. Yes.

The drafting of the Convention relative to the protection of the right to organise will be complicated by the need to make it effectively responsive to widely varying conditions with respect to the actual security and power of employers' and workers' organisations and with respect to the existing machinery of the Government members for protecting the right to organise. Problems arising from these varying circumstances should not be allowed to complicate or delay the adoption of a Convention formulating the nature of the right whose recognition should guide us and whose exercise it should be our duty fully to protect.

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 prejudge the question of the right of such officials to strike?*

AUSTRALIA

3. (a) Yes. This has been, and still is, the policy in Australia both in public and in private employment.

(b) No.

(c) Yes.

AUSTRIA

3. (a) and (b) It would be preferable to adopt the formula set forth in Question 3 (b), as the words "without distinction whatsoever" might, in view of their having too general a meaning, lend themselves to different interpretations and, therefore, to a restricted interpretation, with the result that there might be grounds for fearing that, when the Convention is applied by the States Members, the categories of persons protected would come to be defined in a different way and the real objects of the international regulations would not be fully realised. The wording adopted under Question 3 (b) has the advantage of specifying clearly the categories of employers and workers to whom the Convention shall apply.

It is evident that the establishment of workers' and employers' associations should not be made subject to "previous authorisation". But this should not mean that, when associations are being established, the administrative formalities in force in the various States may be disregarded. In Austria, associations both of employers and of workers are established in accordance with the Associations Act of 15 November 1867 (R.G.Bl. 1. Nr. 134), under the provisions of which the proposal to establish an association (occupational organisation) must be notified in writing to the competent administrative authority (provincial governor) and copies of the rules submitted. The administrative authority has power to prohibit the formation of the association only within four weeks of receiving the notification, and only if its objects or constitution render the organisation contrary to law or dangerous to the State. If the administrative authority does not issue any prohibition within a period of four weeks, or if the authority declares, before the expiration of this period, and after considering the rules which have been submitted, that it does not prohibit the establishment of the association, such association may commence to operate. A decision to prohibit the association may

be appealed against within sixty days to the Minister of the Interior.

Under the provisions of the Austrian Associations Act, in order to establish a workers' or employers' association, it is necessary, therefore, in principle, merely to make a declaration to that effect to the administrative authority, but there is no need to obtain previous authorisation. If the words "without previous authorisation" relieved associations of any obligation to comply with formal requirements such as those indicated above, it would be necessary, in order not to render the ratification of the Convention more difficult, to take account of this aspect of the question by inserting supplementary clauses.

(c) In view of the fact that in many countries, under the legal regulations governing the public services, officials are placed in a situation of particular responsibility in relation to the State, and because by virtue of that situation certain officials may themselves frequently represent the State authority, it seems desirable to specify in the Convention that the recognition of the right of association of these officials in no way prejudices the question of their right to strike.

BELGIUM

3. (a) The inviolable right to establish or join organisations of their own choosing without previous authorisation should be guaranteed to employers and workers, without distinction whatsoever; this is the corollary to freedom of association, the principle of which was solemnly affirmed in the Preamble to Part XIII of the Treaty of Versailles and reaffirmed by the Declaration of Philadelphia in 1944.

(b) See reply to (a) above.

(c) Freedom of association being recognised for all workers, whoever they may be, it is desirable, in accordance with the decision of the International Labour Conference in 1947, to defer for the time being questions of application of this principle, one of which is necessarily the question of the exercise of the right to strike by public officials.

BULGARIA

3. (a) Yes.

(b) No.

(c) Yes.

CANADA

3. (a) Yes.

(c) It is considered that recognition of right of association of public officials should not carry with it recognition of any right to strike.

CHINA

3. (a) The Chinese Government agrees with this, but would like to point out that these organisations should be set up in conformity with the national laws or regulations concerned.

DENMARK

3. (a) Yes.

(b) No.

(c) Yes.

ECUADOR

3. (a) Yes, provided that this does not cover public employees, in the case of whom national legislation must be left free to grant or regulate or refuse this right according to circumstances.

(b) It is considered that this right should be accorded and ensured as a full and general right, except for the reservations which each country may make with regard exclusively to public employees and officials, as indicated in the reply to (a) above.

(c) In view of the fact that each country should be left free to legislate with regard to the right of association of public officials, it is considered that each country should also have the right to regulate or prohibit the right to strike of such officials ; the international regulations, therefore, should in no way prejudge this question.

FINLAND

3. (a) The reply is in the affirmative, but the right of association should also mean that employers and workers might, if they so choose, refrain from joining organisations. The State and municipal authorities, in the rôle of employers, should not be members of the organisations of private employers.

(b) The reply is in the negative.

(c) The reply is in the affirmative.

FRANCE

3. (a) and (b) The formula of (a), being in general terms, appears to be preferable to that of (b).

(c) Yes. It may be recalled in this connection that the French Constitution provides that the right to strike shall be exercised within the limits of the laws regulating that right. A reservation of this kind might be contemplated in the circumstances.

HUNGARY

3. (a) and (b) The solution contemplated under (a) appears to be preferable by reason of its clarity, which excludes the possibility of any distinction. It is of paramount importance, however, that the rights provided by the Convention should be ensured only to those organisations which satisfy the standards of democracy. Moreover, workers' organisations should benefit from the application of these rights only if they include a specified proportion of the workers in the occupation concerned, a proportion which might be fixed by national legislation.

(c) The provision suggested under head (c) should be included in the Convention.

INDIA

3. (a) Yes, but the regulations should be so framed as to make clear that the right to establish or join organisations should be in conformity with the provisions in the national Constitution regarding the freedom of speech and combination, the right to form associations and the right of assembly.

(c) Yes, but it should be made clear that the recognition of the right of association of public officials in no way implies any recognition, directly or indirectly, of the right of such officials to strike.

MEXICO

3. (a) Yes.

(c) No.

NETHERLANDS

3. (a) This is preferred to 3 (b).

(c) Questions relating to the right to strike have not yet been under consideration for the purposes of the proposed

Convention ; a provision concerning the right to strike should therefore not be included.

SWEDEN

3. (a) Yes.

(c) Since the question of the right of public officials to strike does not appear to be directly connected with the right of association, this question should not be dealt with in the Convention.

SWITZERLAND

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

(b) Any enumeration such as is set forth under (b) could only be limitative, and might have the effect of giving rise to controversies likely to disturb social peace.

It is suggested that the two following rights might be dealt with in the Convention ; that of employers and workers to associate and, as a kind of corollary to that right, the right to refrain from association. Admittedly, it has been urged that the simple affirmation of the right to associate fully safeguards the right not to associate. However, it would appear desirable that this principle should be clearly laid down. This question has, in fact, already given rise to discussion in the Committee on freedom of association last summer in Geneva.

(c) It is considered necessary to provide that the recognition of the right of association of public officials should in no way prejudice the question of the right to strike of such officials. The Federal Act respecting the conditions of service of officials of 30 June 1927 provides specifically that the right of association is guaranteed to officials within the limits prescribed by the Federal Constitution. However, they are forbidden to strike.

UNION OF SOUTH AFRICA

3. For the reasons which follow in detail it is considered that any provision in a Convention dealing with this principle should be phrased somewhat as follows :

Employers and workers shall have the right, without previous authorisation, to establish or join organisations for the furtherance of their interests as such and for membership of which they are eligible subject only to such minimum compulsory statutory requirements of the national authority as will ensure :

(a) adequate adaptation to the pattern of the legislative system of wage regulation and collective bargaining and industrial regulation ; and

(b) protection of the organisation's assets against misappropriation and misapplication to non-lawful or non-constitutional purposes ; and

(c) non-participation of organisation in fields of activity not sufficiently closely connected with the purpose for which such organisation was primarily established, for example compulsory political activities.

It is considered that in framing measures of this nature the use of adjectives such as "inviolable" should be avoided. There is a likelihood of a meaning being read into the word other than that intended by the contracting parties. More particularly is it undesirable to utilise such unqualified phraseology and to proceed thereafter to whittle down the scope, as, for example, was done in the Resolution adopted at the 30th Session, where it was necessary to exclude a provision in a collective agreement stipulating compulsory membership of a particular organisation. Such compulsory membership seems in conflict with the phrase "the inviolable right. . . to establish or join . . . organisations of their own choosing".

The term "establish organisations" is also too wide. What is apparently intended by the Resolutions adopted at the 30th Session is to recognise the right of workers as such to establish "trade unions" to protect their interests as "workers", and of "employers" to establish "employers' organisations" to regulate relations between themselves and their employees. The right of both employers and workers to establish organisations for any other purpose should be the same as for the ordinary citizen.

It is considered that any Convention should relate only to workers' and employers' organisations in their capacity as representatives of workers and employers as such. Their purpose should be to further the interests of workers or employers in the particular undertaking, industry, trade or occupation and to regulate relations between them. It would be preferable to define what is intended. The phrase "of their own choosing" is unreal and should be deleted. In actual practice considerable

limits on the right of choice are imposed by the employers or workers who themselves form the various organisations. This right of choice would apply equally to the formation of new organisations.

It is quite impracticable to concede the complete freedom of any employers or workers to establish organisations of their own just when and how they choose. The fundamental right of both the workers and the employers to associate to further and protect their respective interests must be maintained, but orderly regulation is essential if the objective of successful collective bargaining is to be attained, and any Convention adopted should specifically recognise this. Differences in race, custom, stage of social and economic development and education between various population groups are such that in some countries the interpenetration of various groups within the same geographical areas renders the intermingling of the members of such groups within the same organisation impracticable. This is the more so when a large section of a population is slowly emerging into a more socially and economically developed state. If there existed an "inviolable right" to join an organisation "of their own choosing" the less developed sections of the population in such lands having little or no experience of such matters but which might nevertheless be numerically the largest group could take over the control of long-established organisations of many years' experience.

The freedom of choice should be restricted to organisations established according to the pattern upon which industrial relations in a country are organised inasmuch as the main function of employers' organisations and trade unions is collective bargaining. Jurisdictional disputes dissipate the energies and revenues of such organisations and give rise to an atmosphere in which collective bargaining is seriously impeded. The right of the worker and the employer to organise should be guaranteed.

3. (c) The right of servants of the State to association should be subject to similar principles as apply in the case of non-servants of the State, in so far as grouping of different racial and cultural elements is concerned, but distinctions must be drawn between associations of State employees and other associations of public officials. The former should not participate in the ordinary legislative pattern of collective bargaining nor

should they have the right to strike. Public officials in the employ of municipal or other local authorities should generally fall within the ambit of collective bargaining but should not be permitted to strike if employed upon "essential services", i.e. services to the community such as the supply of light, power, water, sanitation and the extinguishing of fires.

UNITED KINGDOM

3. A general formula such as that suggested in 3 (a) is considered to be preferable to an enumeration, as in 3 (b), for the reasons given on pages 7-8 of the Questionnaire. The provision should be so framed as to preserve the right of organisations to decide whether or not to accept applications for membership.

3. (c) There appears to be no reason why the recognition of the right of association of public officials by international regulation should prejudice the question of their right to strike, but no objection is seen to the inclusion of a provision stating that it does not do so.

UNITED STATES

3. (a) and (b) It is considered preferable to state generally that employers and workers should have the stated right, and not to state that employers and workers, public or private, should have the stated right. The term "employers and workers" if unaccompanied by limitation would encompass both public employers and workers and private employers and workers and would not exclude, or create doubt with respect to the inclusion of, any worker who might not seem to fall properly under the category of either "public" or "private".

It is likewise considered preferable to provide generally against discrimination, and not to attempt to enumerate the types of discrimination which ought to be prohibited. It would be unfortunate if, in our concern to give more definite content to the provision against discrimination, we should actually limit the concept and fail to provide against other forms of discrimination which might be the occasion for an equally serious threat to the right of free association.

The phrasing of paragraph (a) was designed to fulfil the objective which the United States approves. The wording

“employers and workers, without distinction whatsoever” may, however, be somewhat ambiguous, in that it may not be clear whether it means (1) only that no distinction is to be made between employers’ rights to establish or join employers’ organisations and workers’ rights to establish or join workers’ organisations, or (2) primarily that no distinction is to be made in either group on any ground whatsoever with respect to individual workers and individual employers. It is clear, of course, that the second of these meanings was intended when the proposed language was selected. It is suggested that the latent ambiguity would be eliminated and that the phrasing would be more apt if it were stated :

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

(c) Yes.

There are at present in Member countries limitations on the right of public officials to strike, supported by the belief that special considerations apply to this problem which do not apply to the general recognition and protection of the right of freedom of association and organisation. It is felt that this belief has substantial basis and that it would, therefore, be undesirable to attempt to resolve this problem under the Convention.

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 ?*

AUSTRALIA

4. (a) Yes. This is fundamental to the concepts underlying the right of freedom of association as understood in Australia.

(b) Yes. It is noted that the Resolution of the Committee at the 30th Session, upon which this question is based, was adopted with only three dissentients "in order to safeguard on the one hand respect for the legal position and to ensure, on the other hand, full recognition of trade union rights".

AUSTRIA

4. (a) and (b) In principle, the reply to both questions must be in the affirmative, for otherwise the complete independence of employers' and workers' organisations which is desired would not be ensured.

However, the provisions contemplated under (a) and (b) should not relieve organisations of their obligation to observe the administrative formalities prescribed by national legislation, as for instance, those concerning the matters which must in any event be covered by the rules, the communication of the names of the executive officers of the organisation, the notification of general meetings. These administrative formalities which are prescribed by the Austrian Associations Act in no way restrict freedom of association. The words "lawful exercise" included under (b) appear adequate to ensure the observation of such administrative formalities.

BELGIUM

4. (a) 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, this right giving effect to the principle of freedom of association.

By their constitutions and rules, which the members should be able to adopt or accept in full freedom, they must have the opportunity to determine how they will make use of their right to organise.

By freely appointing the agencies which, on various levels, will be entrusted with management and supervision, they must have every opportunity to participate effectively in the

life of their organisation and to influence the direction of its activities in accordance with the views of the majority of the members.

By the formulation of their programmes, the employers' and workers' organisations should be able to progress and to recruit new members who will co-operate in the realisation of their aims.

(b) It would be desirable to provide that the public authorities should refrain from any interference which would restrict this right or impede the exercise thereof.

BULGARIA

4. (a) Yes.

(b) Yes.

CANADA

4. (a) Yes.

(b) Yes.

CHINA

4. (a) Yes.

