

INTERNATIONAL LABOUR CONFERENCE

THIRTY-FIRST SESSION
SAN FRANCISCO, 1948

RECORD OF PROCEEDINGS



INTERNATIONAL LABOUR OFFICE
GENEVA, 1950

09616

proposals made in the report are what the Committee considered to be the best arrangements that could be made in the circumstances.

I should, however, like to draw attention to the fact that there are now five States whose arrears exceed two full years' contributions. According to our Constitution, they are not entitled to vote unless especially authorised to do so by a two-thirds majority of the vote of the Conference. The decision to allow a country in such default to vote is, as stated in the report, a very serious matter.

The Committee examined the whole question very carefully in the case of Bulgaria, which is the only country in default which is represented at this session of the Conference; and it recommends that Bulgaria should be permitted to vote, because the Committee was satisfied that Bulgaria was making real efforts to clear off her arrears and to place herself in good financial standing with the Organisation. If the report is adopted, it will be necessary to take a record vote in this matter and, as stated, a two-thirds majority vote will be necessary.

The only other point to which I should like to draw attention is the position regarding the Working Capital Fund, which is given in the appendix to the report. The Working Capital Fund is required to enable the International Labour Organisation to carry on its work pending the receipt of contributions from States Members. As will be seen from the appendix, there were only eighteen countries which had placed a deposit in this Working Capital Fund. This year the United States of America has also placed a deposit; but it is to be hoped that other Member States will also come forward and help to build up the Working Capital Fund, which is very necessary to enable the International Labour Organisation to carry on pending the receipt of contributions which are sometimes delayed.

With these words, I commend the report to the consideration of the Conference.

Interpretation: The PRESIDENT — Does anyone wish to speak on this report?

As no one has asked to speak, I consider the report to have been adopted, subject to the record vote — which will be taken later — concerning Bulgaria's right to vote at this session of the Conference.

FIRST REPORT OF THE COMMITTEE ON FREEDOM OF ASSOCIATION AND INDUSTRIAL RELATIONS ¹

Interpretation: The PRESIDENT — The next item on the agenda is the first report of the Committee on freedom of association and industrial relations.

Interpretation: Mr. JOUHAUX (*Workers' delegate, France; Reporter of the Committee on Freedom of Association and Industrial Relations*) — It is as Reporter for the Workers' members that I speak on this matter. I should like to say that the Workers' representatives will vote in favour of the Convention now before you, but we shall not vote without certain reservations.

It is quite certain that the present Convention does not correspond to the situation as regards the development of the right to organise in the world today and particularly in our countries. There is no doubt that it contains a number of gaps, a number of defects, and a number of points liable to misinterpretation. Nevertheless, as it was found that some countries were not applying freedom of association in their territories (or were applying it subject to restrictions), we considered it essential that the Conference should take positive action on a first Convention, so that freedom of association in its primary stage should be respected in all countries.

It is evident that the International Labour Organisation finds itself, in present circumstances, in a situation which it should have avoided. Since 1920, freedom of association has been embodied in the Constitution of the International Labour Organisation, and should have been applied in full ever since that date, and the work of the International Labour Office in this field at the present time should have been merely to follow the development of the right to organise in all the different countries so as to register the progress achieved by all countries in this respect.

What I have said did not take place; and, when we examine this text and compare it with the existing situation in our own countries, we are struck by the very large gap between the text now before you and what our trade unions in our own countries have already obtained. We are no longer at the stage of primary claims. We are now claiming a share in the management of national economy. We have accepted obligations in the national community and, consequently, we have obtained a number of rights. These rights are far from being recognised in the present text. Nevertheless, in social legislation (both national and international), acquired rights remain undiminished if they are superior to those provided by a Convention, and there is therefore no risk for us in accepting the present text.

Still, we regret that, in present circumstances, so many sectional views and selfish interests, and so much lack of understanding were shown in the discussion on this matter. I should like to say to our employer friends that they are not in the International Labour Organisation in order to defend an attachment to a dead past. They are in the

¹ See Third Part, Appendix X.

Organisation to serve progress ; and they should not fear bold ideas, because it is only by bold thought that we can secure a future of progress. When they speak of the public interest, they should not merely mean their own interests, but those of the national community which they represent and of those of the international community in which they collaborate. I must tell them in all sincerity that, if their attachment to the past should continue as at present, their action might lead—and this would be to the detriment of their own interests—to the workers disinteresting themselves in the International Labour Organisation.

I should also like to say—because it is a matter of regret to me—that the Government representatives show, in their thought and action, too much attachment to national sovereignty. National sovereignty is of course a highly reputable conception, because it is an expression of independence.

But it is unusual to hear arguments regarding national sovereignty in 1948, nearly thirty years after the establishment of the International Labour Organisation, which presupposes the abandonment to some extent of national sovereignties. In order that the Organisation may play its part in developing labour legislation equally in all countries, it is absolutely necessary to make national sovereignty give way to international interests if we are to prevent the dumping of which Governments complain so often and if we wish to establish peace.

The present Convention on freedom of association contains all these defects ; and it is to be regretted that we have not before us a text which, by reflecting economic development, and consequently the development of the right to organise, would record it as a dynamic force which would support the International Labour Organisation in its work. If the International Labour Organisation is to remain—and it must remain—the motive force of social progress, it must boldly lead the way and not fear new ideas ; it must abandon outworn ideas and try to represent progress.

All these arguments are important to us workers. But I repeat that we shall vote in favour of this Convention because it is a first condition to the essential and continued progress on the road which the International Labour Organisation should follow.

It is the duty of the countries in which development is most advanced to help in the development of countries which are economically backward, for otherwise their own reforms will be endangered. In the International Labour Organisation, there is not a single country or group which can exclude itself from the prevailing atmosphere ; but there are countries which should help the others down the difficult path which they must

follow in order to achieve an improved economy and the freedom of the workers. Who can say today whether the level reached by some countries will be typical of the future ? Who can say whether the social evolution of man, of which a great economic philosopher (whose name I need not tell you) spoke in the early days of industrialism, is not entering an intermediate stage, that of nationalisation ? If the formulation of a theory must be absolute, he said, its application must take account of the changing realities of the social scene. We are today in the midst of an international economic revolution. We must hope that the efforts of all in the International Labour Organisation will be to assist the development of this peace-making and emancipatory revolution, and that all will realise that it is based on the co-operation of labour, through its trade union organisations, in the exercise of freedom. For where there are duties there must be rights.

We consider that freedom is not only a human right ; it is also, in the present circumstances, a collective right, a public right of organisation. If it is not respected even in the most highly developed countries, it may turn them from their path and lead to the opposite of the result hoped for.

The representatives of the workers will therefore vote in favour of the present Convention, with all its faults, because it is a first step in the application of a freedom which is indispensable to the development of humanity, and because it is a first recognition of the absolute necessity for the participation of the workers, through their organisations, in the whole of human development and particularly in economic development. We shall vote in favour of it because it is essential that those who have not yet those liberties should receive them. We shall vote, however, with the idea of giving this reform later on all the boldness needed in order that the International Labour Organisation may take its rightful place in the vanguard of progress.

Interpretation : Mr. CORNIL (Employers' delegate, Belgium ; Reporter of the Committee on Freedom of Association and Protection of the Right to Organise) — The text which you have before you summarises, as accurately as possible, the discussions in our Committee. As you have appointed three Reporters, I feel that I may follow the example of my colleague who spoke last, and depart a little from the strictly objective standpoint which should be adopted when there is only a single Reporter. I will therefore outline to you, in a few words, the spirit in which the employers participated in the drafting of this text of the Convention concerning freedom of association and protection of the right to organise.

First, I will ask my colleagues of the Employers' group to excuse me for the personal element which I shall inevitably introduce into my summary. It would really be impossible to present a point of view which would be perfectly in accordance with the opinions of all the employers here represented. Although we realise the necessity of organisation among the employers, we have too much respect for individual freedom to demand that we all conform to one average opinion which, through its very neutrality, would lose all point and all human value.