(b) No. In the event of any interference which restricts this right or impedes the exercise thereof, employers and workers respectively have the right to request the public authorities to intervene.

DENMARK

4. (a) Yes.

(b) Yes.

ECUADOR

4. (a) Yes.

(b) Yes, provided that the exercise of this right does not endanger the security of the State and that organisations pursue their objects by means which are lawful and not contrary to the Constitution and to public morals.

FINLAND

4. (a) The reply is in the affirmative, provided that the term "legal" in the text is intended to imply (in accordance with the understanding in the Committee) that occupational organisations, like other organised collectivities, are bound, when exercising their rights, to observe the general law of the country which, by definition, is binding on everyone.

FRANCE

4. (a) Yes, provided that occupational organisations undertake to respect the fundamental rules of public law.

(b) Yes.

HUNGARY

4. (a) Yes.

(b) Yes.

INDIA

4. (a) and (b) Yes; 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", provided the methods followed are open, strictly peaceful and within the law, and are not in any way calculated to interfere with the exercise of similar rights by other people and organisations.

MEXICO

4. (a) Yes.

(b) Yes.

NETHERLANDS

4. (a) Yes.

(b) Yes.

SWEDEN

4. (a) Yes.

(b) Yes.

The term "lawful exercise" is rather vague, however, and might not exclude the adoption of special legislation under which public authorities could interfere with the functioning of organisations. The text of the Convention should be drafted so as to eliminate the possibility of such an interpretation and application of the term.

SWITZERLAND

4. (a) It is considered 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. Moreover, this right is fully recognised in Switzerland, provided that, by the terms of Article 56 of the Federal

Constitution, the objects and methods of such associations are not unlawful or dangerous to the State.

(b) It is considered that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, on the understanding that the term "lawful" is to be interpreted as meaning that occupational organisations, like other organised collectivities, are bound, when exercising their rights, to observe the general law of the land. Moreover, this basic principle is expressed in the second paragraph of Article 41 of the Constitution of the International Labour Organisation.

UNION OF SOUTH AFRICA

4. (a) and (b) Clearly employers' organisations and workers' organisations should have the right to draw up their constitutions and rules. Similarly they should have the right to organise their administration and activities and to formulate their programmes, provided these fall within the terms of their own constitutions and rules and conform to legitimate activities for organisations of this nature.

If by the proposal it is meant that employers' organisations and trade unions should be free to include in their constitutions provisions unrelated to the main purpose of such organisations, then the Union Government is fundamentally opposed to any such provision. Having regard to the real purpose of the whole structure—namely, representative organisations regulating conditions of employment by means of collective agreements—it is essential that there should be orderly regulation of the purpose and administration of such organisations. Otherwise the whole structure would be endangered.

It is of interest to note that the W.F.T.U. in its representations to the Economic and Social Council appreciated the necessity for some such regulation. In paragraph 2 of the Resolution as printed on pages 138 and 139 of Report VII—*Freedom of Association and Industrial Relations*—considered by the 30th Session of the International Labour Conference, the following view is expressed by the W.F.T.U. :

Trade union organisations 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.

As "employers' organisations" and "trade unions", when they collaborate in the negotiation of collective agreements, become quasi-legislative bodies and, in fact, perform functions of a semi-judicial character, it is considered to be essential that there should be orderly regulation and that their constitutions and rules should conform to certain main principles.

The legislation for the Union of South Africa, for example, provides that in order to obtain registration the constitution of an "employers' organisation" or "trade union" must provide for certain matters, such as: the qualification for membership; the determining of the amount of subscriptions; the appointment, removal and powers of officials; the calling and conduct of meetings; the keeping of books of account, auditing of accounts, and submission of audited accounts to members once a year; the circumstances in which a member ceases to be entitled to membership; the alteration of the constitution, etc. All those matters are aimed at the orderly regulation of bodies which perform an important function. There is an overriding authority permitting of refusal of registration if any of the provisions of a constitution are unreasonable in relation to the members or the public. Against such a decision there is an appeal to the Courts.

All these provisions are aimed at orderly regulation and do not appear to fall within the phrase "interference which would restrict the right or impede the organisations in the lawful exercise of their rights". If there is any doubt on the question it is considered that any Convention should make the position clear, as the Union Government from long experience is convinced that without such orderly regulation the whole system would be endangered.

There is a further aspect of the question. The South African Industrial Conciliation Act forbids any employers' organisation or trade union to delegate to any other person or body the power to take any ballot or to take part in or to continue or discontinue any lockout or strike. It is considered that in such matters the proper democratic method is for the organisations themselves in terms of their constitutions to take the decision. It would, for example, be quite wrong for it to be possible for a federation of employers' organisations to be empowered to decide that a particular employers' organisation should declare a lockout. Similarly a federation of trade unions should not have the right

to call a strike in any one or more industries. In both cases the members of the organisation concerned should reach their own decision.

In any Convention, paragraph 2 of the Resolution on freedom of association should be phrased somewhat as follows :

Employers' and workers' organisations shall, in conformity with national law, have the right to draw up their constitutions and rules, etc.

The answer to the question is thus in the affirmative, subject only to such minimum compulsory statutory requirements as will ensure—

(a) adequate adaptation to the requirements of the legislative pattern of wage regulation, collective bargaining and industrial regulation ;

(b) protection of the organisation's assets against misappropriation or misapplication to unlawful or unconstitutional purposes, or to such purposes, directions or other activities (in particular the compulsory participation in political activities) not sufficiently closely connected with the purposes for which such organisations primarily exist, namely to deal with matters connected with or arising from employment.

UNITED KINGDOM

4. (a) Yes.

(b) Yes.

UNITED STATES

4. (a) Yes.

The rights specified seem inherent aspects of the right freely to associate. Unless the members of associations can decide for themselves the basis for their association and can determine democratically how their association shall be constituted and how it shall function, any right of free association would seem an empty theory, of little substantive import or practical value.

(b) Yes.

If the members of associations are to be allowed the rights specified under 4 (a) above, then the Governments of the Members must refrain from a negation of those rights. Expressly stating that they "should refrain from any interference which would restrict this right," therefore, seems appropriate and desirable. Similarly, it seems advisable to indicate expressly

that Member Governments cannot effect the same object indirectly by impeding the organisations in their actual operation. It is considered, also, that the word "lawful" should be included (as it is under the proposed phrasing) because, in the opinion of the United States Government, it is important to recognise that organisations of freely associated individuals, democratically instituted and operated, are, otherwise, like individuals themselves, subject to the general laws of the community, State or nation.

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?*

AUSTRALIA

5. Yes, on the understanding set out in the report of the Committee at the 30th Session. Under the Commonwealth Conciliation and Arbitration Act, and some of the Arbitration Acts of the States, provision has been made, in certain circumstances, for suspension or cancellation by the Court of the awards and orders applicable to organisations, and even for the de-registration of organisations, the effect of such action being to deprive the organisations, until such time as the Court rescinds its order, from continuing their activities in obtaining terms and conditions of employment through awards of the Court, which, under the Australian system, is a normal union activity.

AUSTRIA

5. It is not possible to give an affirmative reply to this question in the general form in which it is drafted at present. It must be possible for employers' and workers' organisations, like any other associations of individuals, to be dissolved or suspended when they contravene the national law which is in force. Under the Austrian Associations Act, an association (occupational organisation) may be dissolved by the administrative authority when it takes decisions or measures which contravene the penal law or by which, owing to their substance or form, it assumes powers over matters in the competence of the legis-

lative or executive authority, or when the association exceeds the limits of the sphere of activity prescribed by its rules, or, in a general way, when it no longer fulfils the conditions to which its legal existence is made subject. The decision of dissolution or suspension taken by the administrative authority may be appealed against before the Constitutional Court.

In view of these obligations, which certainly exist in other countries also, it appears desirable that the provision dealing with this question to be included in the Convention should be drafted in the following terms :

Employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority except when their activities are contrary to the national laws in force.

BELGIUM

5. 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.

BULGARIA

5. Yes.

CANADA

5. Yes.

CHINA

5. Yes, 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, but special cases should be exempt from this provision.

DENMARK ¹

5. It is pointed out that Article 65 of the Danish Constitution Act runs as follows :

Citizens have the right, without preliminary authority, of forming associations having a legal object. No association may be dissolved by Governmental action. Nevertheless, an association may be temporarily forbidden, but proceedings to affect its dissolution should at once be taken against it.

¹ Employers' and workers' organisations answer in the affirmative.

As it appears from this provision, an association may be temporarily forbidden, but, if so, proceedings should be instituted immediately in the courts against the association, demanding its dissolution. The Government will have to reserve its position on the question whether according to Danish conditions there is a case for affording the organisations of employers and workers a protection in this respect going beyond that of Article 85 of the Danish Constitution Act.

ECUADOR

5. Yes; provision should be made for invoking judicial procedure in order to bring about the suspension or dissolution of organisations.

FINLAND

5. The reply is in the affirmative.

FRANCE

5. Yes. (This provision implies that employers' and workers' organisations may not be dissolved except by judicial procedure.)

HUNGARY

5. Yes.

INDIA

5. The employers' and workers' organisations should not be liable to be dissolved or have their activities suspended except by a due process of law.

MEXICO

5. Yes.

NETHERLANDS

5. Yes, it being understood that in this context administrative authority means any other authority than the legislative and judicial authorities.

SWEDEN

5. Yes.

SWITZERLAND

5. We consider that the dissolution and suspension of employers' and workers' organisations should not be permitted except, of course, where the existence of the State is imperilled or where certain associations attempt to obtain an unlawful monopoly of rights to the detriment of other organisations, and also in those cases provided for by civil law. Thus, Articles 77 and 78 of the Swiss Civil Code provide for the automatic dissolution of an association when it is insolvent, when the executive can no longer be constituted according to the rules, or when the objects of the association are unlawful or contrary to public morals.

UNION OF SOUTH AFRICA

5. Yes, except where suspension or dissolution is effected in terms of specific legislative authority under the statutes of the country concerned which shall set out clearly the grounds upon which suspension or dissolution shall be effected and which provide for the right of appeal against such administrative decisions to the Courts of Justice.

The above remarks do not relate to what is known as "de-registration". In the Union of South Africa employers and workers have always been free to form organisations. They are, however, not fitted into the legislative pattern of statutory agreements unless they are "registered"—i.e. unless they are in fact representative and conform to the orderly regulation prescribed by legislation. There is, for example, no reason why an employers' organisation or a trade union, if it becomes insolvent, should not be subject to the national laws for liquidating any insolvent concern.

Subject to the above, the Union Government agrees that such organisations should not be subject to arbitrary dissolution or suspension by administrative authority alone. Any such action should rest upon legislative authority and be appealable to the Courts of the State concerned.

UNITED KINGDOM

5. Yes.

UNITED STATES

5. Yes. This provision seems a suitable precaution under the principles of 4 (a) and 4 (b) above.

If administrative authority could be used to dissolve the employers' or workers' organisations or to suspend their activities, the protection of the rights already guaranteed would seem inadequately safeguarded. Rights of such fundamental importance should not be subject to denial without opportunity for public presentation of the facts and arguments.

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?*

AUSTRALIA

6. Yes. This is a logical extension of the rights which should be granted in the local and national sphere.

AUSTRIA

6. Yes. The inclusion of such a provision merely legalises the *de facto* position which has existed for a long time.

BELGIUM

6. The Government cannot conceive that the reply to this question could be in the negative, for that would amount, on the national level, to the negation of every possibility of organisation.

The right of affiliation with international organisations of employers and workers should also be accorded to employers' and workers' organisations.

BULGARIA

6. Yes.

CANADA

6. Yes.

CHINA

6. Yes.

DENMARK

6. Yes.

ECUADOR

6. Yes. The right to establish federations and confederations within each country should be guaranteed to employers' and workers' organisations. They should also be accorded the right to affiliate with international confederations, provided that the sovereignty, security and dignity of their country are safeguarded and that the trade unions and associations shall not be bound to follow the instructions of international organisations which might be of a character to injure the country to which the association, trade union or organisation concerned belongs. If any dispute should arise between a confederation and an affiliated body, it should be for an international tribunal to adjudicate thereon.

FINLAND

6. The reply is in the affirmative.

FRANCE

6. Yes.

HUNGARY

6. Yes.

INDIA

6. Yes, provided the exercise of this right does not in any way injure the security of the State.

MEXICO

6. Yes.

NETHERLANDS

6. Yes.

SWEDEN

6. Yes.

SWITZERLAND

6. Provided always that they do not exceed the limits prescribed by law, employers' and workers' organisations should have the right to establish federations and confederations and to affiliate with international organisations of employers and workers.

UNION OF SOUTH AFRICA

6. Yes, provided that it is made amply clear that any such federation is consultative in its purpose and is concerned substantially with the achievement of the objects of the trade unions and employers' organisations. It must have no power to direct the policy of any affiliated body, nor should the basis of the affiliation derogate from the independence of action of such organisations. For example, it would be quite wrong for a federation of employers' organisations to be in a position to decide that any constituent organisation should declare a lockout or refuse to agree to increased wages. Similarly, a federation of trade unions should not be competent to call a strike. In each and every case the decision should rest with the organisation itself.

Where the federation exists to any substantial extent for purposes other than those for which the organisations exist, then obviously affiliation may involve the expenditure of the organisations' assets on purposes to which all members may well not subscribe, and where such factors are involved in the affiliation it should be open to the national authority to require cancellation of the affiliation or, failing such cancellation, to withdraw statutory recognition to the organisation concerned.

Any provision included in a draft Convention might read :

Employers' and workers' organisations shall have the right to establish federations and confederations as well as the right of affiliation with international organisations of employers and workers provided such federation or affiliation in no way imposes upon such organisation any limit as to freedom of action in terms of its own

constitution or in determining its programme and provided that such organisations exist substantially for the purpose of furthering the same objects as such organisations themselves.

UNITED KINGDOM

6. Yes.

UNITED STATES

6. Yes. This seems to be only a logical extension of the previous provisions, if employers' and workers' organisations are to enjoy the same rights internationally as nationally. We believe that such organisations should enjoy the right of free association on an international basis and that the recognition of this right is important and in accordance with the general approval of international association in political affairs.

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?

AUSTRALIA

7. Yes.

AUSTRIA

7. Yes. However, the reservations made in the replies to II, 3, and III, 4, must apply in this case also.

BELGIUM

7. Everything which applies to workers' and employers' organisations should also apply in the case of their federations and confederations.