Albert Thomas often cited in his speeches what he called the simile of the train—the train which the employers reproached him with wanting to make go too fast and on which they wanted to assume the functions of brakesmen. Albert Thomas, the driver, protested against the zeal shown by the brakesmen—but he recognised their usefulness. I remind you of this comparison not only because it appeals to me, but especially because it will allow me to illustrate the progress of the International Labour Organisation since the days of its first illustrious Director. The train has made progress; too much, in the view of some, not enough, in the view of others. However, none can deny the greatness of its accomplishments. When it started, its crew were not accustomed to working in unison. The brakesmen, apprehensive of the unknown, sometimes applied their brakes too hard. On the other hand, the firemen and drivers, over-exalted by the thrill of getting under way, ignored the most obvious obstructions and would have been quite happy to shake off the brakesmen. Little by little, each one adapted himself to his own role and learned to appreciate and respect the role of others. The brakesmen acquired a taste for travelling, the firemen realised the necessity of controlling the pressure, and the drivers concentrated on the job of keeping the train on the rails. A spirit of team work came into being, and all the team, however contradictory their respective activities might seem, kept the common objective before them.

Of course, opinions are still very varied. There will always be some who reproach the brakesmen for over-caution and the firemen will threaten to blow up the boiler in revenge. These differences are inevitable and even necessary. They are not dangerous so long as everyone is determined to make the journey. Here, it seems to me, is the surest guarantee of the future of our Organisation. The common determination to make the journey together has never been more clearly shown than when we drafted the text of the proposed Convention on freedom of association.

The oratorical skirmishes of which the report submitted to you is an accurate summary were inspired by the usual, and

necessary, tactics. Leaving aside certain passages of arms which do perhaps sometimes serve a useful purpose in making clear particular viewpoints, but which are also sometimes purely tactical measures, one is powerfully impressed by the unanimous desire shown to get results. Employers and workers have discussed this proposed Convention with a common desire to achieve something. The extent of the concessions made by all parties reveals a mutual trust which I do not think has ever before been so clearly shown.

For countries like mine, this Convention does not involve anything which has not already been admitted and given recognition to long ago. That does not, however, at all diminish the profound significance of this document, which is a faithful embodiment of the common will of workers' and employers' organisations to give each other recognition, to respect each other, and to help each other in promoting genuine social progress.

Interpretation : Mr. GUZMAN (Government delegate, Mexico ; Reporter of the Committee on Freedom of Association and Industrial Relations) — I cannot hope to interpret faithfully all the different points of view of those who have done my country the honour of appointing me as Reporter for this Committee. But I want to point out that, as far as my Government is concerned, we have made every effort of good will in order to co-ordinate and take into account all the interests of those whom we represent.

There is no doubt of the good will of the Government representatives at this meeting. And if at any time a reference has been made to national sovereignty, this does not mean that we do not realise that, by coming to this Conference, a part of that sovereignty has to be set aside. However, there has been no need to set aside any of our national sovereignty in order to acknowledge the rights and privileges of the working class.

As a representative of my Government, I only want to point out that, before this Organisation was founded, the Mexican Constitution already recognised the rights upon which we have today agreed in the Committee on freedom of association. Having said this, I think that both employers and workers will recognise the good will of the Government representatives in this matter.

Interpretation : The PRESIDENT — The general discussion is now open.

Interpretation : Mr. VEIGA (Government delegate, Portugal) — The proposed Convention concerning freedom of association and protection of the right to organise, as adopted by the Committee on freedom of association and industrial relations,

calls for the following remarks on the part of the Government of Portugal.

Although Portugal was represented in the Committee, we were not, for reasons outside our control, able to take part in the actual work of the Committee. I must, therefore, take this opportunity of submitting my observations.

The Government of Portugal considers that the present draft sacrifices effectiveness of trade union action to an abstract conception of freedom of association, a conception which is political and not occupational, which my Government considers useless from the point of view of social progress. In their replies to the questionnaire on freedom of association, several Governments made very significant reservations on the matter. Austria, Chile, China, Ecuador, Hungary, Pakistan, Switzerland and the Union of South Africa stressed the necessity of taking account of the requirements of public order in each country, and of respecting national regulations concerning the establishment of occupational associations. Bolivia, Ecuador and the Union of South Africa were definitely in favour of excluding public servants from occupational associations. Austria, Belgium, Canada, Ecuador, Egypt, the Netherlands, Sweden, Switzerland, the Union of South Africa, the United Kingdom and the United States also stated more or less explicitly that we should avoid any drafting which might imply the idea that we were granting public servants the right to strike.

The Portuguese Government could not fail to associate itself with these reservations, even if it were not obliged to adopt the attitude to the problem which it desires to maintain.

The fundamental aspect of the problem lies in the confusion in the draft between freedom of association and multiplicity of trade unions. This arises from the formula which gives the employers and the workers the right to establish "organisations of their own choosing", according to Article 2.

In our opinion, freedom of association does not necessarily involve the establishment of multiple organisations in one and the same occupation and for the same region. Freedom of association should mean the right granted to employers and workers to organise for the defence of their occupational interests in unions which can affiliate as they please, and with the power to do so. This does not at all imply multiplicity of unions, which is a very different thing, and which is really incompatible with the essential object of occupational organisation. Nevertheless, multiplicity of unions is what happens if one identifies freedom of association with the unlimited and unspecified right of workers and undertakings to form organisations of their own choosing, and to join the organisations which they prefer for political or religious reasons.

What is really important for the defence of occupational interests is not the formation of many small associations, but free establishment of associations which really represent the categories concerned, and which have the authority and prestige indispensable to progress in the regulation of industrial relations.

This is one of the cases in which political and social considerations contradict one another, in so far as they aim at different objectives. While the first object of political considerations is to guarantee freedom of opinion, the fundamental object of social policy cannot be other than to secure civil peace by justice in the relations between the different elements engaged in production.

The remarks of New Zealand and the Union of South Africa in reply to the questionnaire appear to us perfectly justified, when they draw attention to the necessity of preventing multiplicity of unions and the risks which such multiplicity carries with it. Pure trade union principles are undoubtedly opposed to the idea of multiplicity. Multiplicity distracts the associations in question from the pursuit of their occupational objects and introduces party spirit, thus involving them in the political machinery and often transforming them into factors of dangerous and sterile agitation. Unions should belong to occupations, to workers, to undertakings, and not to parties. And this is not possible when a type of freedom of association is proclaimed which involves dispersion of effort and of organisations.

We think that the constructive action of trade unions should apply particularly to collective agreements. It is easy to see what insurmountable difficulties arise when you have a multiplicity of organisations in the same occupation. The idea of plurality in trade organisation is, in fact, contrary to the very spirit of the collective agreement. The object of a collective agreement is to place the worker on a footing of equality with the employer, by freeing him from the economic weakness which is inevitable if he acts individually. Evidently this object is not achieved if you have many separate unions.

While, from the employers' side, we find a general tendency towards unitary organisation, the same is not true of the workers, who, under the influence of ideas which we regard as dangerous, have always a tendency to multiplicity in organisation. If this goes on, we shall have on one side strong, united employers' organisations, and on the other side numerous, weak workers' unions. The problem will merely have been shifted from the field of competition between individuals to the field of competition between organisations, at the expense of the real interests of the workers.

Observation of the results of trade union policy throughout the world and of experience in our own country has induced Por-

tugal to adopt a realistic system, which safeguards the true principle of freedom of association while avoiding the disadvantages of the abstract formula for occupational organisation.

This system is based essentially on three principles. First of all, the establishment of occupational organisations is based on the initiative of the persons concerned, that is to say, the employers and workers are free to establish or not to establish unions. However, once a union of employers or workers is established in a particular region and for a given occupation, then no other union for the same occupation and region can be legally recognised. In essence, a similar principle is applied in other countries like Australia, Mexico, New Zealand and the Union of South Africa, where registration is granted only to a single organisation representative in each industry for the purpose of concluding collective agreements.

Secondly, the Portuguese system embodies the principle of freedom of association, that is to say, it recognises the right of all employers and all workers to join or not to join the organisations established. Our law is opposed absolutely to any clause or action limiting this liberty or impeding its exercise.

Thirdly, Portuguese law recognises that organisations are entitled to be incorporated and to have autonomous management. They have the right to draft their own rules, elect their representatives and organise their business, provided they keep to the general rules laid down by law.

Thanks to this system, we have today strong and efficient occupational organisations, which cover the majority of the Portuguese workers, and which have done a very constructive and valuable job in the field of collective agreements, because the organisations have restricted themselves to studying and defending occupational interests, without any religious or political prejudices.

We do not, of course, want to impose our system on other nations. But we sincerely regret that the proposed Convention concerning freedom of association and protection of the right to organise which is now before the Conference is not sufficiently flexible and balanced to be accepted by the Government of Portugal.

Interpretation: Mr. ALTMAN (*Government delegate, Poland*) — The delegation of Poland regrets that it cannot vote in favour of this proposed Convention, although its reasons are very different from those put forward by the Portuguese delegate a moment ago.

I wish to say that the Polish delegation will abstain in the vote on this proposed Convention as a whole. We consider that the proposal does not satisfy the legitimate claims of the trade union movement as presented to the Economic and Social Council of the United Nations by the World Federation of Trade Unions, and

we think that it was the duty of the International Labour Organisation to give full satisfaction to those claims.

During the work of the Committee, the Polish delegation put forward several amendments of principle. Most of these were rejected by a majority vote. In consequence of the work of the Committee, not only has the Office text, which seemed to us inadequate, not been improved, but, on the contrary, changes have been made in the original text which have very clearly resulted in restriction of the very principle of freedom of association.

The Polish Government delegation will therefore abstain. The Polish Workers' delegate and the Polish Employers' delegate have authorised me to say that they associate themselves with this statement.

Mr. MESTITZ (*Government adviser, Czechoslovakia*) — After consulting with the Employers' and Workers' delegates of my country, I wish to declare, on behalf of the Czechoslovak Government, that, for the very important reasons mentioned by my colleague from Poland, the Czechoslovak delegation has decided to abstain from voting on this Convention.

Interpretation: Mr. AGUIRRE (*Government delegate, Ecuador*) — I should like to make a slight clarification in connection with the declaration recently made by the Workers' delegate of Ecuador when he referred to the fact that the Government of Ecuador has made certain limitations to the right to organise of public employees. Actually, the Government which preceded the present one did, in a communication sent to the International Labour Office, notify certain limitations, but the present Government of Ecuador, which I represent at this Conference, has authorised me to defend and maintain freedom of association in all its aspects, because such rights are fully recognised by our Constitution and our labour laws.

This decision to defend freedom of association to the utmost I have maintained in the Committee dealing with the subject. I am sorry to have to say that there are omissions from and ambiguities in the proposed Convention on freedom of association which I should have liked to see rectified, because they are likely to prejudice the exercise of this right.

The delegation of Ecuador would have liked to vote for a better, or a more complete, draft, but since it has not been possible to obtain that, we will vote for the one which is presented. Our delegation is, moreover, interested in finding a proper method of application and control, so that freedom of association may become a full and living reality in all the countries of the world. For us, the right to freedom of association is as sacred as the right to live. I have said that before, and I repeat it. For that reason, we are ready to take whatever action may be necessary to bring about effective application of this right.

Interpretation: Mr. MONGE (*Workers' delegate, Costa Rica*) — The Workers' delegation of Costa Rica considers that the proposed Convention on freedom of association has some defects, but we shall vote for it because we think that it is a step towards guaranteeing the workers' right to organise freely and to defend their own interests.

We also want the workers to be given a more effective guarantee of this inalienable right. As regards limiting the right of association of public employees, we do not agree with this. We wish to guarantee the right to organise to mankind, as such, not merely to workers, to men of certain categories or religious beliefs, but to man himself.

Interpretation: The PRESIDENT — If no one else wishes to speak, I shall declare the general discussion closed.

We shall now approve the proposed Convention, article by article. We will begin with the Preamble. An amendment has been submitted by Mr. Gemmill, Employers' delegate of the Union of South Africa, which proposes that, in the fourth clause, for the words:

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

there should be substituted the words:

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

Mr. GEMMILL (*Employers' delegate, Union of South Africa*) — You will observe that the fourth clause of the Preamble to the proposed Convention makes a brief reference to the Declaration of Philadelphia. The amendment I propose is that this clause should quote also the whole of Part V of the Declaration of Philadelphia.

I would point out, in the first place, that the wording proposed in this amendment, which was unanimously agreed to at the 1947 Session of the International Labour Conference, in Geneva, was embodied in the Resolution on freedom of association adopted by that Conference, which was forwarded to the Economic and Social Council of the United Nations, and adopted by the Economic and Social Council, which then forwarded it to the General Assembly of the United Nations, which also endorsed

it. It also appeared in the introduction to the questionnaire on freedom of association and protection of the right to organise which was addressed to the Governments.

In the replies from the Governments, no objection to the inclusion of these words in the Preamble was made by any Government, although there was expressed a preference for the inclusion of Part V in the body of the Convention rather than in the Preamble; and yet, neither in the Preamble nor in the body of the Convention as submitted by the Office, was Part V included.

To say the least, such non-inclusion seems to me a very strange procedure by the Office, and my amendment is presented in order to remedy the matter by re-inserting Part V in the Preamble to the Convention. Without it, there would be absolutely nothing in the Convention to indicate that there are some peoples in so elementary a stage of development that industrial relations, freedom of association and so on, have little or no meaning to them, and the application of international measures in these questions must be determined progressively, with due regard to the stage of such development.

I ask that such conditions should be taken into consideration and provided for in the text—in this case in the Preamble. When I raised this matter in committee, it was suggested in some quarters that the matter of racial discrimination was involved and that Part V of the Declaration of Philadelphia was in conflict with the principles of the Convention. These arguments are difficult to follow, as the Declaration of Philadelphia, including Part V, is part and parcel of the Constitution of the International Labour Organisation, and no Convention can be contrary to that Constitution.

On the other hand, the very fact that Part V, after being unanimously included in the Preamble by the 1947 Session of the Conference and endorsed by the Economic and Social Council and the General Assembly of the United Nations, is subsequently deleted from the Preamble and not mentioned anywhere in the new Convention, must give the impression that the progressive application of the terms of the Convention to backward peoples is not authorised, and in that case the countries involved would have no alternative but to refuse to ratify the Convention.

I suggest that there is nothing unreasonable in this proposal. It is just a suggestion to embody in this Convention a provision in the Constitution which is peculiarly adapted to it, and for these reasons I move the amendment which is in your hands.

Interpretation: The PRESIDENT — Is the amendment seconded?

Interpretation: Mr. OERSTED (*Employers' delegate, Denmark*) — I second the amendment.

Interpretation: Mr. JOUHAUX (*Workers' delegate, France; Reporter of the Committee on Freedom of Association and Industrial Relations*) — I would simply reply that this amendment was considered in the Committee and rejected. It was rejected because it is impossible, in an international Convention, to accept discrimination inside each country. In fact, a Convention would cease to operate if each Government could make discrimination on the basis of differences in development on the part of the population. It was because the amendment was contrary to the Constitution of the International Labour Organisation and because it would nullify the social value of the Convention that the Committee rejected it.

Interpretation: The PRESIDENT — I shall put Mr. Gemmill's amendment to the vote.