It is for the organisations themselves to decide whether they wish to limit their activities to the regional, occupational or industrial field, to form or affiliate with a central federation or to affiliate with a confederation.

Each of these organisations should have the same right to draw up its constitutions and rules, to organise its administration and activities and to formulate its programmes.

BULGARIA

7. Yes.

CANADA

7. Yes.

CHINA

7. Yes.

DENMARK

7. Yes.

ECUADOR

7. It is considered that there is no practical objection to these rights being accorded to federations and confederations.

FINLAND

7. The reply is in the affirmative.

FRANCE

7. Yes, subject to the reservations expressed under 4 (a) and 5.

HUNGARY

7. Yes.

INDIA

7. Yes.

MEXICO

7. Yes.

NETHERLANDS

7. Yes.

SWEDEN

7. Yes.

SWITZERLAND

7. The guarantees accorded to employers' and workers' organisations referred to in the replies to Questions 3, 4 and 5 should apply to federations and confederations of employers and workers except where this is contrary to national legislation.

UNION OF SOUTH AFRICA

7. No.

UNITED KINGDOM

7. Yes.

UNITED STATES

7. Yes.

The answers of the United States Government to Questions 3, 4 and 5, in conjunction with the answer to Question 6, adequately explain the reasons for the affirmative reply to Question 7.

It is assumed that it is uniformly understood that the provisions discussed under Questions 4 (b) and 5 apply to Member Governments and do not apply to international public authorities. If there is not such uniform understanding, the Government would like to express the opinion (1) that it is clearly beyond the power of the International Labour Organisation to limit, in any respect whatsoever, the power of the United Nations or such other public international authorities as exist in connection with it, or may exist; and (2) that it is clearly inappropriate, likewise, for a Convention to enunciate any principle with respect to the limitation of such power.

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?*

AUSTRALIA

8. Yes.

AUSTRIA

8. Yes.

Under Austrian law, employers' and workers' organisations automatically acquire legal personality when they are legally and effectively established. (See the explanation given under II, 3 (a) and (b).)

BELGIUM

8. It is evident that the authority which would make the acquisition of legal personality by employers' and workers' organisations subject to any condition of such a character as to restrict freedom of association—even if free organisations retained the right not to acquire legal personality—would be acting in a manner contrary to the principle of freedom of association by conferring on those organisations which agreed to conform to the conditions prescribed the benefit of the advantages resulting from civil personality.

It is therefore desirable to prevent any possibility of States permitting any inequality to arise in this way between employers' and workers' organisations, which must remain entirely free and the sole arbiters of their destiny.

BULGARIA

8. Yes.

CANADA

8. Yes.

CHINA

8. No.

DENMARK

8. Yes.

ECUADOR

8. It is considered that the enjoyment of legal personality should not be limited except under conditions determined by each State in order to protect its own security and the well-being of its citizens. The most simple and practical measures should be adopted, so as not to restrict the right of freedom of association as above defined, inasmuch as the purpose is to guarantee it.

FINLAND

8. The reply is in the affirmative, but account should also be taken of those formal provisions in national legislation which impose conditions by which the acquisition of legal personality by organisations is governed.

FRANCE

8. Yes.

HUNGARY

8. Yes.

INDIA

8. Yes.

MEXICO

8. Yes.

NETHERLANDS

8. Yes.

SWEDEN

8. Yes.

SWITZERLAND

8. 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. However, the interpretation of legal personality varies so much from one country to another that the Swiss Government wonders whether it would not be preferable for the international regulations to omit this question or for it to be dealt with only in a Recommendation.

In Switzerland, the great majority of trade unions are constituted in the form of associations in the sense of Articles 60 *et seq.* of the Swiss Civil Code. Article 60 provides :

Political, religious, scientific, artistic or charitable associations and those formed for purposes of recreation or other purposes, whose aims are not of an economic character, acquire legal personality as soon as the intention to organise themselves on a corporate basis has been explicitly expressed in their constitution.

UNION OF SOUTH AFRICA

8. No—on the contrary, if such organisations are to fulfil a statutory rôle in a national legislative system of labour regulation, then recognition must necessarily be on a basis of association consistent with the pattern of the legislation, and organisations which do not conform to such basis should be denied legal personality. Only in this manner is it possible to control demarcation and jurisdictional disputes between organisations and prevent the exploitation of a majority by an organised minority.

“Freedom of association”, if it means “freedom” in the true sense, obviously also connotes freedom not to associate if the individual, or at any rate the majority, so desires.

UNITED KINGDOM

8. No objection is seen to the inclusion of such a provision if this is felt to be generally desirable.

UNITED STATES

8. Yes. This provision seems to be a natural corollary of 4 (a) above.

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?*

AUSTRALIA

9. (a) No. It would be preferable to reserve such a provision for inclusion in the international regulation of collective

agreements or conciliation and arbitration, when endeavour could be made to lay down clearly defined rights and obligations.

(b) Yes. See 9 (a).

AUSTRIA

9. (a) and (b) The Convention should be limited to the international regulation of those questions which are fundamental to freedom of association and the protection of the right to organise, that is to say, to questions of a purely organisational character, while the rights and obligations of employers' and workers' organisations and, therefore, their responsibilities should be left to be dealt with by other international Conventions.

BELGIUM

9. (a) It would be difficult to accept a provision which did no more than declare that the acquisition and exercise of the right to organise should not exempt employers' and workers' organisations from their respective responsibilities and obligations; it would be necessary to specify and define these responsibilities and obligations.

(b) It would be preferable to reserve such a question for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

BULGARIA

9. (a) Yes.

(b) Yes.

CANADA

9. (a) Yes.

CHINA

9. The Government agrees with (b).

DENMARK

9. (a) Yes.

ECUADOR

9. (a) The acquisition and exercise of the rights defined above should not exempt employers' and workers' organisations from their responsibilities and obligations.

(b) It does not seem necessary to reserve such a provision for inclusion in other international regulations and, therefore, the question should be dealt with in the general regulations guaranteeing freedom of association and organisation.

FINLAND

9. (a) The reply is in the affirmative.

FRANCE

9. (a) and (b) It would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration, subject to it being redrafted in more definite terms than were adopted by the Committee.

HUNGARY

9. The solution contemplated under (a) appears to be the more reasonable, as occupational organisations have to assume certain responsibilities as a direct result of the rights accorded.

INDIA

9. (a) Yes. Every right has its counterpart in obligations. The recognition of a right should be, therefore, balanced by a recognition of corresponding responsibilities.

MEXICO

9. The Government would prefer that this matter should not be dealt with by international legislation, but that the States should be left to take appropriate measures.

NETHERLANDS

9. (a) The wording of this provision is too vague. The suggestion of (b) is preferred.

SWEDEN

9. (a) and (b) If the question under (a) refers only to the obligations of organisations to comply with existing legislation, such an obligation would seem so evident that special provisions

on this matter in the Convention should be superfluous. Since, however, the purport of this question is not quite clear, it would seem preferable to refer the question of responsibilities of organisations to further examination in connection with the preparations for a Convention concerning collective agreements, conciliation and arbitration.

SWITZERLAND

9. (b) In the opinion of the Government, a clause relating to the responsibilities and obligations of employers' and workers' organisations should be included in international regulations concerning collective agreements or conciliation and arbitration. It should be observed, however, that certain influential circles in Switzerland are inclined to favour the solution under (a). In fact, the regulation contemplated under (b) would exclude from its scope many associations which are not covered by collective agreements or by provisions on conciliation and arbitration.

UNION OF SOUTH AFRICA

9. (a) No.

(b) It is not clear exactly what is intended by the phrase "not exempt employers' and workers' organisations from their full share of responsibilities and obligations". They would, of course, be subject to the common law of the land and the mere fact that they are associated together would not affect the position. They would, for example, have the responsibility of remaining solvent.

UNITED KINGDOM

9. It is considered that a provision on the subject might be included in the international regulations concerning freedom of association.

UNITED STATES

9. The Government approves alternative (b).

The clause, as stated under 9 (a), seems to lack the necessary precision of meaning for inclusion in a Convention. Any attempt to render its meaning exact and definite would involve us prematurely in the detailed problems with respect to the 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?*

AUSTRALIA

10. Yes. See answers to Questions 1 and 2.

11. Yes.

12. Yes.

AUSTRIA

10. Yes. See reply to Question 2.

11 and 12. To ensure the protection of the right to organise, it would be quite inadequate to rely only on mutual agreements between organisations of employers and workers. The protection of the right to organise, free from any constraint, which is so important for the employers and above all for the workers, should be internationally guaranteed by special provisions to be included in the Convention.

BELGIUM

10. International regulations should guarantee the exercise of the right to organise.

11. This guarantee may be effectively assured by means of mutual agreement between organised employers and workers.

The international regulations, therefore, should take account of appropriate methods of facilitating the making of such agreements.

The convocation of a national labour conference, the consultation of a central joint council, agencies within which representatives of employers' and workers' organisations may discuss and define their respective rights and obligations, may result in the drawing up of a national agreement laying down the general principles governing the exercise of the right to organise.

On the basis of these general directives, joint industrial committees could then conclude separate agreements which would take account of the requirements and circumstances in each of the branches of industry concerned.

12. Even in those cases where the protection of the right to organise is ensured by means of mutual agreements between organised employers and workers, provision should be made to protect the exercise of the right to organise against any intimidation, coercion or restraint from any source.

Freedom of association should guarantee the indefeasible right of the members of an employers' or workers' organisation to meet peacefully without previous authorisation, without being obliged to admit representatives of authority, and solely on the decision of the executive which they have elected in full freedom.

States should also protect the exercise of the right to organise within the undertaking.

In view of the fact that the representatives of organisations of workers work in an undertaking under the terms of a contract for hire of services which confers on them the legal position of a subordinate, States should agree that the trade union representative should benefit from a special guarantee as regards the period of notice of dismissal to be given, so that an employer may not, of his own free will and by making use of his rights under a contract, rid himself over easily of a worker whom he might consider to be too strong an advocate of the claims of those whom he represents.

BULGARIA

10. Yes.

11. Yes.

12. Yes.

CANADA

10. Yes.

11. Yes, where established practice and the degree of organisation would make this feasible.

12. Yes.

CHINA

10. Yes.

11. Yes.

12. Yes, in this case, appropriate measures should be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

DENMARK

10. The Danish Government reserves its opinion—having regard also to the replies of the employers' and workers' organisations¹ to this question—until more concrete particulars of the guarantee suggested are available.

11. The Danish Government holds the same views on this question as do the occupational organisations.²

12. Yes.

ECUADOR

10. The international regulations should guarantee the exercise of the right to organise to the fullest and most effective degree.

11. Yes, provided that the two elements in production, capital and labour, act with the sincere intention of achieving co-operation and harmony. The agreements reached would effectively put an end to violent labour disputes.

12. If no such agreement as referred to in Question 11 is reached, and even where the best possible agreement may be concluded, such measures as may be deemed appropriate should be taken to render effective the protection of the right to organise against any desire to interfere with or restrict it or any other improper intention.

¹ The Danish Employers' Confederation replies in the negative to this question, for it does not see how such an international guarantee can be made effective. The Confederation of Danish Trade Unions considers that such a guarantee can hardly be of any value.

² The Danish Employers' Confederation considers that the right of association should be safeguarded effectively by mutual agreement between organised employers and workers; both it and the Confederation of Danish Trade Unions point out that this is the case in Denmark by the Agreement of 5 September 1899.

FINLAND

10. The reply is in the affirmative.
11. The reply is in the affirmative.
12. The reply is in the affirmative.

FRANCE

10. Yes.

11. Yes ; collective agreements, in fact, play an important part in the protection of the right to organise. But this should not be the only solution, as in many countries such agreements would be clearly inadequate.

It is for the democratic State, the protector of public liberties, to ensure the respect of the right to organise, which is one of the fundamental liberties of modern society. It would be essential, therefore, to provide that the State remains in the final instance the protector of the right to organise and that it is the duty of the State to ensure the respect of that right whenever it may be necessary.

However, a law, whether it is constitutional or enacted by Parliament, can lay down only general principles, and it will be for collective agreements to determine in greater detail the conditions under which the right to organise may be exercised where work is carried on.

12. Yes, and especially in order to guarantee to wage-earners that the question of belonging or not belonging to a trade union may not be taken into account in relation to engagement, maintenance in employment, or dismissal.

HUNGARY

10. Yes.

11. No, as there is no guarantee that such an agreement can suffice to cover all cases or all circumstances.

12. Yes.

INDIA

10. Yes.
11. Yes.
12. Yes.

MEXICO

10. Yes.

11 and 12. The Government would prefer that such guarantee should be left to the legislation in force in each country.

NETHERLANDS

10. Yes. The desirability, however, may be questioned of embodying in a Convention a number of principles, as envisaged in Questions No. 11 and No. 12, on the protection of the right to organise, without including at the same time provisions for the practical application of these principles, which provisions will come under first discussion at the 31st Session of the International Labour Conference. It appears to be more systematic to embody both the principles and the provisions for practical application thereof, without which the principles may hardly be considered as clearly defined, together in one Convention. In that case one Convention should be adopted for freedom of association in 1948, whereas Chapter B of the Questionnaire and related questions could be internationally regulated in 1949.

11. If not assured, the protection of this right will be furthered by this provision.

12. Yes.

SWEDEN

10. Yes.

11 and 12. The only way effectively to assure the right to organise is by means of legislation securing to every citizen an unconditional right to establish or join organisations, the "positive" right to organise. On the other hand, the "negative" right to organise, *i.e.* the right of every citizen not to establish or join organisations, should not be regulated by law. Nor should the right of employers' and workers' organisations to conclude mutual agreements concerning the protection of the right to organise be regulated by law.

SWITZERLAND

10. Yes; it would not be possible to visualise the recognition of the right of employers and workers to associate in full freedom, without ensuring at the same time that their exercise of this right was guaranteed.

11. The protection of the right to organise should be effectively assured by means of mutual agreements between organised employers and workers. In Switzerland, many collective agreements or understandings between employers' and workers' organisations already make express provision for the recognition of the right to organise.

12. It is considered 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 against any acts of intimidation, coercion or restraint from any source. However, the adoption and application of such measures would not appear to be a simple matter.

UNION OF SOUTH AFRICA

10-12. Adequate protection against victimisation in connection with the right to form organisations (*cf.* Section 78 (1) of the Industrial Conciliation Act, No. 36 of 1937) and protection against victimisation on account of participation in the lawful activities of any such organisation outside working hours or, with the consent of the employer, during working hours, should be provided. Section 78 (1) and Section 66 of the Union's Act No. 36 of 1937 could usefully be used as a model in framing any such provisions.