(A vote is taken by show of hands. The amendment is rejected by 23 votes to 85.)

Interpretation: The PRESIDENT — I shall now ask the Conference to vote upon the Preamble and the remainder of the Convention, article by article.

(The Preamble and Articles 1, 2, 3, 4, 5, 6 and 7 are adopted seriatim.)

Interpretation: The PRESIDENT — Are there any remarks on Article 8?

Interpretation: Mr. RAPPARD (*Government delegate, Switzerland*) — I do not wish to start a lengthy debate on this important article, but wish simply to make a statement to satisfy the members of my delegation and my Government.

The first paragraph of the article runs as follows: "In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land."

Of course, in a country like mine, workers and employers, like all other citizens, are always required to respect the law of the land, and the Government, the State, is the only judge of legality. I do not think that there is any misunderstanding on the subject, but if anyone chose to examine the proposed text critically, reservations could be made. Of course workers and employers and their respective organisations, like other persons or organised collectivities, are required to respect the law of the land. It is in this sense that Switzerland will vote for this provision with the rest of the Convention.

Interpretation: The PRESIDENT — If no one else wishes to speak, I shall declare Article 8 adopted.

(Article 8 is adopted.)

(Articles 9, 10, 11, 12 and 13 are adopted seriatim.)

Interpretation: The PRESIDENT — If there are no other speakers, I shall consider the proposed Convention on freedom of association and the right to organise to be accepted as a whole.

Mr. GEMMILL (*Employers' delegate, Union of South Africa*) — I wish to place my abstention on record.

Interpretation: Mr. VEIGA (*Government delegate, Portugal*) — The Portuguese Government delegation votes against the proposed Convention.

Interpretation: Mr. ALTMAN (*Government delegate, Poland*) — The Polish Government delegation abstains from voting.

Interpretation: Mr. KRAUS (*Government delegate, Czechoslovakia*) — The Czechoslovak Government delegation also abstains.

Interpretation: The PRESIDENT — We have recorded the abstentions and two votes against approval of the proposed Convention.

(The proposed Convention as a whole is approved.)

Interpretation: The PRESIDENT — The proposed Convention, being approved as a whole, will now be referred to the Drafting Committee of the Conference.

I wish to extend our sincere thanks, on behalf of the Conference, to the Chairman of the Committee and to the three Reporters.

APPROVAL OF INSTRUMENT OF AMENDMENT OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION BY THE PRESIDENT OF THE UNITED STATES

Interpretation: The PRESIDENT — I call upon Mr. Morse, who has an announcement to make.

Mr. MORSE (*Government delegate, United States*) — I simply want to take advantage of this opportunity to inform the Conference that the President of the United States has approved the Instrument of Amendment of the Constitution of the International Labour Organisation. This announcement gives me considerable pleasure, and I thought I would bring it to the attention of this body.

RECORD VOTE ON THE PROPOSAL TO PERMIT BULGARIA TO VOTE AT THE PRESENT SESSION OF THE CONFERENCE

Interpretation: The PRESIDENT — We shall now proceed to take a record vote on the question of authorising Bulgaria to take part in the voting.

APPENDIX X

Seventh Item on the Agenda : Freedom of Association and Protection of the Right to Organise

(1) Text of the Proposed Convention concerning Freedom of Association and Protection of the Right to Organise, Prepared by the International Labour Office.

(The text of the proposed Convention is given, article by article, in the first report of the Committee on freedom of association and industrial relations—see below, item (2).)

(2) First Report of the Committee on Freedom of Association and Industrial Relations.¹

PROPOSED CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE

The Committee on freedom of association and industrial relations established by the Conference at its third sitting, on 18 June 1948, consisted of 80 members (40 Government members, 20 Employers' members, and 20 Workers' members). Each Government member had one vote and each Employers' and Workers' member had two votes.

The Officers of the Committee were as follows :

Chairman : Mr. Thorn, Government member, New Zealand.

Vice-Chairmen : Mr. Taylor, Employers' member, Canada, and Mr. Roberts, Workers' member, United Kingdom.

Reporters : Mr. Guzmán Neira, Government member, Mexico, Mr. Jouhaux, Workers' member, France, and Mr. Cornil, Employers' member, Belgium.

Representatives of the Secretary-General : Mr. Rens, Mr. Bessling and Mr. Herz.

Expert : Mr. Lawyer.

Mr. Schweib, representing the United Nations, attended the sittings of the Committee.

The *Drafting Committee* consisted of the following members : the Chairman, the Vice-Chairmen and the Reporters, and, in addition, Sir Guildhaume Myrddin-Evans, United Kingdom Government member, and Mr. Hauck, French Government member.

The Committee was responsible for considering the following texts :

1. The proposed Convention concerning freedom of association and protection of the right to organise, contained in Chapter IV of Report VII ;

2. The report of the Governing Body on the effect to be given to the Resolution concerning international machinery for safeguarding freedom of association adopted by the International Labour Conference at its 30th Session (Appendix to Report VII) ;

3. The proposed conclusions regarding industrial relations, contained in Chapter III of Report VIII (2).

The Committee decided to consider first the proposed Convention on freedom of association and protection of the right to organise. It took as a basis for its discussion the text submitted by the Office, which it considered article by article.

Preamble

The Office text was as follows :

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

¹ See Second Part, pp. 229, 269.

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,

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 :

The 2nd and 5th Considerations as well as the final paragraph of the Preamble were the object of a number of amendments.

Second Consideration.

The South African Employers' member proposed that this clause be completed by adding Part V of the Declaration of Philadelphia. This amendment, according to its author, involved no racial or other discrimination but was intended to facilitate the ratifications of the Convention by those countries within whose territories there were population groups at a less advanced stage of cultural and social development than other groups of the population.

The Employers' members seconded this amendment. They recalled the fact that the text of the amendment had been included in the Resolution on freedom of association and protection of the right to organise which had been unanimously adopted by the 30th Session of the Conference. This Resolution was subsequently endorsed by the Economic and Social Council and by the Assembly of the United Nations. It also appeared in the introduction to the questionnaire on freedom of association and protection of the right to organise which was addressed to Governments. They pointed out, furthermore, that many Conventions, including that on freedom of association, can only be applied gradually. It was important to take into account the conditions prevailing in certain countries, and to adopt a text which would be likely to obtain the largest possible number of ratifications.

The Pakistan Employers' member, as well as the Burmese and Pakistan Government members and the Workers' members, opposed the amendment. If it were adopted, it would allow a Government acting in

bad faith to endanger the guarantee of freedom of association. Furthermore, the amendment was unnecessary, as it merely reproduced Part V of the Declaration of Philadelphia, which was an integral part of the Constitution.

The Committee rejected the amendment by 55 votes to 63.

Fifth Consideration.

The problem of "legality" dealt with in this clause, which had been debated at length at the 30th Session of the International Labour Conference, was, in the opinion of the Committee, of vital importance.

Numerous amendments dealing with the problem of legality were submitted to the Committee, referring either directly to the last clause of the Preamble or to Articles 2, 3, 4, and 5 of the proposed Convention. With the exception of the amendment proposed by the Polish Government member, which treated any reference to this question as superfluous, since it was self-evident, all other amendments proposed the introduction of a reservation concerning legality in the body of the Convention itself.

The Indian Government member pointed out in particular, in connection with the amendment he had proposed on this question, that the reference to the principle of legality in the Preamble was useful only for purposes of interpretation.

The Workers' members, on the other hand, regarded as unacceptable a clause which would tend to place national legislation above international law. The French Workers' member stated he did not claim special rights or privileges but simply wanted the right to exercise freedom of association. He would not agree to the Convention becoming a paternal regulation, designed to limit the freedom of workers.

Several Government members similarly indicated their opposition to any provision likely to limit freedom of association.