Concurrently, employers' organisations should be free of pressure or intimidation in their attempts to organise. This difficulty has been experienced in South Africa.

The protection should find its place in legislation and not be left to collective agreements, more particularly as, in the nature of things, organisation must precede the collective agreement.

UNITED KINGDOM

10-12. Yes, subject to considerations similar to those stated in the answer to Question 1. In the United Kingdom the matters referred to in Questions 10-12 rest upon the relations which have developed between organised employers and work-people, and, while international regulations should guarantee the exercise of the right to organise, the regulations should not be drafted in such a way as to require the enactment of legislation in cases where mutual recognition of the right to organise is achieved in other ways.

UNITED STATES

10. Yes.

11. Yes.

12. Yes.

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?*

AUSTRALIA

13. Yes, subject to the insertion of the words " if necessary " after the word " establishing ", as recommended by the Committee and adopted by the Conference at the 30th Session.

AUSTRIA

13. It would be desirable to include in the Convention a provision imposing on States Members a general obligation to provide in their national legislation for the establishment of appropriate agencies for the purpose of ensuring the respect of the right to organise. However, it would be desirable to refrain from including in the Convention any detailed provisions dealing with this question, in order to afford to the States Members, when applying the Convention, sufficient latitude with regard to the establishment of such agencies; in fact, in view of the differences prevailing with regard to the competence of administrative and judicial authorities, any other solution might stand in the way of the ratification of the Convention.

In Austria the protection of the right to organise falls within the competence of the administrative authorities. But, in view of the fact that this right is guaranteed by the Constitution, and in order to avoid any restriction of the right to organise, the decision of the final administrative authority may be appealed against before the Constitutional Court.

BELGIUM

13. The Government considers that the establishment, under the auspices of the International Labour Organisation, of an appropriate agency for the purpose of ensuring the respect of the right to organise should be provided for by international regulation.

BULGARIA

13. Yes.

CANADA

13. Yes.

CHINA

13. Yes.

DENMARK

13. Yes.

ECUADOR

13. It is considered desirable and necessary that a national agency should be set up composed of representatives of employers, workers and the State for the purpose of ensuring the respect of the right to organise. This agency should be provided for by regulations.

FINLAND

13. As the organisation and duties of the agencies in question are still undecided it is difficult to adopt any attitude concerning this question.

FRANCE

13. It would be desirable to consider whether effect should not be given to this proposal within the framework of the International Labour Organisation.

HUNGARY

13. Yes.

INDIA

13. Yes.

MEXICO

13. If a guarantee is established by law, States should take appropriate measures to deal with violations of the law.

NETHERLANDS

13. The principle that these agencies should exist in each country should be laid down in a Convention. It should be left to each country, however, to decide which agency, independent of the administration, should be charged with these duties.

SWEDEN

13. In Sweden, this is in the first instance a matter for the organisations themselves. The strength of the organisations is no doubt such as to make them fully capable of ensuring the respect of the right to organise. In case of dispute it is possible to have the question examined by a Labour Court, *i.e.* a special tribunal dealing mainly with disputes relating to interpretation and application of existing collective agreements. If the Court should come to the conclusion that the right to organise has been violated, the guilty party is liable to pay compensation for any damages caused thereby. The Swedish Government is not in a position to judge whether provisions on the lines suggested would be required in other countries. The Convention should be drafted in such a way as to allow for exercise of the supervision in question by existing qualified agencies.

SWITZERLAND

13. The Government is not in favour of the idea that international regulations should include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise, if such a conception should result in the creation of international machinery to supervise the right to organise.

In Switzerland, it is left to the ordinary courts to adjudicate with regard to violations of the right to organise in contravention of the Swiss Civil Code or Penal Code.

UNION OF SOUTH AFRICA

13. The phrase "appropriate agencies" is not clear. The "right" should be embodied in national legislation, leaving the Courts of the land to deal with contraventions of the law.

UNITED KINGDOM

13. Such a provision would not be appropriate to conditions in the United Kingdom.

UNITED STATES

13. Yes, if they are necessary to ensure the respect of the right.

* * *

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?*

BELGIUM

14. The Belgian Government reserves the right to put forward any proposal or suggestion which may appear desirable during the discussion of the questions by the Conference, in particular with regard to certain questions to which replies have been given but which, being not sufficiently clearly defined, can be answered only in general terms.

FRANCE

14. The French Government would be grateful to the International Labour Office if it would study more intensively the question of the representative character of trade union organisations, especially in those countries where several trade union movements exist, and in particular :

(a) whether it is not contrary to freedom of association to accord by law to certain organisations, deemed to be the most representative, a privilege entitling them to represent the whole of the wage-earners concerned for the purpose of concluding collective agreements which, according to a specified procedure, may become generally binding.

(b) in the negative, what would be the criteria, not contrary to freedom of association, which would enable the most representative organisations to be determined.

Finally, it is advisable to point out that it may appear reasonable enough theoretically to desire to establish, along

the lines of the proposed texts, a constant parallel between the organisational rights of trade unions and employers' associations, whereas the objects pursued and the conditions under which those rights are exercised by workers and by employers may present very appreciable differences, and workers' organisations, in particular, are far more exposed to acts of intimidation, coercion or restraint.

It is not so much the legal status of the organisations concerned, but their very objects, that is to say, the defence of the occupational and social interests of their members, which calls for the measures of protection contemplated in the present text.

INDIA

14. The object of the regulations is to secure an effective functioning of free institutions in democratic communities. It is, therefore, essential to provide that the rights shall be available only to organisations of employers and workers which—

(a) do not exclude from their membership any individual or group of individuals, who may otherwise be eligible, merely on grounds of sex, colour, race, creed or nationality ;

(b) do not interfere in any way with the right of any individual or group of individuals to pursue peacefully his or their trade and vocation and to exercise the right of citizenship, and

(c) conduct their activities according to democratic procedure.

UNION OF SOUTH AFRICA

14. Yes.

An examination of the earlier Conventions adopted by the International Labour Conferences indicates that they are appropriate to States with a homogeneous population.

At the outset it was realised that States which could accept Conventions for their metropolitan territories would have difficulty in applying them to dependent territories such as colonies and mandatory territories, and the Constitution of the International Labour Organisation made provision for the ratification in respect of such territories with reservations to be determined by the competent authority. The same principle was repeated in the revised Constitution adopted in 1946. The reason is clear, namely, that Conventions appropriate to highly

civilised communities could not be applied in their entirety to populations less socially and economically developed.

In other Conventions it was realised that conditions which might be appropriate to densely populated industrialised areas would be incapable of application to scattered thinly populated areas, and provision was made for regional application.

In yet other Conventions it was realised that certain countries, on account of the stage of social and economic development of the general mass of the population, could not, at the time, subscribe to the proposed conditions, and special provision was made for somewhat easier conditions.

Attention is, however, invited to the fact that a fourth type of State exists, and that is the State which within its own borders contains all these elements, namely, the State whose urban industrial working population is made up of inter-penetrating groups which have reached varying stages of social and economic development (that is to say, groups which although at varying stages of development, are not separated geographically in so far as either their domicile or their place of work is concerned) and in which it is quite impracticable to apply concurrently identical provisions to all the groups. The Union of South Africa falls within this classification.

The Declaration of Philadelphia, in Part V, recognised that it might be necessary to differentiate in the manner of the application of the principles set out in that Declaration with due regard to the stage of economic and social development of the peoples concerned. The 30th Session of the International Labour Conference saw fit, in its Resolution concerning freedom of association, to make reference in the preamble to Part V of that Declaration.

While the Union of South Africa is more directly concerned with the problems which arise within its own borders, it is also desirous of ensuring that any Conventions on this question which may, at this third attempt, be adopted by the International Labour Conference should have a reasonable prospect of being generally ratified and achieving "positive results" in the direction of the betterment of the lives of the peoples of the world.

It is apparent from a perusal of, for example, the records and discussions of regional conferences that many States would have considerable difficulty in proceeding in one step to the standard expressed in the Resolution referred to, but it is con-

sidered that much can be achieved by permitting qualified or progressive application either to the entire population of a State or, where the urban industrial working population consists of inter-penetrating groups at varying stages of economic and social development, to groups of the population.

It is considered that this principle, which is incorporated in the preamble to the Resolution, should be included in the text of any Convention considered by the next session of the Conference. Only by such measures can real results be achieved.

UNITED STATES

14. The Government has made a suggestion in its reply to Question 3 above, which is not directly solicited under the phrasing of the question.

The Government has made a suggestion in its reply to Question 7 above, which is not directly solicited under the phrasing of the question.

It is suggested that the scope, functions and powers of the International Labour Organisation, and the intended purpose and the implied meaning of the language of the Convention, support the inclusion of a definition clause in the Convention stating as follows :

“Employers’ and workers’ organisations” as used in this Convention means organisations of employers and workers with respect to their participation in all matters relating to trade union affairs and employer-employee relations.

In this connection, the Government wishes to point out that its affirmative support of a Convention declaring the right of freedom of association of employers and workers without qualification is based on its understanding that the Convention relates solely to trade union affairs and employer-employee relations, and not to other activities, extraneous to these fields, in which employer and worker organisations may engage.

It is assumed that the Convention will include the usual clauses providing for subsequent revision or modification. This seems desirable if the Convention is to afford leeway for further amelioration of its terms.

CHAPTER II

ANALYSIS OF THE REPLIES OF THE GOVERNMENTS

The following pages contain an analysis of the replies of the nineteen Governments set forth in the preceding chapter, made with a view to arriving at practical conclusions for the drawing up of proposed international regulations.

In this analysis the same order is followed as in the Questionnaire, except where the observations of the Governments relate to several points, or even to the Questionnaire as a whole. In the latter case, the observations have been grouped together under the heading to which they most particularly relate.

Preliminary Observations

Several Governments have seen fit to preface their replies by certain preliminary observations, focusing attention on problems of a general kind, which, in their opinion, should be specially considered when drawing up the international regulations.

Some Governments stress, in the first place, the importance which they attach to freedom of association, a principle recognised for a long time in their national legislation (Austria and Switzerland). The Austrian Government declares, *inter alia*, that employers' and workers' organisations are the essential factors in all social progress and that their free co-operation constitutes the best guarantee of social peace.

In the second place, many Governments observe that the exercise of freedom of association should naturally be kept within the limits of the law. They bring up this point either as a special preliminary observation (Netherlands) or in relation to Questions 3, 4, 5 and 7 (Austria, Finland, India, Switzerland, Union of South Africa and United States).

The Netherlands Government points out in particular that in giving its approval to international regulation by means of

a Convention it has taken it as a matter of course that freedom of association, like every other freedom, is subject to the provisions of national legislation with relation to public order.

The Governments of India and of the Union of South Africa express the opinion that the guarantee of freedom of association should be in conformity with national constitutional principles. The Danish and Swiss Governments refer particularly to the provisions in their national Constitutions recognising freedom of association within the limits of the law.

The Governments of Austria, Finland, France and the Union of South Africa point out that occupational organisations, when exercising their rights, are obliged, like any other organised collectivity, to observe the fundamental laws of the country.

The Governments have not made any concrete proposals on these questions, but from the previous remarks there emerges the belief that the international regulations, while emphasising the importance of freedom of association, should make it perfectly clear that workers, employers and their respective organisations are just as much subject to the law as any other person or organised collectivity.

The South African Government calls attention to a third problem. It emphasises the fact that the degree of social and economic development of populations varies, not only between one State and another or between the metropolitan country and non-metropolitan territories, but sometimes, also, even within the frontiers of a single State. In its opinion, no Convention would attain its object or could have positive results if, with regard to the methods and principles of its application, it did not take adequate account of the degree of development of each people and of national conditions. The suggestion made in this connection by the South African Government is considered further in relation to Question 14.

I. Desirability and Form of International Regulation

Questions 1 and 2

The first question asked whether 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.

All the Governments have declared themselves to be in favour of regulations under the form of an international Convention. However, the South African Government, without formally opposing this, would prefer the process of regulation by successive stages. In its opinion, the Conference should first adopt a Recommendation, and only at a later date, in the light of the reports which the Governments would forward with regard to the application of the Recommendation, proceed to adopt international regulations under the form of a Convention.

The Government of the United Kingdom points out that the international regulations should not impose an obligation on a State Member to enact legislation concerning freedom of association or the protection of the right to organise, where this freedom and this right are recognised by the legislation in force or are sufficiently assured by other means.

The second question concerned the point whether the Conference should adopt two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise.

The opinions of the Governments are divided. The majority (Australia, Austria, Belgium, China, Denmark, Ecuador, Hungary, Mexico, Netherlands, Sweden and United Kingdom) consider that freedom of association and the protection of the right to organise should be dealt with in a single Convention, while the minority (Bulgaria, Canada, Finland, France, India, Union of South Africa and United States) are of the opinion that the two questions should be dealt with in two separate Conventions.

The Austrian, Belgian and Swiss Governments, in favour of the former alternative, urge in particular that the two questions are so closely related that they could not be dealt with on a separate basis.

Supporting the other alternative, the Government of the United States calls attention to the different circumstances existing in various countries, both with regard to the protection of the right to organise by means of agreements and as regards protection by legislation. In its opinion, these differences might result in delaying the adoption of a Convention concerning freedom of association, which is the paramount task of the Conference. The South African Government, also, as already pointed out in its preliminary observations, emphasises the importance of the different national customs and traditions.

If the Conference, says that Government, should decide in favour of regulation by international Convention, it should do so by means of at least two Conventions, or draw up a text which could be adopted in separate parts.

Finally, the Netherlands Government, while declaring itself to be in favour of the adoption of a single Convention, expresses some doubt as to the desirability of regulating separately, as contemplated by the Conference at its 30th Session, the principles of the protection of the right to organise and the methods of application of those principles, that is to say, of settling the first of these questions by the single-discussion procedure and the second under the double-discussion procedure, and, therefore, dealing with the same problem in two separate texts. In its opinion, it would be more desirable to limit the Convention of 1948 to freedom of association and to unite in a single text all the questions relating to the protection of the right to organise, a question on which the Conference will have to take a final decision in 1949.