As a compromise, the Indian Government member withdrew his amendment and proposed in its place the following new Article :

1. In exercising the rights provided for in this Convention, workers' and employers' organisations shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so interpreted as to impair, the guarantees provided for in this Convention.

The Workers' members proposed the following amendment to the first paragraph of this Article :

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

The Employers' members accepted the change proposed by the Workers' members in the first paragraph, but proposed the

following rewording of the second paragraph :

2. The law of the land shall not be such as to impair ... the right to organise and lawful activities guaranteed in this Convention.

The Committee rejected the amendment proposed by the Employers' members by 48 votes to 72.

The United Kingdom Government member proposed to delete from paragraph 2 of the compromise text the words "nor shall it be so interpreted as to impair". In his opinion, these words were not necessary, and it had to be recognised that the interpretation of laws was a function of the courts, which were independent of the Executive. If complete deletion of these words were not acceptable, he proposed the following : "... nor shall it be so interpreted by administrative actions as to impair ...".

The Mexican Government member, considering this wording to be too restrictive, proposed the following : "The law of the land shall not ... be so interpreted by the Government as to impair ...".

By 71 votes to 0, with 19 Employers' members abstaining, the Committee decided to delete the last Consideration in the Preamble of the Office text, and in lieu thereof to insert a new article, the wording of which was left to the Drafting Committee, on the understanding that it would take account of all the observations which had been made.

The Drafting Committee subsequently presented the following text to the Committee :

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

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

The Committee adopted the revised Article on the understanding that it could not be interpreted as involving any interference with the independence and authority of the judiciary. It became Article 8 of the Committee's text of the proposed Convention.

The amendments dealing with the question of legality had earlier been withdrawn in succession by their authors.

The Polish Government member proposed to substitute the following text in place of the fifth Consideration, which had been deleted by the Committee :

Considering the steadily increasing role of trade unions, which tend to assume responsibilities in various fields of the economic and social life of their respective countries, and to become a powerful factor for social progress, for the consolidation of world peace and for the development of world prosperity,

In support of his amendment, the Polish Government member pointed out that it would be appropriate to stress in the

Preamble of the Convention the ever-increasing role that trade unions play in the economic and social life of many countries.

The Workers' members, while expressing their sympathy with the principle of this amendment, considered, however, that it hardly belonged in the Preamble, the primary purpose of which was to recall the historical background of the problem and that, in addition, it was not in harmony with the purpose of the Convention, which covered employers' organisations as well as workers' organisations. They considered the suggestion strange that freedom of association should be denied to any group in the national community, including employers.

The Committee rejected this amendment by 3 votes to 54.

Last Paragraph of the Preamble.

The Committee adopted by 52 votes to 41 an amendment, also proposed by the Polish Government member, to substitute for the words "Freedom of Association Convention, 1948" the words "Freedom of Association and Protection of the Right to Organise Convention, 1948".

PART I. FREEDOM OF ASSOCIATION

Article 1

The Office text was as follows :

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

This Article was adopted unchanged without discussion.

Article 2

The Office text was as follows :

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

An amendment presented by the United Kingdom Government member proposed the following changes :

(1) delete "inalienable" ;
(2) delete "or", substitute "and" ;
(3) before "join" insert the words "subject only to the rules of the organisations concerned to" ;

(4) after "choosing" insert the words "for the purpose of furthering their interests as workers and employers respectively".

After discussion, point (1) of the amendment was adopted by 54 votes to 46. Point (2), involving only a correction of the English text, was adopted without discussion. Point (3) was adopted after discussion by 87 votes to 16.

Point (4) of the amendment was discussed at the same time as other proposals to insert in the text of the Convention a definition of workers' and employers' organisations. Some of these amendments

merely stated that workers and employers should have the right to organise "for the protection of their interests", others sought to provide that the guarantee of freedom of association should be limited to relations between employers and workers or to the defence of the social and economic interests of the two parties.

The Workers' members opposed any modification of the text which might limit trade union activity to the professional field alone.

Similarly, a number of Government members stated that they could not accept a definition which might be interpreted as restricting the right of trade union organisations to take part in political activities.

In an effort to reconcile the divergent points of view, the United Kingdom Government member proposed to substitute for the point in his amendment defining workers' and employers' organisations the following provision :

In this Convention, the term "organisation" means any organisation of workers or of employers for furthering or defending the interests of workers and employers respectively, except any trust or cartel as defined by national law or regulations.

The author of the amendment explained that, in view of existing legislation in the United States, it had appeared desirable to introduce a reference to trusts and cartels in the text of the Convention.

The Workers' members considered any definition superfluous, since the new Article concerning the principle of legality sets out the limits within which an organisation might exercise its activities. They agreed, however, to the compromise text with the following two reservations :

(1) that the words "of workers or of employers" after the words "any organisation" should be deleted, and

(2) that the phrase referring to trusts and cartels should be limited to employers' organisations only.

With regard to the first point, they observed that in certain countries workers did not have the right, either individually or through their unions, to join political organisations. With regard to the provision concerning trusts and cartels, they pointed out that trade union organisations have sometimes been accused—wrongfully, in their view—of forming monopolies.

The Employers' members stated that they were prepared to accept the first part of the United Kingdom Government member's amendment, but they opposed the part referring to trusts and cartels. They pointed out that such a reference was outside the competence of the International Labour Organisation, that it exceeded the scope of the Convention, and that it should not be limited to employers' organisations alone.

The United States Government member declared that he was not opposed to the

deletion of the reference to trusts and cartels if it were clearly understood that trusts and cartels were outside the scope of the Convention.

The Workers' members agreed to the elimination of this clause and to the retention of the text in its original form if it were likewise understood that workers and employers, and their organisations, had the right, within the limits of legality provided for by the new Article, to join any political or other organisation.

The Committee agreed to eliminate this clause. In order to give a wider meaning to the provision under discussion, it also decided to delete the word "respectively".

The Committee adopted the revised amendment proposed by the United Kingdom Government member by 102 votes to 4.

All the other amendments concerning the definition of workers' and employers' organisations were thereafter withdrawn by their movers, the Chairman having repeated his statement that the text as adopted did not have a restrictive meaning.

The Polish Government member proposed an amendment, which was seconded by the Czechoslovak Government member, to delete the word "employers" from Articles 2 to 8 of the Office text.

In unanimously opposing this amendment, the Employers' members pointed out that it affected the whole tripartite basis of the International Labour Organisation. They further contended that if freedom of association is to be effective it cannot exclude such an important segment as employers. The Workers' members supported the Employers' view, emphasising the points that employers must be granted the same rights as workers, which in turn would strengthen the position of workers.

The amendment was defeated by 6 votes to 101, with one abstention.

The Committee adopted Article 2 by 99 votes to 3, with one abstention, in the following form :

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

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

It was agreed that the second paragraph of this Article might be inserted at whatever place in the text of the Convention the Drafting Committee considered most appropriate.

Article 3

The Office text was as follows :

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.

A number of amendments were presented to include in the text a reference to national legislation concerning industrial organisations, with a view to permitting States to promulgate certain rules which, without restricting the rights of these organisations, would, however, establish certain minimum conditions to be fulfilled by them in respect to their constitution and operation.

The Chairman stated that the Convention was not intended to be a "code of regulations" for the right to organise, but rather a concise statement of certain fundamental principles. The States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. It followed, therefore, that formalities provided for by national regulations concerning the constitution and operation of workers' and employers' organisations were in conformity with the provisions of the Convention, provided that these regulations did not impair the guarantees granted by the Convention.

Following this statement, all the amendments dealing with this question were withdrawn. An amendment proposed by the Argentine Government member was likewise withdrawn, it being understood that the proposer could bring it up again during the discussion on item VIII of the agenda.

Article 3 was adopted in the form proposed by the Office.