To sum up, the Governments are almost unanimous in recognising the need, and even the urgency, for an international Convention on freedom of association and the protection of the right to organise. Their opinions differ, on the other hand, with regard to the desirability of regulating these two questions under the form of a single Convention or under the form of two separate Conventions.

A. FREEDOM OF ASSOCIATION

II. Establishment of Organisations

Question 3

Governments were consulted on the question whether provision should be made to accord to employers and workers the right to establish or join organisations, according to either of the formulae proposed by Question 3 (a) and (b). Affirmative replies were received, supporting one formula or the other, from Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, United Kingdom and United States.

The only other reply received, that of the Union of South Africa, expresses a desire to see some qualification of the text proposed which would take account of the situation in that country.

The South African Government wishes the word "inviolable" to be omitted, because of the possibility of its misinterpretation, *e.g.*, in relation to the question of compulsory membership of any particular organisation. It also considers that the phrase "establish organisations" requires some descriptive addition, as in the Government's proposed text given below, to show that the right dealt with in the Convention applies only to employers' and workers' occupational organisations for the purpose of regulating their industrial relations, whereas their right to form organisations for other purposes should be the same as that of other citizens. The phrase "of their own choosing" is considered inadvisable, as it does not correspond fully with actual practice.

Moreover, the Union of South Africa feels that some "orderly regulation" is needed and that it is not practicable to allow employers and workers the complete freedom of establishing organisations just as they choose. Such orderly regulation would take account of differences existing in certain countries, with regard to the race, customs, stage of social and economic development and education of various groups of the population, and would prevent an inexperienced majority, before they have reached a sufficient stage of development, from taking over control of organisations from the more experienced minority. Further, the freedom of choice should be restricted to organisations established according to the industrial pattern of a country, especially if jurisdictional disputes are to be avoided.

In view of the foregoing considerations, the Union of South Africa expresses a desire that any such provision as is set forth in Question 3 (a) and (b), if it is to be included in a Convention, should be redrafted as follows :

Employers and workers shall have the right, without previous authorisation, to establish or join organisations for the furtherance of their interests as such and for membership of which they are eligible subject only to such compulsory statutory requirements of the national authority as will ensure :

(a) adequate adaptation to the pattern of the legislative system of wage regulation and collective bargaining and industrial regulation ; and

(b) protection of the organisation's assets against misappropriation and misapplication to non-lawful or non-constitutional purposes; and

(c) non-participation of the organisation in fields of activity not sufficiently closely connected with the purpose for which such organisation was primarily established, for example, compulsory political activities.

Leaving aside for the moment the question whether the formula (a) or (b) is preferred, certain reservations are expressed in the replies of some of these countries.

Austria, China, Ecuador, Hungary and India wish to see the right qualified to a certain degree in accordance with national legislation.

Austria considers that the right should not, in principle, be made subject to previous authorisation, but that, when associations are being formed, the administrative formalities prescribed in certain countries should be observed. In the case of Austria, an organisation, prior to its formation, must comply with the provisions of the Associations Act with regard to the notification of the intention to form the organisation and submission of the proposed rules to the administrative authority. Austria points out that if the administrative authority then prohibits the formation of the organisation, the persons concerned have a right of appeal, and the Austrian Government states that this protects the right against any unconstitutional restriction. The Government proposes that, if the words "without previous authorisation" would free organisations from the obligation to comply even with administrative formalities of the kind described, there would need to be included supplementary clauses to take account of the situation in Austria and in countries possessing similar regulations.

China considers that organisations should be set up in conformity with national laws and regulations, while India declares that the right to establish or join organisations should be in conformity with national constitutional provisions regarding freedom of speech and combination, the right to form associations and the right of assembly.

Ecuador considers that the Convention should not refuse the right to establish or join organisations to public employees, but that their rights to do so should be decided by national legislation.

Hungary expresses two reservations—first, that the organisations concerned must be truly democratic, and secondly, that

a workers' organisation may benefit from the right only if it will be representative of a sufficient proportion of workers in the occupation concerned, as fixed by national legislation.

The Governments of Finland, the United Kingdom and Switzerland wish for certain other points to be made clear in the provision. In the first place, Finland considers that the State and municipal authorities, in the rôle of employers, should not be members of the same organisations as private employers. Secondly, the United Kingdom wishes to ensure that the right of organisations to accept or refuse applications for membership shall be safeguarded. Thirdly, both Finland and Switzerland, and also the Union of South Africa, wish expression to be given to the right of employers and workers, not only to establish or join organisations, but to refrain from membership of organisations if they choose.

On the question whether the right should be accorded under the general terms suggested in Question 3 (*a*) or in the more specific terminology of Question 3 (*b*), the majority of the countries favour the former alternative.

Subject to the general reservations referred to in certain cases, the following countries are in favour of (*a*): Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland and United Kingdom. Austria favours alternative (*b*), and the United States proposes a draft similar to this alternative but with one slight deletion and one addition designed to prevent the enumeration from being limitative.

Of those in favour of the former alternative, the United Kingdom considers that it is preferable to have a general formula, for the reasons given on pages 7 and 8 of the Questionnaire. Switzerland considers that any attempt to enumerate, as under (*b*), could only be limitative and might give rise to controversy.

Austria, however, considers the words "without distinction whatsoever", as under (*a*), are too general in character and might, therefore, come to be interpreted in a restrictive sense in certain countries, whereas alternative (*b*), having the advantage of specifying clearly the categories to whom the Convention should apply, would avoid this possibility.

The United States would accept formula (*b*) with the omission of the words "public or private" and the addition, after the enumeration, of the words "and without any other distinction". The United States Government considers that the

term "employers and workers" itself includes employers and workers both public and private, whereas the words "public and private", if included, might raise doubts as to which persons fell under either of these two categories. The United States, while it does not consider it advisable to try to enumerate the various types of discrimination, feels that ambiguity might be avoided by the adoption of formula (b) with the modifications referred to above.

The large majority of the countries which have replied, therefore, are in favour of the principle that employers and workers, without distinction whatsoever, should have the right to establish or join organisations of their own choosing without previous authorisation, and almost all these countries prefer the provision to be drawn up in general terms rather than as a descriptive enumeration.

To the question whether the provision should be included to the effect that the recognition of the right of association of public officials does not prejudge the question of their right to strike—Question 3 (c)—Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Switzerland, Union of South Africa and United States reply in the affirmative, while the United Kingdom states that it does not object if it is thought to be necessary. China's reply omits any answer to this particular question, and Mexico answers in the negative. Both the Netherlands and Sweden consider that this Convention should not be concerned with questions relating to the right to strike, and the United States, while replying in the affirmative, considers that it would be undesirable to attempt to resolve this problem under this Convention.

Most countries, therefore, implicitly recognise the right of association of public officials without prejudice to the question of the right to strike, which latter question, many countries point out, is not relevant to the present proposed Convention.

III. Functioning of Organisations

Question 4

To the question whether it would be desirable to provide that employers' and workers' organisations should have the right to draw up their constitution and rules, to organise their administration and activities and to formulate their programmes

—Question 4 (a)—affirmative replies were received from Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, Union of South Africa, United Kingdom and United States.

The Union of South Africa qualifies its reply. The Government agrees to the right in principle, provided that the administration, activities and programmes fall within the constitution and rules of the organisation and conform to legitimate activities for organisations of this kind, but could not accept the principle if it meant that organisations would be free to include in their constitutions provisions unrelated to the main purpose of such organisations. Further, under South African legislation, an occupational organisation, in order to obtain registration, must provide in its constitution for certain matters such as qualification for membership, keeping and audit of accounts, etc. The Union of South Africa therefore answers the question in the affirmative, provided that the words “in conformity with national law” are inserted in the clause.

Austria agrees, provided that the clause shall not relieve organisations of the obligation to observe the administrative formalities prescribed by national legislation, for example, matters which must be covered by the rules in any event, communication of the names of the executive officers and notification of general meetings.

Finland, too, agrees, with the reservation that it assumes that the word “lawful” in 4 (b) is also implied in 4 (a) and means that occupational organisations, when exercising their rights, must observe the general law of the country.

France replies in the affirmative, provided that occupational organisations undertake to respect the fundamental rules of public law.

India stipulates that her affirmative reply is dependent on the methods followed by the organisations being open, peaceful and within the law and not in any way calculated to interfere with the exercise of similar rights by other people and organisations.

Switzerland observes that the right is guaranteed by the Federal Constitution, provided that the objects and methods of associations are not unlawful or dangerous to the State.

The affirmative replies of the other countries mentioned contain no reservations. The United States, in fact, states that the rights specified are inherent aspects of the right of association

and that their absence would render the right of association of little value.

All the nineteen countries which have replied, therefore, are in favour of the principle that employers' and workers' organisations should have the right to draw up their constitutions and rules, etc., six of these countries stressing that the right must be exercised in accordance with the national law or constitution, or, in the case of Austria, the administrative formalities prescribed by law.

The question whether it would be desirable to provide that the public authorities should refrain from any interference which would restrict the right (*i.e.* of organisations to draw up their constitutions and rules, to organise their administration and activities and to formulate their programmes) or would impede the organisations in the lawful exercise of this right—Question 4 (*b*)—was answered in the affirmative by Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Mexico, Netherlands, Sweden, Switzerland, Union of South Africa, United Kingdom and United States.

Similar reservations as in the case of the replies to Question 4 (*a*) attach to the replies of Austria, Finland and the Union of South Africa.

Ecuador stipulates that her answer is in the affirmative, provided that the organisations exercising their rights do not endanger the security of the State and do not pursue their objects by unlawful means or by means contrary to the national Constitution or public morals.

China points out that in her case, where there is any restriction of the rights enumerated, employers and workers have the right to request the public authorities to intervene.

The United States stresses the importance of the word "lawful" inasmuch as democratic organisations are, like individuals, subject to the general law of the community, and Switzerland attaches a very similar interpretation to this word.

The other countries mentioned do not qualify their affirmative reply, while Sweden suggests the strengthening of the guarantee afforded. The Swedish Government considers that the words "lawful exercise" are vague, and that there should be some redrafting so as to exclude the possibility of the adoption of special legislation under which public authorities might interfere with the functioning of organisations.

All the nineteen countries, therefore, have declared themselves to be in favour of the principle that the public authorities should refrain from any interference which would restrict the rights of organisations accorded under 4 (a). Again, a number of countries stress the importance of the word "lawful" in the sense that the exercise of these rights must be in accordance with the law of the land.

IV. Dissolution and Suspension of Organisations

Question 5

Question 5 asked whether it would be desirable for the international regulations to provide that employers' and workers' organisations should not be liable to be dissolved or have their activities suspended by administrative authority.

Denmark points out that under its Constitution associations having a legal object may be freely formed without preliminary authority and may not be dissolved by governmental action. An association may, however, be temporarily prohibited, but in such a case judicial proceedings against it should be undertaken at once. Accordingly, Denmark deems it necessary to reserve its position on the question whether under Danish conditions trade associations should be afforded a protection going beyond that of the constitutional provision.

Austria replies that it must be possible for employers' and workers' organisations, like any other association of individuals, to be dissolved or suspended when they contravene the national law in force, and states that its national legislation recognises certain conditions under which associations may be dissolved or suspended by administrative authority. The answer explains, however, that the decision of the administrative authority in a case of this character may be appealed against to the Constitutional Court. It suggests, therefore, that the provision in a Convention should provide that organisations are not subject to dissolution or suspension by administrative authority "except when their activities are contrary to the national laws in force".

Switzerland considers that dissolution or suspension should not be permitted except where the existence of the State is imperilled, where associations seek to obtain an unlawful end, and in such cases as are provided for by the Swiss Civil Code.

The Union of South Africa replies in the affirmative, but excludes instances where the action of the administrative authority is taken pursuant to specific legislative authority under statutes that set forth the grounds for dissolution or suspension and provide for the right of appeal to the Courts of Justice. The process of "de-registration" is also excluded from the scope of the affirmative answer.

China replies in the affirmative, but states that "special cases" should be exempt from this provision.

India replies that organisations should not be liable to dissolution or to the suspension of their activities "except by a due process of law".

The Netherlands answers in the affirmative, upon the understanding that in this context "administrative authority" means any authority other than the legislative and judicial authorities.

France likewise answers in the affirmative, noting that the provision implies that organisations may not be dissolved except by judicial procedure.

The remaining countries, Australia, Belgium, Bulgaria, Canada, Ecuador, Finland, Hungary, Mexico, Sweden, United Kingdom and United States, reply in the affirmative without qualification other than a reference in the Australian answer to the understanding contained in the report of the Committee on freedom of association to the 30th Session of the Conference.

As disclosed by the Committee's report, an organisation having as its object the commission of criminal or immoral acts, or seeking to undermine the security of the State, would be unlawful and could not invoke the guarantee of the principle of freedom of association, for this freedom—like every other freedom—is bound by national laws, as is envisaged in the Constitution of the International Labour Organisation. The proposal contained in Question 5 was intended to exclude the possibility of dissolution or suspension of organisations by mere administrative authority. It did not cover the case of dissolution or suspension by judicial process.

Viewed in the light of this interpretation, the overwhelming majority of the replies clearly support the principle that organisations should not be liable to dissolution or suspension by mere administrative authority.

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

Question 6

Question 6 asked whether 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. No country replies in the negative, and only four countries, Ecuador, India, Switzerland and the Union of South Africa, qualify their affirmative answers.

The Union of South Africa considers that the character of the organisation the employers' and workers' organisations might join should be clarified. To this end it suggests an addition to the text as proposed, tending to restrict the federation, confederation or international organisation with which a trade association might affiliate to those approved by the national authority. The granting of the proposed right, the answer suggests, would be acceptable "provided such federation or affiliation in no way imposes upon such organisation any limit as to freedom of action in terms of its own constitution or in determining its programme and provided that such organisations exist substantially for the purpose of furthering the same objects as such organisations themselves". Where such conditions do not prevail the Government would reserve the right to require cancellation of the affiliation, or failing such cancellation, to withdraw statutory recognition of the organisation concerned.

The affirmative answer of Ecuador is somewhat similarly qualified, in that it considers that the right to affiliation with international organisations should be subjected to safeguards for the sovereignty, security and dignity of the State and would not apply in any instance where the organisations are bound to follow instructions of the international organisations which might be of a character to injure the State. A conflict arising between the international and affiliated organisation should be adjudicated by an international tribunal.

India states that the proposed right should be granted provided the exercise thereof does not in any way injure the security of the State. Switzerland considers that such right should be granted provided always that employers' and workers' organisations do not exceed the limits prescribed by law.