Article 4

The Office text, corrected to conform with the French wording of this Article, read as follows :

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

Several Government members suggested amending the text so as to allow Governments to dissolve or suspend an organisation by administrative action when it engaged in illegal activity. The right of immediate appeal to the Courts should be expressly granted to the interested parties.

Both Workers' and Employers' members opposed this amendment. As it was pointed out, notably by the French Government member, such a provision would permit the dissolution of organisations by administrative action before the former had been prosecuted in the Courts, whereas under the normal procedure the organisations would first be prosecuted before being dissolved.

The Belgian Government member observed that no administrative procedure could in any way be assimilated to a judicial procedure.

The amendment was rejected by 5 votes to 101, and the text proposed by the Office was accepted without change.

Article 5

The Office text was as follows :

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

An amendment proposed by the South African Government member suggested that the right to establish federations and confederations and to affiliate with them should be subject to the following conditions: (1) that these organisations should in no way limit the autonomy of the member associations; and (2) that the international organisations, in particular, should have the same objects as the national organisations.

After discussion, this amendment was rejected by 5 votes to 60, with 19 abstentions by Employers' members.

After adopting by 100 votes to 0 an amendment by the United Kingdom Government member intended to give greater precision to the terms of this provision, the Committee unanimously adopted Article 5 in the following form :

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

Articles 6 and 7

The Office text of these two Articles was as follows :

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.

These Articles were adopted unchanged without discussion.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 8

The Office text was as follows :

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.

The Polish Government member proposed to replace Article 8 by a text according to which each Member of the International Labour Organisation for which this Convention was in force should recognise all legislation restricting the principles stated in the Convention as contrary to the principles of economic and social co-

operation defined by the Charter of the United Nations.

The proposer of the amendment declared that the Convention, if so amended, would conform to one of the fundamental principles of the United Nations.

The Workers' members, while fully in agreement with the idea expressed in this amendment, felt, however, that such a provision would be of a declaratory nature, and would not carry any specific obligation.

The amendment was rejected by 5 votes to 70.

Another amendment dealing with the application of the principle of the right to organise and to bargain collectively was withdrawn by the proposer, the Uruguayan Workers' member, it being understood that it could be taken up again during the discussion of item VIII of the agenda.

Lastly, two other amendments, one proposed by the Australian Government member, and the other by the Employers' members, proposed to make the language of Article 8 more precise. The proposers agreed to entrust the task of finding more appropriate wording for the provision to the Drafting Committee.

The text adopted by the Drafting Committee and approved by the Committee was as follows :

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

New Article

Two amendments had been proposed, one by the Indian Government member, the other by the United Kingdom Government member, seeking to exclude the armed forces and the police from the scope of the Convention. These amendments were advocated on the ground that most countries would not find it possible to ratify a Convention which required absolute freedom of association and organisation to be granted to members of the armed forces and the police, having regard to the responsibility of Governments for defending the law and assuring the maintenance of public order.

In order to take account of the fact, however, that in several countries members of the police and at times even members of the armed forces have the right to organise, the United Kingdom Government member proposed to complete the provision by a clause excluding those cases in which national law or established national practice had already granted freedom of association to those categories of persons.

As thus modified the amendment was as follows :

The provisions of this Convention shall not apply to the armed forces or to the police, except to the extent already provided by national law or established national practice.

The French Workers' member announced that he would vote against the amendment, because the restrictive nature of this proviso might give rise to difficulties in its application. The Italian Workers' member opposed the amendment which, in his view, might have an unfavourable influence on the development of trade union legislation. However the majority of the Workers' members, although entertaining doubts regarding the usefulness of this new provision, were not opposed to the revised amendment, provided it was drafted more appropriately.

With this in view, it was proposed to redraft the clause as follows :

The provisions of this Convention shall apply to the armed forces and the police in so far as national law or established national practice do not prevent it.

A number of Government members opposed this provision which, they felt, was likely to create uncertainty rather than to clarify matters. Some of them considered it superfluous because the Convention, applying as it did to employers and workers, could not apply to persons who were not bound by a labour contract.

The Committee approved the principle of the amendment by 78 votes to 22 with the proviso that the Drafting Committee should modify the text in order to take account of the various suggestions made during the debate on this question.

The new Article, as submitted by the Drafting Committee, was as follows :

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

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

The Committee adopted the new Article, on the understanding that the term "national laws or regulations" refers to "national" as contrasted with "international" and includes, in the case of federal States Members, both federal legislation and the legislation of the constituent States.

PART III. MISCELLANEOUS PROVISIONS

Articles 9 and 10

The Office text of these two Articles was as follows :

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 subparagraphs (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 subparagraphs (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.

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.

Two amendments were proposed to these two Articles. The first amendment, by the Argentine Government member, proposed to delete the two Articles altogether. He believed that they would involve a restriction of the scope of the rights, granted in the preceding articles, for a considerable number of workers living in non-metropolitan territories, and would thus create a condition of unjustifiable inequality, contrary to the essential principles of the International Labour Organisation. The second amendment, by the Venezuelan Workers' member, proposed to make it obligatory for each Member of the Organisation ratifying the Convention to put it immediately into force in the non-metropolitan territories under its authority. The International Labour Organisation, or any organ that it created for this purpose, should supervise the application of the provisions of the Convention.

The Legal Adviser of the International Labour Office explained that, according to the terms of the amended Constitution, Members enjoyed a certain liberty in deciding when and under what conditions they could apply an international labour Convention in non-metropolitan territories under their authority. No international labour Convention could be contrary to this constitutional provision.

On the other hand, Articles 9 and 10, which followed the corresponding provisions of the Constitution closely, specified certain details relating to the application of these provisions. This was the purpose of maintaining the Articles.

After discussion, the amendment proposed by the Argentine Government member was rejected by 13 votes to 88.

Following this vote, the amendment proposed by the Venezuelan Workers' member was withdrawn by the proposer.

Articles 9 and 10 were then adopted as proposed by the Office.

The South African Government member submitted a proposal to apply the principles of Article 35 of the Constitution relating to non-metropolitan territories to the metropolitan territory of a Member where population groups existed whose social and cultural institutions were analogous to those of the populations in non-metropolitan territories.

In support of this proposal, the South African Government member said that it was not inspired by a spirit of racial discrimination. He explained that it was impossible to apply the Convention completely and immediately to groups of people who by reason of their social and cultural level were not able to make full use of the freedom of association and especially to participate in collective bargaining. Being inexperienced, or even illiterate, these people easily became the victims of persons posing falsely as trade unionists who exploited them.

Moreover, the proposal was not directed against the principle of freedom of association. Employers' and workers' orga-

nisations in the Union of South Africa enjoyed full autonomy for regulating the conditions of admission of members, but the State should have the means of providing special rules for illiterate masses, precisely in order to protect them. It was just such a problem as had been envisaged by Part V of the Declaration of Philadelphia.

Other States Members met which the same difficulties in non-metropolitan territories under their authority, but Article 35 of the Constitution, to which Articles 9 and 10 of this Convention referred, allowed them to solve these difficulties. In South Africa the problem existed in exactly the same terms within a metropolitan territory itself. In this case Article 35 was not applicable. In order to prevent a very real discrimination between the different States Members of the Organisation, it was necessary to apply Article 35 of the Constitution to the present case.

A great many Government members, as well as Workers' members, opposed this proposal. The following arguments were advanced.

Freedom of association constituted a universal and indivisible principle. While certain institutions, as for example, social insurance or regulations concerning hours of work, could be introduced gradually in a country, this was not possible in the case of freedom of association. If the amendment were adopted, a State could determine freely to which group of the population the Convention would be applicable and under what conditions. The Convention would thus be deprived of all its value, and would even serve as a pretext for certain racial discrimination.

Part V of the Declaration of Philadelphia was not intended to impair fundamental principles which were the very basis of the International Labour Organisation. The proposal would thus have the effect of introducing indirectly an amendment into the Constitution.

Lastly, the cultural state of a group of the population could not be considered as a sufficient reason for restricting the freedom of association for them. On the contrary, trade unions played an important educative role. In several countries they contributed effectively to the raising of the cultural level of the masses.

The Committee rejected the proposal by 9 votes to 75.

The Committee adopted the proposal Convention *nem. con.*, the South African Government member and Employers' member abstaining.

San Francisco, 3 July 1948.

(Signed) JAMES THORN, *Chairman*.
ALFONSO GUZMAN
NEIRA, *Reporter*.
LÉON JOUHAUX, *Reporter*.
L. E. CORNIL, *Reporter*.

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 General 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;

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 and Protection of the Right to Organise 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 right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their

representatives in full freedom, to organise their administration and activities and to formulate their programmes.

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

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

Article 9

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

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

Article 10

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

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

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

PART III. MISCELLANEOUS PROVISIONS

Article 12

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 subparagraphs (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 subparagraphs (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.

Article 13

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the inter-

national 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 Conventions 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.

(3) Second Report of the Committee on Freedom of Association and Industrial Relations.¹

RESOLUTION CONCERNING INTERNATIONAL MACHINERY FOR SAFEGUARDING FREEDOM OF ASSOCIATION

As noted in the first report of the Committee on freedom of association and industrial relations, the Committee was responsible for considering three texts. Having completed discussion on the first

—the proposed Convention concerning freedom of association and protection of the right to organise—the Committee decided to consider next the report of the Governing Body on the effect to be given to the Resolution concerning international machinery for safeguarding freedom of association adopted by the International Labour Conference at its 30th Session at Geneva (Appendix to Report VII).

The Workers' members submitted a proposed Resolution concerning international machinery for safeguarding freedom of association which read as follows:

The Conference,

Recalling the Resolution concerning international machinery for safeguarding freedom of association adopted by the Conference at its 30th Session (July 1947), requesting the Governing Body to examine this question in all its aspects and to report back to the Conference at its 31st Session,

Having taken note of the report presented by the Governing Body in conformity with the above-mentioned Resolution,

Having taken note also of the Resolution adopted by the Economic and Social Council of the United Nations at its 5th Session (August 1947), requesting the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights on the question of enforcement of trade unions rights,

Having taken note also of the resolution adopted by the Assembly of the United Nations at its 2nd Session (September-November 1947), recommending to the International Labour Organisation that it pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference, the study of the control of the application of trade union rights,

Considering that the Constitution of the International Labour Organisation provides adequate guarantees for the application of international labour Conventions in general,

Recognising, however, that exercise of the right of freedom of association by workers and employers could be endangered by interference with other fundamental rights, the safeguarding of which lies within the competence of the United Nations, especially that of the Commission on Human Rights,

Considers that international machinery for safeguarding freedom of association established in collaboration with the United Nations could effectively complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,

Requests the Governing Body, accordingly, to enter into consultation with the competent organs of the United Nations, for the purpose of making proposals with a view to establishing international machinery for ensuring the safeguarding of freedom of association, and to report back to the Conference at an early session.

When presenting the proposed Resolution, the Workers' members declared they did not share the apprehensions of some persons that it would result in a threat to the authority of the International Labour Organisation, as this was already clearly established by the existing Agreement between the International Labour Organisation and the United Nations. On the contrary, they considered consultation and collaboration with the United Nations as a necessary step. It might be argued, as

¹ See Second Part, p. 259.

noted in the report of the Governing Body, that once the Convention had come into force the system of supervision provided by the Constitution of the International Labour Organisation would automatically become applicable, and that no other machinery would be needed. They did not, however, believe this would be true in general, since some countries which were Members of the United Nations were not Members of the International Labour Organisation. To make the Convention a living reality, they deemed it necessary to have it applied as widely as possible. Moreover, the exercise of the right of freedom of association by employers and workers might be rendered ineffective by interference with other fundamental rights, such as the right to hold public meetings, the right of free speech, the right to circulate printed matter, etc. As emphasised by the French Workers' member, the safeguarding of these rights lies within the competence of the United Nations ; and it therefore seemed clear that there must be consultation and collaboration between the International Labour Organisation and the organs of the United Nations.

The Swiss Government member, on the other hand, directed the Committee's attention to the necessity of safeguarding the interests of countries who were Members of the International Labour Organisation but not of the United Nations, as was the case with his country.

Various amendments to the proposed Resolution were submitted.

The Italian Government member was of the opinion that the International Labour Organisation, by reason of its nature, was well qualified to handle any problems which might arise from the application of a Convention on freedom of association, and accordingly proposed to amend the Workers' Resolution by inserting before the last paragraph thereof a new paragraph, as follows :

The action of the international machinery for safeguarding freedom of association shall be limited to those cases which are outside the competence of the International Labour Organisation or to those cases where its action should have proved ineffective.

The Italian Government member, however, withdrew his amendment on the understanding that the Governing Body would take account of his observations in its discussion with the United Nations.

The Employers' members, while in agreement with the report of the Governing Body, considered that the adoption of the text submitted by the Workers' members would involve at least a moral commitment on the part of the Conference as regards the proposition contained in the last paragraph thereof. This would be undesirable and premature in the absence of knowledge as to the kind of machinery that might be established. It would be preferable in their view simply to endorse the principle that the Governing Body should enter into consultation with the

United Nations, without granting at this time specific authority to the Governing Body to commit itself to concrete proposals. The Conference would not then commit itself to final action until after it had received the report of the Governing Body on the result of its consultations. This report might be negative or it might contain suggestions for changes within the framework of the International Labour Organisation, but it would not be binding on the Conference. For these reasons the Employers' members proposed to replace the last three paragraphs of the Workers' Resolution by the following text :

Recognising, however, that exercise of the right of the freedom of association as provided for in the Convention (adopted at the 31st Session of the Conference) might be endangered by interference with other fundamental rights, the safeguarding of which lies outside the competence of the International Labour Organisation but within the competence of the United Nations, especially that of the Commission on Human Rights,

Endorses and adopts the recommendation of the Governing Body regarding consultation with the United Nations, contained in the report of the Governing Body adopted at its 104th Session, and requests the Governing Body to report back to the Conference at an early session.

The United Kingdom Government member emphasised the importance of obtaining complete unanimity on this matter, both in the Committee and in the Conference itself. He also considered the general substance of the question of such importance that every care should be taken to ensure that the proposals put to the Conference were correctly framed. In general, he agreed with the line of approach taken in the Resolution put forward by the Workers' members, but he had some sympathy with the apprehensions of the Employers' members. He felt that the impression should not be given that the International Labour Organisation was abandoning part of its functions. It was equally important, however, that the text should show no reluctance on the part of the International Labour Organisation to collaborate with the United Nations, since a pledge of collaboration was contained in the agreement in force between the two organisations.

With reference to the Employers' proposed amendment, he saw no essential difference between the two texts as far as the first paragraph was concerned, but expressed preference for the Employers' wording subject to a slight modification. He did not, however, consider the last paragraph of the Employers' proposal sufficiently precise, particularly when it simply referred to the recommendations and report of the Governing Body. This lack of precision might have arisen from the fact that perhaps the report of the Governing Body was itself a little imprecise in its conclusions. The Workers' members had attempted to remedy this, and in so doing may have given the appearance of

prejudging the issue. He therefore suggested the following amendment :

To retain the first paragraph of the amendment proposed by the Employers' members with the exception of the words "adopted at the 31st Session of the Conference" and to continue with the last two paragraphs of the Resolution proposed by the Workers' members, modified as follows :

"Considering that additional international machinery for safeguarding freedom of association in all its aspects, established in collaboration with the United Nations, may be necessary effectively to complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,

Requests the Governing Body, accordingly, to enter into consultation with the competent organs of the United Nations for the purpose of examining what amendments and additions (if any) to existing international machinery are necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session."