Fifteen countries reply to this question in the affirmative, without qualification : Australia, Austria, Belgium, Bulgaria, Canada, China, Denmark, Finland, France, Hungary, Mexico, Netherlands, Sweden, United Kingdom and United States.

VI. Guarantees relating to Federations and Confederations

Question 7

This question asked whether 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. The Union of South Africa replies in the negative, three countries (Austria, Switzerland and France) qualify their affirmative answers, and the replies of the remaining fifteen countries are in the affirmative.

The negative reply of the Union of South Africa to this question is not explained. Austria answers in the affirmative, but with reservations referred to in its replies to Questions 3 and 4 regarding the necessity of observing administrative formalities prescribed by national law. Switzerland considers that such guarantees should apply to federations and confederations " except where this is contrary to national legislation ". France replies in the affirmative, subject to the reservations, expressed in reply to Questions 4 (*a*) and 5, that occupational organisations undertake to respect the fundamental rules of public law and should not be subject to dissolution except by judicial procedure.

The principle contained in this proposal has been accepted without qualification by all other responding countries, namely, Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, Hungary, India, Mexico, Netherlands, Sweden, United Kingdom and United States.

VII. Legal Personality of Organisations

Question 8

Question 8 asked whether it would be desirable to include in the international regulations a clause providing 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 defined in the foregoing provisions.

Only China and the Union of South Africa give a negative reply to this question. China does not accompany its reply with any further observations, while the South African Government declares that only an association established in accordance with the law should be able to enjoy legal personality; it is only in this way, says that Government, that jurisdictional disputes between organisations can be avoided and the exploitation of a majority by an organised minority be prevented.

In contrast to this view, Belgium considers that "the authority which would make the acquisition of legal personality subject to any condition of such a character as to restrict freedom of association—even if free organisations retained the right not to acquire legal personality—would be acting in a manner contrary to the principle of freedom of association by conferring on those organisations which agreed to conform to the conditions prescribed the benefit of the advantages resulting from civil personality". The Government declares itself, therefore, to be in favour of the proposed provision, in order that States may thus "prevent any possibility of permitting any inequality to arise between employers' and workers' organisations, which must remain entirely free and the sole arbiters of their destiny".

The majority of the States reply in the affirmative without further observations (Australia, Bulgaria, Canada, China, Denmark, France, Hungary, India, Mexico, Netherlands and Sweden); a few Governments, however, have stated briefly the reasons for their replies.

Ecuador considers that "the enjoyment of legal personality should not be limited except under conditions determined by each State in order to protect its own security and the well-being of its citizens".

Finland considers that account should also be taken of those provisions in national legislation which impose conditions by which the acquisition of legal personality by organisations is governed.

Switzerland wonders whether it would not be preferable, in view of the fact that the interpretation of legal personality varies so much from one country to another, for the international regulation to omit this question or for it to be dealt

with only in a Recommendation. It points out, moreover, that under Article 60 *et seq.* of the Swiss Civil Code "associations . . . whose aims are not of an economic character, acquire legal personality as soon as the intention to organise themselves on a corporate basis has been explicitly expressed in their constitution".

Austria explains that, under Austrian law, employers' and workers' organisations automatically acquire legal personality when they are legally and effectively established.

While not giving a clearly affirmative reply, the United Kingdom sees "no objection . . . to the inclusion of such a provision, if this is felt to be generally desirable".

Finally, the United States Government observes that this provision appears to be a natural corollary to any affirmative reply to Question 4 (a).

The analysis of the replies to this question reveals that, by a very large majority, the Governments consider that the conditions to which the law may subject the acquisition of legal personality by employers' and workers' organisations should not be such as in any way to restrict freedom of association.

VIII. Responsibilities of Organisations

Question 9

Question 9 suggested two alternatives. The Governments were asked :

(a) whether they considered that it would be desirable to provide, in the international regulations concerning freedom of association, that the acquisition and exercise of the rights defined in the first part of the regulations should not exempt employers' and workers' organisations from their full share of responsibilities and obligations ; or, alternatively,

(b) whether they considered that it would be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

The replies to this question are not unanimous, although they show a clear majority in favour of the solution proposed under 9 (b).

Mexico considers that it would be preferable that this matter should not be dealt with in the international regulations, but that the States should be left to take such measures as they consider appropriate. Canada, Denmark, Ecuador, Finland, Hungary, India and the United Kingdom favour the solution proposed under 9 (*a*). In their observations, Hungary and India point out that, as every right has its counterpart in obligations, occupational organisations have to assume certain responsibilities as a direct result of the rights accorded to them. It should be noted that the replies of these two Governments refer to the moral basis for responsibility and not to the desirability of including such a provision in the international regulations concerning freedom of association.

On the other hand, the replies of the Governments which declare themselves to be in favour of the solution proposed under 9 (*b*) (Australia, Austria, Belgium, Bulgaria, China, France, Netherlands, Sweden, Switzerland, Union of South Africa and United States) indicate, for the most part, not that the Governments are opposed to the responsibilities and obligations of employers' and workers' organisations being defined, but that they consider it more desirable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration.

The United States points out that paragraph 9 (*a*) as it exists is not sufficiently clear for inclusion in a Convention, and that any attempt to render its meaning exact and definite would involve the Conference prematurely in the detailed study of problems relating to international regulations concerning collective agreements or conciliation and arbitration.

Australia, Belgium, the Netherlands, Sweden and Switzerland accompany their replies with similar remarks; the last-mentioned country points out, however, that certain influential circles in Switzerland are rather inclined to the solution proposed under 9 (*a*), as the regulation contemplated under 9 (*b*) would exclude from its scope many associations which are not covered either by collective agreements or by provisions concerning conciliation and arbitration.

Austria considers that the Convention should be limited to the international regulation of those questions which are fundamental to freedom of association and the protection of the right to organise, that is to say, to questions of a purely organisational character.

From this short analysis, it becomes clear that the majority of the Governments consider that it would be preferable to reserve, for inclusion in international regulations concerning collective agreements or conciliation and arbitration, any provision concerning the respective responsibilities and obligations of employers' and workers' organisations.

B. PROTECTION OF THE RIGHT TO ORGANISE

IX. Guarantee of the Exercise of the Right to Organise

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

Questions 10-13

Question 10 asked whether international regulations should guarantee the exercise of the right to organise.

The Danish Government, considering that this is a question of the guarantee of the right to organise by an international agency supervising freedom of association, reserves its opinion, while awaiting fuller information as regards the particulars of the international guarantee. The central organisations of Danish employers and workers, consulted beforehand by the Government, also declared themselves to be against an international guarantee, to which they attribute no practical value. The use of the term "international guarantee", both by the Danish Government and by the central organisations concerned, appears to indicate, however, that the Danish Government has in view the problem of international supervision, a question which is not contemplated under the present regulations. It is, therefore, permissible not to attribute a negative sense to the reply of the Danish Government, especially in view of the fact that affirmative replies are given to the subsequent questions, which are dependent on Question 10.

The replies of all the other Governments are clearly in the affirmative. It should be noted, however, that the United Kingdom Government points out once again that the international regulations should not impose on a State Member the obligation to enact legislation in cases where the right to organise

is already adequately protected by existing legislation or in other ways.

There is, therefore, almost complete unanimity as to the need to embody the protection of the right to organise in the international regulations.

Question 11 dealt with the consideration whether the protection of the right to organise could be effectively assured by means of mutual agreement between organised employers and workers.

The Governments of Austria, Hungary, Mexico, Sweden and the Union of South Africa reply in the negative. They consider indeed that only the law offers effective guarantees.

In the opinion of the French Government, the international regulations should take into account all collective agreements, but should not entrust the protection of the right to organise solely to such agreements. This obligation falls in the last resort on the State. The law should lay down general principles, and collective agreements should prescribe the conditions of their application.

On the other hand, the replies of the remaining countries are in the affirmative (Australia, Belgium, Bulgaria, Canada, China, Denmark, Ecuador, Finland, India, Netherlands, Switzerland, United Kingdom and United States). The Canadian Government specifies, however, that the protection of the right to organise by means of collective agreements should depend on the existence of an established practice and of organisations which are sufficiently developed.

The Government of Ecuador emphasises that the two parties must act together in a sincere intention to co-operate in order to put an end to disputes.

Question 12 asked whether, in the absence of full and effective guarantee by means of mutual agreements, the States Members should take appropriate measures to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source.

The Governments of Austria, Mexico, Sweden and the Union of South Africa, in accordance with the replies given to Question 11, consider that legislative measures are indispensable for ensuring the exercise of the right to organise. The Governments of Belgium and Ecuador are of the same opinion.

The Swedish Government specifies, in this connection, that such legislation should be limited to guaranteeing the right

to establish and join organisations; it should not regulate, on the other hand, either the right not to associate or the right of occupational organisations to conclude mutual agreements.

The Governments of Belgium and Ecuador consider that the State should take protective measures, even where agreements have been concluded in due and proper form. The Government of Belgium calls special attention to the importance of protecting staff delegates against discriminatory dismissal.

The other Governments (Austria, Bulgaria, Canada, China, Denmark, Finland, France, Hungary, India, Netherlands, Switzerland, United Kingdom and United States) approve the text suggested in Question 12. In the view of the French Government, appropriate measures should be taken especially in order to guarantee to wage-earners that the question of membership or non-membership of a trade union may not be taken into account in relation to engagement, maintenance in employment or dismissal.

Lastly, the Swiss Government points out that the adoption and application of protective measures might encounter difficulties.

Finally, Question 13 dealt with the establishment of appropriate agencies for the purpose of ensuring the respect of the right to organise.

The United Kingdom and South African Governments reply in the negative.

The Government of Finland does not express any view as yet, on the ground that neither the structure nor the duties of these agencies would be defined in the regulations.

For the Swiss Government, the provision would not be acceptable if it should result in the creation of international machinery to supervise the right to organise.

On the other hand, the Belgian Government is of the opinion that the establishment, under the auspices of the International Labour Organisation, of an appropriate agency of supervision, should be prescribed by the international regulations. Likewise, the French Government feels that consideration should be given to the question whether effect might be given to this proposal within the framework of the International Labour Organisation. It is desirable, however, once more to point out that Question 13 related, not to the establishment of international supervision, but only to the establishment of appropriate national agencies.

In the opinion of the Swedish Government, the adoption of this provision should not involve any modification of existing national systems which give complete satisfaction to everyone.

In a similar manner, the Mexican Government considers that it is for the countries which guarantee the right to organise by legislation to take appropriate measures where such legislation is contravened.

The Governments of Australia and the United States answer in the affirmative in principle, but would like to see the words "if necessary" embodied in the provision.

The other replies are clearly affirmative (Austria, Bulgaria, Canada, China, Denmark, Ecuador, Hungary, India and Netherlands).

It becomes clear from the survey of the replies that the opinions of the Governments are divided as regards the desirability of a provision which would impose a strict obligation on States Members to establish supervisory agencies.

Proposals by the Governments

Question 14

Question 14 asked whether the Governments had any proposal or suggestion to make on any point to which no reference had been made in the Questionnaire.

An analysis follows of the proposals made to include in the text provisions not covered in the Questionnaire.

The Governments of France, India, the Union of South Africa and the United States suggest that certain provisions should be included in the Convention which, although varying in form, are intended to define directly or indirectly the scope of the Convention.

The South African Government urges that Conventions adopted earlier include provisions granting exemption in the case of non-metropolitan territories, or of certain States the mass of whose population has not yet reached the same economic and social level as in more advanced countries, or again in the case of States whose territories include sparsely populated regions. In the South African view, account should also be taken of the fact that a fourth type of State exists, among which is the Union of South Africa, in which certain elements of the population, while sharing in the general industrial life,

have not attained the same degree of development as the rest of the community. The Government of South Africa proposes, therefore, that there should be embodied in the text of the Convention, as in the Resolution adopted at the 30th Session of the Conference, the provision contained in Part V of the Declaration of Philadelphia, according to which due account should be taken of the stage of social and economic development of each people in relation to the realisation of the programme set forth in the Declaration.

In the opinion of the Indian Government, the benefit of the rights provided by the Convention should be available only to those organisations of employers and workers which fulfil the three following conditions :

(a) the organisations must not exclude from membership any individuals or group of individuals who may otherwise be eligible, merely on grounds of sex, colour, race, creed or nationality ;

(b) the organisations must not interfere in any way with the right of any individual or group of individuals to pursue peacefully his or their trade or vocation and to exercise the right of citizenship ;

(c) the organisations must conduct their activities according to democratic procedure.

The Government of the United States declares that it is in favour of the adoption of a Convention concerning freedom of association of workers and employers, on the understanding that the Convention deals exclusively with trade union affairs and employer-employee relations, and not with other activities of organisations extraneous to these fields. In order to give more clarity to the proposed text, it suggests that a definition of the words " employers' and workers' organisations " should be included, a definition which, in the spirit of the Constitution of the International Labour Organisation and of the Convention itself, might be drafted as follows :

" Employers' and workers' organisations " as used in this Convention means organisations of employers and workers with respect to their participation in all matters relating to trade union affairs and employer-employee relations.

The French Government calls attention to the fact that it is not so much the legal status of the organisations concerned,

but their very object, which calls for the measures of protection contemplated in the present text. That object is the defence of the occupational and social interests of their members.

The French Government points out, in this connection, that it may appear reasonable enough theoretically to desire to establish a constant parallel between organisations of workers and employers, whereas the objects pursued and the conditions under which those rights are exercised by workers and employers may present very appreciable differences, and workers' organisations, in particular, are far more exposed to acts of intimidation, coercion or restraint.

Further, the French Government asks the International Labour Office to study more intensively the question of the representative character of trade union organisations. It raises in particular the following questions :

(a) whether it is not contrary to freedom of association to accord by law to certain organisations deemed to be the most representative a privilege entitling them to represent the whole of the wage-earners concerned for the purpose of concluding collective agreements which, according to a specified procedure, may become generally binding ;

(b) in the negative, what would be the criteria not contrary to freedom of association which would enable the most representative organisations to be determined ?

It should be pointed out that this problem has been examined by the Office in its report on industrial relations, which question is Item VIII on the agenda of the present session of the Conference.¹ It appeared to the Office that this problem arose essentially in connection with industrial relations and, more particularly, as the French Government itself refers to it, in connection with collective agreements, and might, therefore, be more suitably dealt with in relation to that question.

¹ International Labour Conference, 31st Session, Report VIII (1) : *Industrial Relations*, Geneva (I.L.O.), 1947.

CHAPTER III

CONCLUSIONS

On the basis of the replies analysed in the preceding chapter, the Office submits for the consideration of the Conference a proposed Convention concerning freedom of association and protection of the right to organise, prefaced by a short Preamble. These texts will be found in Chapter IV.

Preamble to the Proposed Convention

The Office has considered it necessary to include a short Preamble stating the reasons for the text of the proposed Convention.

In the first place, it appears desirable to refer to the provisions of the Constitution of the International Labour Organisation and of the Declaration of Philadelphia, which determine the competence of the Organisation in respect of the question of freedom of association and give prominence to the importance of this problem in relation to the improvement of conditions of labour, social progress and maintenance of peace.

It seems no less desirable to emphasise that the Assembly of the United Nations has endorsed the principles concerning trade union questions adopted unanimously at the last session of the Conference and has, therefore, requested the International Labour Organisation to make every effort to translate these principles into formal undertakings by means of one or several international labour Conventions.

Finally, it appears necessary to recall that if workers, employers and their respective organisations must not be subject, as they often have been in the past, to discriminatory treatment, as compared with other persons or organisations, they are no less obliged, when exercising their rights, to observe the laws concerning public order laid down by national

Constitutions, penal codes or civil codes which, by definition, are binding upon everyone.

The Office thus takes into account the reservations relating to "legality" and "public order" reaffirmed by a number of Governments in their replies. It may be recalled in this connection that such reservations, even if they are not expressly declared, are nevertheless implicitly included in any text, national or international, giving sanction to a right or a freedom. But, in order to avoid any ambiguity, it is necessary to state specifically that the laws relating to public order in various countries, whatever they may be, must be compatible with the provisions of any Convention which may be adopted concerning freedom of association. The same holds good, of course, with regard to national legislation concerning occupational organisations. Indeed, if the position should be otherwise, the Convention itself would no longer have any object. And it is for this reason that account can hardly be taken of any reservation relating to public order in the actual text of the Convention, because this would enable the States, according to their interpretation of this concept, to bring into question once again the principles to which they had subscribed.

Proposed Convention concerning Freedom of Association and Protection of the Right to Organise

Before considering the significance of the various provisions of the proposed Convention concerning freedom of association and protection of the right to organise, it is important to recall in a few words the spirit in which this proposed text has been prepared.

The Office, in full accord with the decisions of the last session of the International Labour Conference, has endeavoured to define as concisely as possible the principles determining the rules governing freedom of association, principles which, be it remembered, are expressly sanctioned by the legislation and practice of the great majority of countries.

In other words, all these countries are in a position to ratify the Convention without having first to amend their legislation concerning occupational organisations.

On the other hand, any proposed regulation purporting to regulate even the smallest problems which might arise in

practice in each country would have obliged the majority of countries first to amend their national legislation, frequently with regard to points of detail, before they would be in a position to ratify the international Convention. And it is for this reason that the Office has purposely refrained from proposing to the Conference any kind of "code or model regulations" concerning freedom of association.

In the second place, it is important to remember that, in accordance with the decisions taken by the 30th Session of the Conference, the Convention concerning freedom of association should be considered only as a first stage in the programme for the international regulation of trade union rights. In fact, the 31st Session of the Conference also has before it, for first discussion, several texts relating, *inter alia*, to the rôle of workers' and employers' organisations in the field of industrial relations and in that of social and economic regulation (Item VIII on the agenda of the Conference).

Moreover, a number of suggestions made in the replies of the Governments, which relate to the wider problems of industrial relations and co-operation between public authorities and employers' and workers' organisations, might more usefully be discussed in connection with the texts referred to above.

DESIRABILITY AND FORM OF INTERNATIONAL REGULATION

The Conference will need to decide in the first place whether the international regulations should take the form of a Convention and, if the decision is in the affirmative, whether there shall be a single Convention relating both to freedom of association and the protection of the right to organise, or two separate Conventions, one concerning freedom of association and the other concerning the protection of the right to organise.

The Governments have expressed themselves almost unanimously to be in favour of prompt international regulation by means of a Convention, and the majority prefer a single Convention.

However, a number of Governments have given preference to regulation by means of two separate Conventions, for the reason especially that a text relating to both questions at the same time might risk entailing delay in the adoption of a Convention on freedom of association, which should be the first task of the Conference. It has also been urged that it

might be undesirable to seek to regulate separately, on the one hand, the principle of the protection of the right to organise by the procedure of single discussion, and the methods of application of the principle by the double-discussion procedure.

The Office has endeavoured to reconcile these opinions by dividing the proposed regulations into two parts, the first being concerned with freedom of association and the second with the protection of the right to organise.

The Conference will thus be in a position to give its decisions separately on each of the two parts of the proposed Convention.

PART I. FREEDOM OF ASSOCIATION

Article 1 of the proposed Convention provides that each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the provisions laid down in the following articles. This text does not call for any further observations.

Establishment of Organisations

Article 2 of the proposed Convention consists of a definition of freedom of association of workers and employers as individuals. It provides accordingly that workers and employers, without distinction whatsoever, shall have the inalienable right to establish or join organisations of their own choosing without previous authorisation.

The observations of the Governments have related to several points in this definition which it is necessary now to consider briefly.

The Principle of Non-discrimination.

It may be recalled in the first place that the Governments were asked to choose between two formulae. The first, that which has been retained in the proposed Convention, defines the principle of non-discrimination in quite general terms: "without distinction whatsoever". The second, on the other hand, enumerates certain typical examples of organisational discrimination: "without distinction as to occupation, sex, colour, race, creed, nationality or political opinion".

The majority of the replies expressed a preference for the first formula, for the reason especially that a clause in quite

general terms was actually more comprehensive than a formula enumerating the different types of discrimination, which always entails the risk of certain types being omitted.

Hence, in keeping with the spirit of the replies, the general provision included in the text of the proposed Convention should be interpreted in the widest sense as meaning that freedom of association should be recognised without distinction whatsoever as to occupation, sex, colour, race, creed, nationality, political opinion, etc., not only for workers and employers in private industry, but also for officials or employees of the public service.

It may be observed, in this latter connection, that the Governments were also consulted on the question whether it would be desirable to provide in the international regulations that the recognition of the right of association of public officials should in no way prejudice the question of the right of such officials to strike. Several Governments, while giving their approval to the formula, have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference.

In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association.

Guarantee of Freedom of Association without Previous Authorisation.

The real guarantee of freedom of association flows from the words : " inalienable right of workers and employers to establish or join organisations . . . without previous authorisation ".

None of the replies have expressly questioned this fundamental principle, but some Governments have urged nevertheless that, in the interests of the smooth functioning of the organisations, they should be obliged to comply, in regard to their establishment, with the legal formalities prescribed by their national legislation.

It should be stressed in this connection that Article 2 merely lays down a principle and simply places a limit on the intervention of the State. Therefore, it leaves a certain latitude to countries to regulate as they wish the conditions under which

organisations may be established, with the express proviso, of course, that these conditions shall not be such as to restrict the right which workers and employers should have to establish their organisations in full freedom.

The words "without previous authorisation" are sufficiently explicit to enable countries to distinguish between measures which are compatible with the principle of the free establishment of organisations and those which would not be so.

The Right to Associate and the Right Not to Associate.

Article 2 lays down, in positive terms, the right of workers and employers to establish and join organisations.

The very large majority of the replies have unreservedly given approval to this principle, but a few Governments have also expressed the wish that the international guarantee should refer not only to the positive right to associate but also to the purely negative right not to associate.

It should be observed in this connection that the very object of the international regulation is to guarantee freedom of association as a measure of social protection of outstanding importance. But the protection of the purely negative right not to associate could naturally not be viewed as coming under this head.

Moreover, Article 2 merely lays down a right and not, as certain countries seem to fear, an obligation. It follows, therefore, that workers and employers remain completely free either to make use of this right or not to do so. But the voluntary renunciation of the positive right to associate could not be treated on the same basis as the formal guarantee of the purely negative right not to associate.

Freedom of Choice of Organisations.

By including the words "organisations of their own choosing" in Article 2, the Office intended to take account of the fact that, in a number of countries, there exist several organisations representative of workers and employers among which the persons concerned may choose which they shall join, on either religious or political grounds.

And it is in this sense that the very large majority of replies have interpreted these words. However, to allay certain apprehensions which have been expressed in a few replies, it is

important to point out that such a provision leaves the organisations concerned entirely free to lay down in their rules the conditions of membership or withdrawal from membership, subject only to the reservation that such conditions shall not bring into question the principle of non-discrimination in relation to organisational rights.

Autonomy of Organisations

Article 3 of the proposed Convention consists of two paragraphs which supplement each other.

The first provides that workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

It will be observed that to the formula which was included in the Questionnaire have been added the words: "to elect their representatives in full freedom", which gives precise detail to the definition of the right of free functioning of organisations.

The second paragraph of Article 3 lays an obligation on the public authorities to refrain from any interference which would restrict this right or impede the lawful exercise thereof.

The majority of the replies to this question are not merely affirmative but emphasise further the fact that the freedom to establish organisations guaranteed by Article 2 of the proposed Convention would not be of great value if it was not completed by the freedom for organisations to administer themselves according to their wishes.

But here again, certain reservations have been made by some Governments with regard especially to the definition of organisations and the limits to be placed on administrative autonomy.

Definition of Occupational Organisations.

In using the words "workers' and employers' organisations", the Office intended to emphasise that the proposed Convention refers only to occupational organisations whose essential mission consists in ensuring the defence of the occupational, social and economic interests of their members. It follows that organisations of a purely political or purely commercial character, or

public agencies (State agencies, municipalities, etc.), do not fall within this definition and cannot, therefore, claim to benefit from the application of the Convention.

But by reason of the very great difference in the definitions of occupational organisations which is met with in the various national legislations, it seems impossible to hope to bring all these definitions down to one formula which would suit all countries. The words "workers' and employers' organisations" appear to be sufficiently definite to distinguish occupational organisations from other organisations.

In reply to another observation made by certain Governments on the "representative character of organisations", it will be sufficient to point out here that the proposed Convention concerning freedom of association can hardly discriminate between organisations according to their numerical importance, but that this problem will come before the Conference in connection with the question of industrial relations, which is Item VIII on its agenda.

Regulation of the Functioning of Organisations.

Some Governments have accompanied their affirmative reply relating to the administrative autonomy of organisations by reservations similar to those made in connection with the preceding article and which relate to certain formalities prescribed by their national regulations.

But here again, the text under review goes only so far as to fix a limit to the interference of authorities, and in no way pretends, therefore, to prohibit legal requirements having as their exclusive object the assurance of the normal functioning of organisations.

Thus, for instance, national legislation frequently provides that organisations must be endowed with rules regulating, in the interests of the members themselves, such questions as, for example, the conditions for obtaining or withdrawing from membership, the organisation of the administration and executive, trade union contributions, management and supervision of funds, submission of the balance-sheet to the members, and other similar questions.

Provisions of this kind, which, moreover, are always included in the rules which organisations draw up on a voluntary basis, cannot be considered as being contrary to the principle of

freedom of association if they do not bring into question the autonomy of organisations as defined by Article 3 of the proposed Convention.

But if the national authorities possess in this way a fairly considerable latitude to regulate the functioning of organisations, it would appear, nevertheless, that the insertion in Article 3 of the words "in conformity with national laws" (an insertion asked for by certain Governments) would be incompatible with the principle of autonomy of occupational organisations, as this would give the national public authorities a free hand, so to speak, to regulate the functioning of the organisations as they wished.

On somewhat similar considerations the Conference may wish to discuss the desirability of deleting, at the end of the second paragraph of Article 3, the word "lawful", since a general reservation regarding legality is already included in the Preamble and applies, therefore, to all the articles of the proposed Convention.

Dissolution and Suspension of Organisations

Article 4 of the proposed Convention provides that workers' and employers' organisations shall not be liable to be dissolved or have their activities suspended by administrative authority.

The object of this clause is to complete the guarantees relating to the free establishment and free functioning of organisations, prescribed by Articles 2 and 3 of the proposed text, by a guarantee against dissolution or arbitrary suspension of organisations by administrative authority. In other words, workers' and employers' organisations should benefit from all the guarantees offered by the judicial procedure if the dissolution or suspension is prescribed in national regulations as a penalty for breach of the law.

The very great majority of the replies unreservedly endorse this principle, for the reason, above all, that it should be for the judiciary and not for the administrative authorities to hear cases of alleged breaches of the law and, where appropriate, to apply the penalties prescribed.

The Conference will, however, wish to take account of the fact that, in several countries, the dissolution or suspension of organisations arises out of an administrative jurisdiction which offers the parties the same guarantees as judicial procedure

properly speaking. It seems, therefore, that such administrative procedure could be assimilated, in the terms of the Convention, to judicial procedure.

*Federations, Confederations and International Organisations
of Employers and Workers*

Article 5 provides that workers' and employers' organisations shall have the right to establish federations and confederations and to affiliate with international organisations of workers and employers.

This provision is simply the corollary to the right provided under Article 2 to establish organisations. It is based on the recognition of the fact that the solidarity of interests which unites workers and employers is not limited to one undertaking, nor to one trade or industry, nor even to one country, but extends to all countries. It may be recalled in this connection that both the United Nations and the International Labour Organisation have formally recognised the status of international organisations of workers and employers by associating them directly with their own activities.

The very great majority of the countries have given their unqualified approval to this provision. Three countries once more qualify their agreement by general reservations concerning public order and security of the State, reservations which have been considered in connection with the Preamble to the Convention. A single reply raises the problem of the administrative and financial autonomy of organisations affiliated either to national federations and confederations or to international organisations. It may be pointed out, in this latter connection, that, in fact, the rules of national federations and confederations, like those of international organisations of workers and employers, safeguard to the largest possible degree the autonomy of the organisations which are affiliated to them. But this problem, indeed, is related to the sovereignty of national and international congresses of workers and employers and could not, therefore, be dealt with by an international document.

Guarantees relating to Federations and Confederations

Article 6 is intended to make applicable to federations and confederations the guarantees relating to establishment, functioning and dissolution, provided under Articles 2, 3 and

4 of the proposed Convention in respect of workers' and employers' organisations.

Except for the formal reservations with regard to "legality" made by three countries, the other replies are in the affirmative without further observations. One country only replied in the negative, without giving any reasons for its answer.

This text, therefore, does not call for further remark.