The Mexican Government member stated that it would be difficult, if not impossible, for him to accept the Workers' Resolution in its present form, as it tended towards the creation of a third body. The powers given to him by his Government were insufficient to enable him to deal with the question since the creation of this international machinery might infringe on national sovereignty.

Mr. Egon Schwelb, representing the United Nations, told the Committee that he had followed the discussions for the purpose of preparing an international labour Convention on the right of association, which, in his opinion, was an event of considerable importance extending even beyond the scope of labour relations. He had refrained from availing himself of the possibility, which he had under the agreement between the two organisations, of taking part in the Committee's deliberations. However, in view of the discussion concerning the report of the Governing Body on international machinery, he had asked to speak in order to dispel some apprehensions and doubts felt by some members of the Committee and in this way to assist in reaching a satisfactory conclusion.

In his opinion, the admirable report of the Governing Body sufficiently outlined the powers and machinery both of the International Labour Organisation and of the different organs of the United Nations. There was no doubt that freedom of association and its international protection was within the jurisdiction of the International Labour Organisation. This had been recognised in two resolutions of the Economic and Social Council and in one resolution of the General Assembly of the United Nations. In fact, the present discussions were partly the result of the request made by the Economic and Social Council, acting on suggestions made by the World Federation of Trade Unions and the American Federation of Labor. There could be no doubt, then, about the com-

petence of the International Labour Organisation.

However, there could be no further doubt that the right of association of workers and employers, like the right of association of all other persons, was one of the fundamental human freedoms. The United Nations had as one of its purposes the promotion and encouragement of respect for human rights and fundamental freedoms for all. All Members of the United Nations had pledged themselves to take joint and separate action, in co-operation with the organisation of the United Nations, for the achievement of universal respect for and observance of human rights. The problem of freedom of association was therefore obviously a legitimate concern of the United Nations and of the appropriate bodies which it had established, including the Commission on Human Rights.

He said that the Economic and Social Council and the Commission on Human Rights had proceeded cautiously in interpreting their powers under the Charter, so that the procedure at present in use was only in a rudimentary stage. Complaints concerning the alleged violation of human rights were summarised by the Secretariat and presented to the Commission in private meeting. The summaries were also sent to the Governments concerned, who had the right of reply and the right to have their replies brought to the notice of the Commission.

The machinery for dealing with complaints concerning human rights by the United Nations was still in the process of being built up, as regards the procedure under the Charter. This did not apply to the provisions for the international application of human rights envisaged in the proposals for implementation of the International Bill of Human Rights. In this respect, the Commission on Human Rights had decided at its session last month that it would continue its work on the important question of implementation at the forthcoming fourth session on the basis of the report of its Working Group on Implementation, a report very ably summarised in the Governing Body's report, taking into account other proposals submitted in the meantime by the Governments of several members.

Under the present procedure regulated by the Economic and Social Council by its resolution of August 1947, hundreds of communications concerning alleged violations of human rights, including the right of freedom of association, were being received and examined by the United Nations. Both under present arrangements and under the machinery planned for the future, complaints concerning the violation of the freedom of association were being received and would be received by the United Nations.

The speaker also stated that, under the Charter, the inhabitants of trust territories had the right to petition the Trusteeship

Council in respect, *inter alia*, of violations of human rights (which clearly included violation of freedom of association). The Trusteeship Council had jurisdiction to accept petitions and to examine them in consultation with the administering authority.

In view of the foregoing, the speaker considered that the Resolution before the Conference was clearly not such as to imply that powers of the International Labour Organisation could or should be delegated to the United Nations. Such delegation of powers was, he said, not necessary in order to give the United Nations the jurisdiction required. The United Nations was legitimately concerned with the problem under the Charter and its functions would be regulated in the International Bill of Human Rights, which it was hoped would contain provisions for its international application. What the International Labour Organisation had been invited to do, and what the Governing Body had proposed, was that the Conference should empower it to consider jointly with the appropriate organs of the United Nations the problems which arose for both organisations from their common jurisdiction in this field, and to consult with the United Nations as to ways and means of co-ordinating their activities.

The speaker therefore hoped that the Committee would reach a unanimous decision as to the action to be taken on the recommendation made to the International Labour Organisation by the General Assembly of the United Nations. There was no doubt that the Secretary-General of the United Nations would do everything in his power to assist in such consultations and in bringing about a successful conclusion of the joint enterprise.

Upon the completion of the above statement, the United Kingdom Government member pointed out to the Committee that there appeared to be complete agreement on the first two of the three paragraphs of his earlier amendment. He was of the opinion that the Governing Body would thoroughly examine the entire question with the United Nations. He then proposed modifying the third paragraph to take into consideration certain objections of the Workers' and Employers' members. The proposed text read as follows :

Requests the Governing Body, accordingly, to enter into consultations with the competent organs of the United Nations, for the purpose of examining what developments to existing international machinery may be necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session.

The amendment as thus modified was accepted by both the Workers' and Employers' members.

The Mexican Government member withdrew his earlier reservation and likewise accepted the proposed text.

The Committee adopted unanimously the text of the Resolution proposed by the Workers' members, as amended by the proposals of the Employers' members and the United Kingdom Government member.

San Francisco, 7 July 1948.

(Signed) JAMES THORN, *Chairman*.
ALFONSO GUZMAN NEIRA,
Reporter.
LÉON JOUHAUX, *Reporter*.
L. E. CORNIL, *Reporter*.

PROPOSED RESOLUTION CONCERNING INTERNATIONAL MACHINERY FOR SAFEGUARDING FREEDOM OF ASSOCIATION

The Conference,

Recalling the Resolution concerning international machinery for safeguarding freedom of association adopted by the Conference at its 30th Session (July 1947), requesting the Governing Body to examine this question in all its aspects, and to report back to the Conference at its 31st Session,

Having taken note of the report presented by the Governing Body in conformity with the above-mentioned Resolution,

Having taken note also of the resolution adopted by the Economic and Social Council of the United Nations at its 5th Session (August 1947), requesting the Secretary-General of the United Nations to arrange for co-operation between the International Labour Organisation and the Commission on Human Rights on the question of enforcement of trade union rights,

Having taken note also of the resolution adopted by the Assembly of the United Nations at its 2nd Session (September-November 1947), recommending to the International Labour Organisation that it pursue urgently, in collaboration with the United Nations and in conformity with the Resolution of the International Labour Conference, the study of the control of the application of trade union rights,

Considering that the Constitution of the International Labour Organisation provides adequate guarantees for the application of international labour Conventions in general,

Recognising, however, that the exercise of the right of the freedom of association as provided for in the Convention might be endangered by interference with other fundamental rights, the safeguarding of which lies outside the competence of the International Labour Organisation but within the competence of the United Nations, especially that of the Commission on Human Rights,

Considering that additional international machinery for safeguarding freedom of

association in all its aspects, established in collaboration with the United Nations, may be necessary effectively to complete the guarantees provided by the Constitution of the International Labour Organisation, guarantees which may be neither abrogated nor suspended,

Requests the Governing Body, accordingly, to enter into consultations with the competent organs of the United Nations, for the purpose of examining what developments to existing international machinery may be necessary to ensure the safeguarding of freedom of association, and to report back to the Conference at an early session.

**(4) Text of the Convention (No.)
concerning Freedom of Association and
Protection of the Right to Organise,
Submitted by the Drafting Committee.¹**

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 General 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 ;

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 and Protection of the Right to Organise 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 right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

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

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

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

¹ For final text of this Convention, see Appendix XIX, p. 547.

Article 9

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

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

Article 10

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

PART. II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

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

PART III. MISCELLANEOUS PROVISIONS

Article 12

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 subparagraphs (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 subparagraphs (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 16, 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.

Article 13

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 16, 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.

PART IV. FINAL PROVISIONS

Article 14

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

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.