Acquisition of Legal Personality

Article 7 provides that the acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions laid down in Articles 2, 3 and 4 analysed above.

While the majority of the countries, in this case also, gave an affirmative reply without comment, a few countries nevertheless wish to make the acquisition of legal personality subject to the formalities prescribed by their national legislation.

In order to avoid any misunderstanding of this provision, it should be pointed out that Article 7 is in no way intended to impose an obligation on States to confer legal personality on organisations.

In fact, in very many countries, organisations occupy a rôle of outstanding importance without, at the same time, being endowed with legal personality. In other countries, organisations are free to acquire or not to acquire legal personality. In yet others, legal personality is acquired as a right after mere registration.

In a very few countries, the accordance of legal personality to organisations is deemed to be a condition *sine qua non* of their existence and operation. Now if, in this last type of case, the legislator was entirely free to make recognition subject to the conditions which it pleased him to impose (such as, for instance, previous authorisation, supervision by the authorities of the internal and external activities of organisations, etc.), he could in this way nullify all the guarantees relating to freedom of association provided in the proposed Convention.

And it is for the sole purpose of preventing the accordance of legal personality from serving as a pretext for a reintroduction, by this means, of a restrictive régime with regard to

occupational organisation that the Office felt obliged to include Article 7 in the proposed Convention.

This clause, therefore, is inserted purely as a safeguard, but it in no way prejudices the question whether countries shall decide to confer or not to confer legal personality on occupational organisations.

Responsibilities of Organisations

The Governments were consulted also on the two following questions :

1. Would it 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 workers' and employers' organisations from their full share of responsibilities and obligations ?

Or, alternatively,

2. Would it be preferable to reserve such a provision for inclusion in international regulations concerning collective agreements or conciliation and arbitration ?

The majority of Governments declared themselves to be in favour of the solution indicated by the latter formula, urging, in particular, that the obligation laid down in the first formula was far too indefinite to be included usefully in an international Convention.

For the purposes of this question, it would appear that only two kinds of responsibility can be visualised : (1) a responsibility of a general kind in respect of breach of the law ; (2) a specific responsibility resulting, for instance, from the violation either of a law specially applicable to occupational organisations or of a contractual undertaking.

The case of general responsibility is covered by the general reservation relating to legality, included in the Preamble to the proposed Convention, while the question of specific responsibility will only arise when the Conference is considering the questions included in Item VIII of its agenda and, in particular, those relating to collective agreements and conciliation and arbitration.

And it is for these reasons that the Office, in accordance with the suggestions made by the majority of the countries, did not feel that it should retain a special provision concerning the responsibility of organisations in the proposed Convention.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

It will be remembered that the Conference, at its 30th Session, reserved for possible regulation in 1948, under the single-discussion procedure, only the question relating to the guarantee of the principle of the protection of the right to organise, but referred the question relating to the application of the principle of the right to organise and to bargain collectively to its 31st Session, for consideration under the double-discussion procedure (Item VIII on the agenda of the Conference).

On the basis of the list of points adopted by the last session of the Conference in this connection, the Office Questionnaire consulted the Governments on the following matters :

1. Should international regulations guarantee the exercise of the right to organise ?

2. Should the protection of the right to organise be effectually assured by means of mutual agreement between organised workers and employers ?

3. In the absence of full and effective guarantee by means of mutual agreements, should appropriate measures be taken to protect the exercise of the right to organise without fear of intimidation, coercion or restraint from any source ? And finally,

4. Should the international regulations include the obligation of establishing appropriate agencies for the purpose of ensuring the respect of the right to organise ?

It is evident from the analysis made in the preceding chapter, that the very large majority of the replies of the Governments are clearly in the affirmative with regard to the need to guarantee the exercise of the right to organise, but reveal fairly considerable differences as regards both the methods to be followed in giving effect to this protection (guarantee by legal means or guarantee under agreement), and as regards the measures of supervision which might be contemplated for the purpose of ensuring protection of the right to organise (establishment of national supervisory agencies).

Faced by this divergence in the points of view expressed, it appeared desirable to the Office to submit to the Conference, in accordance, moreover, with the wish expressed at the 30th Session, a text concerned only with the guarantee of the principle of the protection of the right to organise.

This appears to be the only possible procedure for the further reason that the Conference also has before it, for first discussion, as indicated earlier, a far more detailed text concerning the application of the principle of the right to organise and to bargain collectively, a text which takes due account of all the aspects of the problem.

Article 8 of the proposed Convention provides for the guarantee of the principle of the protection of the right to organise in the following terms :

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

It results from this text that, while the Members ratifying the Convention are of course obliged to ensure in all circumstances the protection of the right to organise, they are nevertheless free to choose the methods—legal guarantee or guarantee by means of mutual agreements—by which this obligation may be carried out.

It results also from the words “all necessary and appropriate measures” that those States which already possess an adequate system of protection of the right to organise, either by virtue of their national legislation or by virtue of other means, are not bound to take further measures before being able to ratify the Convention.

PART III. MISCELLANEOUS PROVISIONS

Articles 9 and 10 of the proposed Convention contain the usual provisions with regard to the application to non-metropolitan territories of any Convention concerning freedom of association and protection of the right to organise which may be adopted.

Article 9 is in accordance with the provisions of Article 35, paragraphs 1-3, of the Constitution, as amended by the Conference at its 1946 Session. It concerns the application of the Convention to those non-metropolitan territories for whose international relations Members of the Organisation are responsible.

Article 10 takes account of the situation—defined in paragraphs 4-8 of Article 35 of the Constitution as amended in 1946—of the authorities for non-metropolitan territories com-

petent in respect of the matters included in the Convention and of territories placed under the joint authority of two or more Members or an international authority.

The Conference, bearing in mind the fact that a Convention concerning the right of association and the settlement of labour disputes in non-metropolitan territories was adopted in 1947¹, will decide whether or not it appears desirable to include provisions relating to non-metropolitan territories in the present Convention.

Finally, the Conference will wish, perhaps, to consider whether it is desirable to include—in accordance with the suggestion made by the Government of the Union of South Africa—either in the Preamble or in the actual text of the Convention, the clause contained in Part V of the Declaration of Philadelphia according to which due account must be taken of the stage of social and economic development reached by each people in relation to the progressive application of the programme laid down in the Declaration.

The Conference will recall that, on the proposal of the South African Employers' member of the Committee on freedom of association, a clause based on Part V of the Declaration was also included in the Preamble to the Resolution concerning freedom of association unanimously adopted at the last session of the Conference.

Establishment of International Machinery for Supervising the Exercise of Freedom of Association

In the Introduction, reference was made to the various Resolutions adopted by the Conference at its 30th Session, by the Economic and Social Council at its Fifth Session and by the Assembly of the United Nations at its Second Session, concerning the establishment of international machinery for safeguarding freedom of association.

It is sufficient to mention here that the Conference will no doubt have before it a special report on this question from the Governing Body.

¹ See *Official Bulletin*, 31 July 1947, Vol. XXX, No. 1, p. 47.

CHAPTER IV

PROPOSED TEXTS

Proposed Convention concerning Freedom of Association and Protection of the Right to Organise

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948 ;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the Session ;

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

Considering that the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress " ;

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation ;

Considering that the Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions ;

Considering that the principle of equality before the law implies that, in the exercise of their right of association, workers and employers and their respective organisations, like other persons or organised collectivities, are under an obligation to respect the law,

CHAPITRE IV

TEXTES PROPOSÉS

Projet de convention concernant la liberté syndicale et la protection du droit syndical

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à San-Francisco par le Conseil d'administration du Bureau international du Travail et s'y étant réunie le 17 juin 1948, en sa trente et unième session,

Après avoir décidé d'adopter sous forme d'une convention diverses propositions relatives à la liberté syndicale et la protection du droit syndical, question qui constitue le septième point à l'ordre du jour de la session,

Considérant que le Préambule de la Constitution de l'Organisation internationale du Travail énonce, parmi les moyens susceptibles d'améliorer la condition des travailleurs et d'assurer la paix, « l'affirmation du principe de la liberté syndicale » ;

Considérant que la Déclaration de Philadelphie a proclamé de nouveau que la « liberté d'expression et d'association est une condition indispensable d'un progrès soutenu » ;

Considérant que la Conférence internationale du Travail, à sa trentième session, a adopté à l'unanimité les principes qui doivent être à la base de la réglementation internationale ;

Considérant que l'Assemblée des Nations Unies, à sa deuxième session, a fait siens ces principes et a invité l'Organisation internationale du Travail à poursuivre tous ses efforts afin qu'il soit possible d'adopter une ou plusieurs conventions internationales ;

Considérant que le principe de l'égalité devant la loi implique qu'à l'instar des autres personnes ou collectivités organisées, les travailleurs, les employeurs et leurs organisations respectives sont tenus, dans l'exercice de leur droit syndical, au respect de la légalité,

adopts this day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association Convention, 1948 :

PART I. FREEDOM OF ASSOCIATION

Article 1

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

Article 2

Workers and employers, without distinction whatsoever, shall have the inalienable right to establish or join organisations of their own choosing without previous authorisation.

Article 3

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

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

Article 4

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

Article 5

Workers' and employers' organisations shall have the right to establish federations and confederations and to affiliate with international organisations of workers and employers.

Article 6

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

Article 7

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

adopte, ce jour de juillet 1948, la convention ci-après, qui sera dénommée « Convention sur la liberté syndicale, 1948 ».

PARTIE I. LIBERTÉ SYNDICALE

Article 1^{er}

Tout Membre de l'Organisation internationale du Travail pour lequel la présente convention est en vigueur s'engage à donner effet aux dispositions suivantes.

Article 2

Les travailleurs et les employeurs, sans distinction d'aucune sorte, ont le droit inaliénable de constituer des organisations de leur choix, sans autorisation préalable, ainsi que celui de s'affilier à ces organisations.

Article 3

1. Les organisations de travailleurs et d'employeurs ont le droit d'élaborer leurs statuts et règlements administratifs, d'élire librement leurs représentants, d'organiser leur gestion et leur activité, et de formuler leur programme d'action.

2. Les autorités publiques doivent s'abstenir de toute intervention de nature à limiter ce droit ou à en entraver l'exercice légal.

Article 4

Les organisations de travailleurs et d'employeurs ne sont pas sujettes à dissolution ou à suspension par voie administrative.

Article 5

Les organisations de travailleurs et d'employeurs ont le droit de constituer des fédérations et des confédérations ainsi que celui de s'affilier à des organisations internationales de travailleurs et d'employeurs.

Article 6

Les dispositions des articles 2, 3 et 4 ci-dessus s'appliquent aux fédérations et aux confédérations des organisations de travailleurs et d'employeurs.

Article 7

L'acquisition de la personnalité juridique par les organisations de travailleurs et d'employeurs, leurs fédérations et confédérations, ne peut être subordonnée à des conditions de nature à mettre en cause l'application des dispositions prévues aux articles 2, 3 et 4 ci-dessus.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 8

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

PART III. MISCELLANEOUS PROVISIONS

Article 9

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said Article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating—

- (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification ;
- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications ;
- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable ;
- (d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of sub-paragraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article x, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

PARTIE II. PROTECTION DU DROIT SYNDICAL

Article 8

Tout Membre de l'Organisation internationale du Travail pour lequel la présente convention est en vigueur s'engage à prendre toutes mesures nécessaires et appropriées en vue d'assurer l'exercice du droit syndical des travailleurs et des employeurs.

PARTIE III. MESURES DIVERSES

Article 9

1. En ce qui concerne les territoires mentionnés par l'article 35 de la Constitution de l'Organisation internationale du Travail telle qu'elle a été amendée par l'Instrument d'amendement à la Constitution de l'Organisation internationale du Travail, 1946, à l'exclusion des territoires visés par les paragraphes 4 et 5 dudit article ainsi amendé, tout Membre de l'Organisation qui ratifie la présente convention doit communiquer au Directeur général du Bureau international du Travail, en même temps que sa ratification, ou dans le plus bref délai possible après sa ratification, une déclaration faisant connaître :

- a) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées sans modification ;
- b) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées avec des modifications et en quoi consistent lesdites modifications ;
- c) les territoires auxquels la convention est inapplicable et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;
- d) les territoires pour lesquels il réserve sa décision.

2. Les engagements mentionnés aux alinéas a) et b) du premier paragraphe du présent article seront réputés parties intégrantes de la ratification et porteront des effets identiques.

3. Tout Membre pourra renoncer par une nouvelle déclaration à tout ou partie des réserves contenues dans sa déclaration antérieure en vertu des alinéas b), c) et d) du paragraphe 1 du présent article.

4. Tout Membre pourra, pendant les périodes au cours desquelles la présente convention peut être dénoncée conformément aux dispositions de l'article x, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation en ce qui concerne les territoires déterminés.

Article 10

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office—

- (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article x, communicate to the Director-General of the International Labour Office a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 10

1. Lorsque les questions traitées par la présente convention entrent dans le cadre de la compétence propre des autorités d'un territoire non métropolitain, le Membre responsable des relations internationales de ce territoire, en accord avec le gouvernement dudit territoire, pourra communiquer au Directeur général du Bureau international du Travail une déclaration d'acceptation, au nom de ce territoire, des obligations de la présente convention.

2. Une déclaration d'acceptation des obligations de la présente convention peut être communiquée au Directeur général du Bureau international du Travail :

- a) par deux ou plusieurs Membres de l'Organisation pour un territoire placé sous leur autorité conjointe ;
- b) par toute autorité internationale responsable de l'administration d'un territoire en vertu des dispositions de la Charte des Nations Unies ou de toute autre disposition en vigueur à l'égard de ce territoire.

3. Les déclarations communiquées au Directeur général du Bureau international du Travail conformément aux dispositions des paragraphes précédents du présent article doivent indiquer si les dispositions de la convention seront appliquées dans le territoire avec ou sans modifications ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle devra spécifier en quoi consistent lesdites modifications.

4. Le Membre ou les Membres ou l'autorité internationale intéressée pourront renoncer entièrement ou partiellement par une déclaration ultérieure au droit d'invoquer une modification indiquée dans une déclaration antérieure.

5. Le Membre ou les Membres ou l'autorité internationale intéressée pourront, pendant les périodes au cours desquelles la convention peut être dénoncée conformément aux dispositions de l'article x, communiquer au Directeur général du Bureau international du Travail une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure en faisant connaître la situation en ce qui concerne l'application de cette convention.
